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FROM

JANUARY 1, 2018 TO JANUARY 18, 2018

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MANILA
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 10689. January 8, 2018]
(Formerly CBD Case No. 11-3171)

ROMEO A. ALMARIO, *complainant, vs.* **ATTY. DOMINICA LLERA-AGNO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; A DOCUMENT SHOULD NOT BE NOTARIZED UNLESS THE PERSON/S WHO IS/ARE EXECUTING IT IS/ARE PERSONALLY OR PHYSICALLY PRESENT BEFORE THE NOTARY PUBLIC.— The importance of the affiant's personal appearance when a document is notarized is underscored by Section 1, Rule II of the 2004 Rules on Notarial Practice which states: Section 1. Acknowledgment. 'Acknowledgment' refers to an act in which an individual on a single occasion: (a) **appears in person before the notary public and presents an integrally complete instrument or document;** (b) **is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;** and x x x. Furthermore, Section 2(b), Rule IV of the same Rules provides that: (b) A person shall **not** perform a notarial act if the person involved as signatory to the instrument or document — (1) is **not** in the notary's presence personally at the time of the notarization; and (2) is **not** personally known to the notary public or otherwise identified by the notary public

through competent evidence of identity as defined by these Rules. These provisions mandate the notary public to require the physical or personal presence of the person/s who executed a document, before notarizing the same. In other words, a document should not be notarized unless the person/s who is/are executing it is/are personally or physically present before the notary public. The personal and physical presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature/s of the affiant/s therein and the due execution of the document.

2. ID.; ID.; ID.; A NOTARY PUBLIC MUST NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED IT ARE THE VERY SAME PERSONS WHO EXECUTED THE SAME, AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE TRUTH OF THE CONTENTS THEREOF; PURPOSE THEREOF.— Notaries public are absolutely prohibited or forbidden from notarizing a fictitious or spurious document. They are the law's vanguards and sentinels against illegal deeds. The confidence of the public in the integrity of notarial acts would be undermined and impaired if notaries public do not observe with utmost care the basic requirements in the performance of their duties spelled out in the notarial law. This Court, in *Ferguson v. Atty. Ramos*, held that "notarization is not an empty, meaningless and routinary act[; i]t is imbued with public interest x x x." In cognate or similar cases, this Court likewise held that a notary public must not notarize a document unless the persons who signed it are the very same persons who executed the same, and personally appeared before him to attest to the truth of the contents thereof. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free and voluntary act and deed. In the present case, the SPA in question was notarized by respondent lawyer despite the absence of Mallari, one of the affiants therein. Mallari could not have personally appeared before respondent lawyer in Muntinlupa City, Philippines where the SPA was notarized on July 26, 2006 because Mallari was in Japan at that time, as certified to by the Bureau of Immigration.

3. ID.; ID.; HAS A BOUNDEN DUTY TO OBEY THE LAWS OF THE LAND AND TO PROMOTE RESPECT FOR

LEGAL PROCESSES; TWO (2) MONTHS SUSPENSION AS NOTARY PUBLIC IMPOSED FOR VIOLATION OF THE 2004 RULES ON NOTARIAL PRACTICE.— It goes without saying that it was respondent lawyer's bounden duty, as a lawyer and notary public, to obey the laws of the land and to promote respect for legal processes. Respondent lawyer may only forsake this duty at the risk of forfeiting her membership in the Philippine Bar and the revocation of her license as a notary public. Considering however, the circumstances attendant upon this case, we resolve to reduce or lower the recommended penalty on respondent lawyer. The Court opts to suspend respondent lawyer as a notary public for two months, instead of six months as the IBP had recommended. We are impelled by the following reasons for taking this course of action: first, the apparent absence of bad faith in her notarizing the SPA in question; second, the civil case wherein the flawed SPA was used ended up in a judicial Compromise Agreement; and finally, this is her first administrative case since she was commissioned as a Notary Public in 1973. In addition, respondent lawyer invites our attention to the fact that she is already in the twilight years of her life.

D E C I S I O N

DEL CASTILLO, *J.*:

This administrative case stemmed from a Complaint[1] filed by complainant Romeo A. Almario (complainant) before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) seeking to disbar Atty. Dominica L. Agno (respondent lawyer), for notarizing a Special Power of Attorney (SPA) without the personal appearance of one of the affiants therein.

Factual Background

On July 5, 2006, a Complaint for Judicial Partition with Delivery of Certificate of Title, docketed as Civil Case No. 06115416[2]

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[1] *Rollo*, pp. 2-7.

[2] *Id*. at 41-46.

(civil case), was instituted before the Regional Trial Court (RTC) of Manila by the herein complainant against therein defendants Angelita A. Barrameda and several other persons. It was therein alleged that complainant is the sole surviving registered owner of a parcel of land situated at No. 973 Del Pan Street, San Antonio, Tondo, Manila, covered by Transfer Certificate of Title (TCT) No. 244909, and that the defendants therein are co-owners of that parcel of land by virtue of intestate succession.

Relative to the said civil case, herein respondent lawyer, as counsel for therein defendants, notarized and acknowledged a SPA[3] which reads:

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

WE, x x x the HEIRS OF THE LATE VICTORIA ALMARIO, to wit: RONALD A. GATDULA, of legal age, Filipino, married, and a resident of 973 Del Pan St., Tondo, Manila and FRANCISCA A. MALLARI, of the same address, do hereby appoint, name and constitute also MA. LOURDES ALMARIO P. PEDIA, above named, to do the following acts and things:

1. To act as our representative and agent in administering our property x x x located at District of Tondo, City of Manila consisting of SEVENTY EIGHT SQUARE METERS AND SIXTY FIVE DECIMETERS (78.65) Square meters, covered by TCT No. T-244909 of the [Register] of Deeds of the City of Manila;

x x x x x x x x x

HEREBY GIVING AND GRANTING unto our said attorney-in-fact full power and authority, whatsoever requisite to be done in or about the premises, as fully as we might or could lawfully do if personally present and hereby ratifying and confirming all that our said attorney shall do or cause to be done by virtue of these presents until revoked in writing by me.

IN WITNESS WHEREOF, we have signed this instrument on the 26[th] day of July 2006 at Muntinlupa City.

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[3] *Id.* at 199-201. Emphasis supplied.

x x x x x x x x x

HEIRS OF THE LATE VICTORIA A. ALMARIO:

(Signed) (Signed)
RONALD A. GATDULA FRANCISCA A. MALLARI

x x x x x x x x x

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES) SS.
CITY OF MUNTINLUPA)

BEFORE ME, a notary public for the City of Muntinlupa, personally appeared the following persons on the 26[th] day of July 2006:

x x x x x x x x x

Ronald A. Gatdula with CTC No. 16785315 issued at Manila on 1-19-06
Francisca Mallari with CTC No. 16785314 issued at Manila on 1-19-06

known to me and to me known to be the same persons who executed the foregoing Special Power of Attorney, consisting of three (3) pages including this page where the acknowledgement is written, signed by the parties and their instrumental witnesses and they acknowledged to me that the same is their own true act and deed.

WITNESS MY HAND AND SEAL.

(Signed)

DOMINICA L. AGNO
Notary Public
Until 31 Dec 2006
PTR No. 0007769
Muntinlupa City
06 January 2006
IBP Life Roll 00577

Doc. No. 193
Page No. 55
Book No. 11
Series of 2006

It is complainant's contention: (1) that the said SPA was falsified because one of the affiants therein, Francisca A. Mallari (Mallari),[4] could not possibly have executed the same because she was in Japan at the time the SPA was executed, as certified to[5] by the Bureau of Immigration (BI); (2) that this SPA was used in the said civil case to perpetrate fraud and deception against complainant resulting in the filing of Criminal Case No. 452612-CR, for violation of Article 172 of the Revised Penal Code (Use of Falsified Document) against Ma. Lourdes Almario Pedia, (Pedia), the attorney-in-fact mentioned in the SPA; (3) that respondent lawyer notarized the SPA although Mallari did not personally appear before her; (4) that in the process of notarizing the SPA, respondent lawyer also accepted a Community Tax Certificate (CTC), which is no longer considered a competent evidence of identity pursuant to the 2004 Rules on Notarial Practice; and (5) that, therefore, respondent lawyer violated Canons 1 and 10 of the Code of Professional Responsibility, which state —

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.

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

x x x x x x x x x

CANON 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

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[4] Also known as Francisca Almario Mallari Usui.

[5] *Rollo*, pp.11-12.

In her Answer,[6] respondent lawyer prayed for the dismissal of the complaint and offered the following arguments:

1) On July 12, 2006, Pedia sent the SPA to Mallari in Japan and it was brought back to the Philippines on July 25, 2006 by Mallari's son, Roman Mallari-Vestido;

2) The SPA was notarized on July 26, 2006 for reasons of expediency, because therein defendants were pressed for time in filing their Answer in the civil case, and that in any event, Mallari undertook to have the SPA acknowledged before the Philippine Consulate in Tokyo, Japan on August 28, 2006, (thereby giving it retroactive effect). Respondent lawyer claimed that the aforementioned circumstances showed that she acted in good faith in notarizing the SPA;

3) Mallari was able to acknowledge the SPA with red ribbon[7] before the Philippine Consulate in Tokyo, Japan on August 28, 2006;

4) Neither fraud nor deception was perpetrated as the parties in the said civil case executed a Compromise Agreement,[8] which was approved by the RTC;[9]

5) Contrary to complainant's claim, CTCs are still presently accepted as proof of personal identification in cases where no other proof of personal identification is available; and,

6) That, if at all, it was complainant himself who defrauded the RTC when he stated in his verified complaint that Mallari is a resident of No. 973 Del Pan St., San Antonio, Tondo, Manila, even though he knew that Mallari was in Japan at the time of filing of the civil case.

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[6] *Id*. at 22-26.

[7] *Id*. at 204-208.

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

[9] Decision dated July 5, 2007 penned by Judge Silvino T. Pampilo, Jr.; *id*. at 29-30.

Report and Recommendation of the Investigating Commissioner

In a Report and Recommendation,[10] the Investigating Commissioner found respondent lawyer liable for violation of Section 12 of the 2004 Rules on Notarial Practice and recommended that she be suspended for six months as notary public.

According to the Investigating Commissioner, it was evident that respondent lawyer notarized the SPA despite knowing that Mallari, one of the affiants therein, did not personally appear before her.

Recommendation of the IBP Board of Governors

On April 16, 2013, the Board of Governors of the IBP issued a Resolution[11] adopting the findings and approving the recommendation of the Investigating Commissioner.

Respondent lawyer filed a verified Motion for Reconsideration,[12] which was denied by the IBP Board of Governors in a Resolution[13] dated May 3, 2014.

Hence, the instant Petition for Review.

Respondent lawyer admits the infraction imputed against her, and simply pleads that the penalty recommended by the IBP be reduced or lowered. She argues that: (1) this is her first offense since she was first commissioned as a notary public in 1973; (2) the case involved only one document; (3) the notarization was done in good faith; (4) the civil case wherein the questioned SPA was used ended in a Compromise Agreement; and finally (5) she is already 71 years old and is truly sorry for

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[10] *Id*. at 181-183.

[11] *Id*. at 145.

[12] *Id*. at 149-155.

[13] *Id*. at 180.

what she had done, and promises to be more circumspect in the performance of her duties as a notary public.[14]

In his Comment[15] to the Petition, complainant insists that respondent lawyer must be disciplined accordingly and that suspension is the appropriate penalty for such infraction.

The sole issue that this Court must thus address is the appropriate penalty to be meted out against respondent lawyer.

Our Ruling

The importance of the affiant's personal appearance when a document is notarized is underscored by Section 1, Rule II of the 2004 Rules on Notarial Practice which states:

> SECTION 1. Acknowledgment. — 'Acknowledgment' refers to an act in which an individual on a single occasion:
>
> (a) **appears in person before the notary public and presents an integrally complete instrument or document;**
>
> (b) **is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;** and
>
> (c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (Emphasis supplied)

Furthermore, Section 2(b), Rule IV of the same Rules provides that:

> (b) A person shall **not** perform a notarial act if the person involved as signatory to the instrument or document —
>
> (1) is **not** in the notary's presence personally at the time of the notarization; and

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[14] See Petition for Review; *id*. at 172-179.

[15] *Id*. at 240-245.

(2) is **not** personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. (Emphasis supplied)

These provisions mandate the notary public to require the physical or personal presence of the person/s who executed a document, before notarizing the same. In other words, a document should not be notarized unless the person/s who is/are executing it is/are personally or physically present before the notary public. The personal and physical presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature/s of the affiant/s therein and the due execution of the document.

Notaries public are absolutely prohibited or forbidden from notarizing a fictitious or spurious document. They are the law's vanguards and sentinels against illegal deeds. The confidence of the public in the integrity of notarial acts would be undermined and impaired if notaries public do not observe with utmost care the basic requirements in the performance of their duties spelled out in the notarial law.

This Court, in *Ferguson v. Atty. Ramos*,[16] held that "notarization is not an empty, meaningless and routinary act[; i]t is imbued with public interest x x x."

In cognate or similar cases,[17] this Court likewise held that a notary public must not notarize a document unless the persons who signed it are the very same persons who executed the same, and personally appeared before him to attest to the truth of the contents thereof. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free and voluntary act and deed.

In the present case, the SPA in question was notarized by respondent lawyer despite the absence of Mallari, one of the

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[16] A.C. No. 9209, April 18, 2017.

[17] *Ocampo-Ingcoco v. Atty. Yrreverre, Jr.* 458 Phil. 803, 813 (2003); *Coquia v. Laforteza,* A.C. No. 9364, February 8, 2017.

affiants therein. Mallari could not have personally appeared before respondent lawyer in Muntinlupa City, Philippines where the SPA was notarized on July 26, 2006 because Mallari was in Japan at that time, as certified to by the Bureau of Immigration.

It goes without saying that it was respondent lawyer's bounden duty, as a lawyer and notary public, to obey the laws of the land and to promote respect for legal processes. Respondent lawyer may only forsake this duty at the risk of forfeiting her membership in the Philippine Bar and the revocation of her license as a notary public. Considering however, the circumstances attendant upon this case, we resolve to reduce or lower the recommended penalty on respondent lawyer.

The Court opts to suspend respondent lawyer as a notary public for two months, instead of six months as the IBP had recommended. We are impelled by the following reasons for taking this course of action: first, the apparent absence of bad faith in her notarizing the SPA in question; second, the civil case wherein the flawed SPA was used ended up in a judicial Compromise Agreement; and finally, this is her first administrative case since she was commissioned as a Notary Public in 1973. In addition, respondent lawyer invites our attention to the fact that she is already in the twilight years of her life.

ACCORDINGLY, respondent Atty. Dominica L. Agno is hereby **SUSPENDED** as Notary Public for the aforesaid infraction for two months and **WARNED** that the commission of a similar infraction will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to Atty. Agno's personal record. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 195472. January 8, 2018]

SAMSON LIM BIO HIAN, *petitioner, vs.* **JOAQUIN LIM ENG TIAN,** *respondent.*

[G.R. No. 195568. January 8, 2018]

JOHNSON LIM BIO TIONG, *petitioner, vs.* **JOAQUIN LIM ENG TIAN,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; POWER OF JUDICIAL REVIEW; THE EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY IS A NECESSARY CONDITION PRECEDENT TO THE COURT'S EXERCISE OF ITS POWER OF ADJUDICATION, AS AN ISSUE CEASES TO BE JUSTICIABLE WHEN A CONTROVERSY BECOMES MOOT AND ACADEMIC.—** The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural not moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.

2. **ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTIONS; NOT PRESENT.—** A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. While it is true that this court may

assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present: (1) Grave constitutional violations; (2) Exceptional character of the case; (3) Paramount public interest; (4) The case presents an opportunity to guide the bench, the bar, and the public; or (5) The case is capable of repetition yet evading review. None of these circumstances is present in this case. It must be noted that the petition for certiorari to assail the decision in CA-G.R. SP No. 133267 was dismissed by the CA in a decision, dated 31 March 2016. Entry of Judgment was thus effected on 15 December 2016. Moreover, the RTC had already issued a writ of execution, which implementation was held in abeyance upon motion of the petitioners who conveniently used the pendency of this petition as a ground therefor. Consequently, the issue raised in this petition was rendered moot and academic by the final and executory decision in the main action for partition.

3. ID.; ID.; ID.; ID.; ID.; ID.; WHERE A DECISION ON THE MERITS OF A CASE IS RENDERED AND THE SAME HAS BECOME FINAL AND EXECUTORY, THE ACTION ON PROCEDURAL MATTERS OR ISSUES IS THEREBY RENDERED MOOT AND ACADEMIC.— The question presented in this petition is merely procedural, *i.e.*, whether the defendant may be allowed to cross-examine the plaintiff after the trial court had allowed the latter to present his evidence ex parte. It is axiomatic in this jurisdiction that where a decision on the merits of a case is rendered and the same has become final and executory, the action on procedural matters or issues is thereby rendered moot and academic. Inarguably, an adjudication of the procedural issue presented for resolution would be a futile exercise.

APPEARANCES OF COUNSEL

Oscar O. Martinez for Johnson Lim Bio Tiong.
Ramil G. Gabao for Samson Lim Bio Hian.
Danilo L. Francisco for respondent Joaquin Lim Eng Tian.

RESOLUTION

MARTIRES, *J.*:

These consolidated petitions for review on certiorari seek to reverse and set aside the Decision,[1] dated 26 July 2010, and Resolution,[2] dated 9 February 2011, of the Court of Appeals *(CA)* in CA-G.R. SP No. 111248 which nullified the Orders,[3] dated 13 March 2009 and 17 August 2009, of the Regional Trial Court, Branch 258, Parañaque City *(RTC),* in Civil Case No. 08-0246, an action for partition.

THE FACTS

The petitioners Samson Lim Bio Tian *(Samson)* and Johnson Lim Bio Tiong *(Johnson)* and respondent Joaquin Lim Eng Tian *(Joaquin)* are co-owners of a parcel of land covered by Transfer Certificate of Title *(TCT)* No. 81239. Respondent wanted to have the said land partitioned but the petitioners refused to heed his demand, thus, he filed a complaint for partition.

Summons and copies of the complaint were served upon the petitioners who, in turn, filed their respective pleadings. After the issues were joined, the RTC set the case for pre-trial conference on 8 December 2008. Notices were sent to the parties and their respective counsels.

When the case was called for pre-trial on 8 December 2008, only Joaquin and Johnson and their respective counsels appeared. However, Johnson filed his pre-trial brief only on that day. Samson and his counsel also failed to appear. Thus, the RTC issued an order,[4] dated 8 December 2008, wherein it ruled that

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[1] *Rollo* (G.R. No. 195472), pp. 15-25; penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Amelita G. Tolentino and Ruben C. Ayson.

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

[3] Records Vol. I, pp. 293-295 and 355-356.

[4] *Id*. at 135-136.

both petitioners failed to file a pre-trial brief. Joaquin was thus allowed to submit his evidence ex parte.

On 18 December 2008, Samson moved for reconsideration of the RTC's 8 December 2008 order. He averred that the non-appearance of his counsel during the pre-trial should be excused as the latter was busy attending a seminar in Mandatory Continuing Legal Education *(MCLE)*. He did not, however, offer any reason for his own failure to appear. Johnson also filed a motion for reconsideration, arguing that he and his counsel decided to submit personally his pre-trial brief on the pre-trial date instead of by mail because they were apprehensive that the court would not receive it on time.

On 13 March 2009, the RTC issued the first assailed order granting the petitioners' motions. The *fallo* reads:

> **WHEREFORE,** premises considered, **the Motion[s] for Reconsideration filed by defendants, Samson Lim and Johnson Lim are GRANTED and movants are allowed to cross-examine plaintiff, Joaquin Lim Eng Lian, and the Pre-Trial Bried submitted by defendants-movants are ADMITTED.**
>
> Meanwhile, let the cross- examination of plaintiff be set on May 4, 2009 at 8:30 in the morning.
>
> Notify the parties and their counsel.[5] (emphasis in the original)

Joaquin moved for reconsideration but the same was denied by the RTC in an order, dated 17 August 2009. Aggrieved, Joaquin filed a petition for certiorari before the CA.

The CA Ruling

In its 26 July 2010 decision, the CA nullified the orders of the RTC. It observed that Samson did not bother to offer any excuse for his non-appearance during the pre-trial conference nor for not filing a pre-trial brief. The appellate court added that Johnson's excuse that he opted to personally file his Brief

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[5] *Id*. at 292.

on the date set for pre-trial instead of filing it by mail, because he did not rely on the mail service, was flimsy and could not be given credence. It opined that the rule on liberal construction was not a license to disregard the rules of procedure because like all rules, they are to be followed except only for the most persuasive of reasons. The CA concluded that the RTC acted with grave abuse of discretion in allowing the petitioners to cross-examine Joaquin and to file a pre-trial brief; because the petitioners had clearly failed to show that their failure to attend the pre-trial conference and to file a pre-trial brief was due to fraud, accident, mistake or excusable neglect.

The petitioners moved for reconsideration but were denied by the CA in a resolution, dated 9 February 2011. Undeterred, the petitioners filed a petition for review before this Court.

Meanwhile, on 21 February 2013, the RTC rendered a decision[6] in the action for partition and ruled that respondent, as co-owner of the parcel of land, was entitled to demand its partition. Thereafter, the trial court denied the petitioners' notice of appeal because it was filed out of time. The decision of the RTC was affirmed by the CA[7] and on 15 December 2016, the CA judgment became final and executory.[8]

ISSUE

WHETHER THIS PETITION PRESENTS A JUSTICIABLE CONTROVERSY AFTER THE DECISION ON THE ACTION FOR PARTITION HAS ALREADY BECOME FINAL AND EXECUTORY.

OUR RULING

The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there

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[6] Records, Vol. III, pp. 780-783.

[7] Records, Vol. IV, pp. 1162-1169.

[8] *Id*. at 1192.

is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.[9]

A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist.[10] While it is true that this court may assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present:

(1) Grave constitutional violations;

(2) Exceptional character of the case;

(3) Paramount public interest;

(4) The case presents an opportunity to guide the bench, the bar, and the public; or

(5) The case is capable of repetition yet evading review.[11]

None of these circumstances is present in this case. It must be noted that the petition for certiorari to assail the decision in CA-G.R. SP No. 133267 was dismissed by the CA in a decision, dated 31 March 2016.[12] Entry of Judgment was thus effected

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[9] *Reyes v. Insular Life Assurance Co., Ltd.,* 731 Phil. 155, 160 (2014).

[10] *Sanlakas v. Executive Secretary Reyes*, 466 Phil. 482, 505 (2004).

[11] *Republic v. Moldex Realty, Inc.,* G.R. No. 171041, 10 February 2016, 783 SCRA 414, 422-423.

[12] Records, Vol. IV, pp. 1162-1169.

on 15 December 2016.[13] Moreover, the RTC had already issued a writ of execution, which implementation was held in abeyance upon motion of the petitioners who conveniently used the pendency of this petition as a ground therefor. Consequently, the issue raised in this petition was rendered moot and academic by the final and executory decision in the main action for partition.

To explain further, the question presented in this petition is merely procedural, i.e., whether the defendant may be allowed to cross-examine the plaintiff after the trial court had allowed the latter to present his evidence ex parte. It is axiomatic in this jurisdiction that where a decision on the merits of a case is rendered and the same has become final and executory, the action on procedural matters or issues is thereby rendered moot and academic. Inarguably, an adjudication of the procedural issue presented for resolution would be a futile exercise.[14]

WHEREFORE, the petitions are **DENIED** for being moot and academic.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

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[13] *Id*. at 1192.

[14] *Go v. Tabanda,* 272-A Phil. 122, 126 (1991).

FIRST DIVISION

[G.R. No. 210766. January 8, 2018]

MARIA CONCEPCION N. SINGSON *a.k.a.* **CONCEPCION N. SINGSON,** *petitioner, vs.* **BENJAMIN L. SINGSON,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE FAMILY CODE; VOID MARRIAGES; ARTICLE 36 OF THE FAMILY CODE; PSYCHOLOGICAL INCAPACITY AS A GROUND TO NULLIFY A MARRIAGE, CONSTRUED; GUIDELINES.— It is axiomatic that the validity of marriage and the unity of the family are enshrined in our Constitution and statutory laws, hence any doubts attending the same are to be resolved in favor of the continuance and validity of the marriage and that the burden of proving the nullity of the same rests at all times upon the petitioner. "The policy of the Constitution is to protect and strengthen the family as the basic social institution, and marriage as the foundation of the family. Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties." Article 1 of the Family Code describes marriage as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life" and as "the foundation of the family and an inviolable social institution." In the instant case, petitioner impugns the inviolability of this social institution by suing out pursuant to Article 36 of the Family Code x x x. Petitioner's case will thus be examined in light of the well-entrenched case law rulings interpreting and construing the quoted Article, to wit: 'Psychological incapacity,' as a ground to nullify a marriage under Article 36 of the Family Code, should refer to no less than a mental — not merely physical — incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Family Code, among others, include their mutual obligations

to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of 'psychological incapacity' to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. In *Santos v. CA* (*Santos*), the Court first declared that psychological incapacity must be characterized by: (a) gravity (*i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage); (b) juridical antecedence (*i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage); and (c) incurability (*i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved). The Court laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic of the Phils. v. CA*, x x x [also known as the Molina guidelines]. These guidelines incorporate the basic requirements that the Court established in Santos.

2. ID.; ID.; ID.; ID.; HABITUAL DRUNKENNESS, GAMBLING AND FAILURE TO FIND A JOB ARE NOT EQUIVALENT OF PSYCHOLOGICAL INCAPACITY, ABSENT INCONTROVERTIBLE PROOF THAT THESE ARE MANIFESTATIONS OF AN INCAPACITY ROOTED IN SOME DEBILITATING PSYCHOLOGICAL CONDITION OR ILLNESS, FOR IT IS NOT ENOUGH TO PROVE THAT A SPOUSE FAILED TO MEET HIS RESPONSIBILITY AND DUTY AS A MARRIED PERSON, BUT IT IS ESSENTIAL THAT HE OR SHE MUST BE SHOWN TO BE INCAPABLE OF DOING SO BECAUSE OF SOME PSYCHOLOGICAL, NOT PHYSICAL, ILLNESS.— Neither does petitioner's bare claim that respondent is a pathological gambler, is irresponsible, and is unable to keep a job, necessarily translate into unassailable proof that respondent is psychologically incapacitated to perform the essential marital obligations. It is settled that "[ps]ychological incapacity under Article 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will." [I]t is not

enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he or she must be shown to be incapable of doing so because of some psychological, not physical, illness." xxx. Furthermore, "[h]abitual drunkenness, gambling and failure to find a job, [while undoubtedly negative traits, are nowhere nearly the equivalent of 'psychological incapacity'], in the absence of [incontrovertible] proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness."

3. ID.; ID.; ID.; ID.; THERE MUST BE PROOF OF A NATAL OR SUPERVENING DISABLING FACTOR THAT EFFECTIVELY INCAPACITATED THE RESPONDENT SPOUSE FROM COMPLYING WITH THE BASIC MARITAL OBLIGATIONS.— x x x [W]ell-entreched is the rule that "there must be proof of a natal or supervening disabling factor that effectively incapacitated the respondent spouse from complying with the basic marital obligations x x x". "A cause has to be shown and linked with the manifestations of the psychological incapacity." Again we agree with the CA that the RTC did not clearly or correctly lay down the bases or premises for this particular finding relative to respondent's psychological incapacity. x x x. x x x [T]he medical basis or evidence adverted to by the RTC did not specifically identify the root cause of respondent's alleged psychological incapacity.

4. ID.; ID.; ID.; ID.; THE PARTIES' CHILD IS NOT A VERY RELIABLE WITNESS WITH RESPECT TO HIS/HER PARENT'S PSYCHOLOGICAL INCAPACITY EXISTING BEFORE OR AT THE TIME OF THE MARRIAGE.— Needless to say, petitioner cannot lean upon her son Jose's testimony that his father's psychological incapacity existed before or at the time of marriage. It has been held that the parties' child is not a very reliable witness in an Article 36 case as "he could not have been there when the spouses were married and could not have been expected to know what was happening between his parents until long after his birth."

5. ID.; ID.; ID.; ID.; UNLESS THE EVIDENCE PRESENTED CLEARLY REVEALS A SITUATION WHERE THE PARTIES OR ONE OF THEM, BY REASON OF A GRAVE

AND INCURABLE PSYCHOLOGICAL ILLNESS EXISTING AT THE TIME THE MARRIAGE WAS CELEBRATED, WAS INCAPACITATED TO FULFILL THE OBLIGATIONS OF MARITAL LIFE AND THUS COULD NOT THEN HAVE VALIDLY ENTERED INTO A MARRIAGE, THEN THE COURT IS COMPELLED TO UPHOLD THE INDISSOLUBILITY OF THE MARITAL TIE.— To support her Article 36 petition, petitioner ought to have adduced convincing, competent and trustworthy evidence to establish the cause of respondent's alleged psychological incapacity and that the same antedated their marriage. If anything, petitioner failed to successfully dispute the CA's finding that she was not aware of any gambling by respondent before they got married and that respondent was a kind and caring person when he was courting her. Against this backdrop, we must uphold the CA's declaration that petitioner failed to prove that respondent's alleged psychological incapacity is serious or grave and that it is incurable or permanent. To be sure, this Court cannot take judicial notice of petitioner's assertion that "personality disorders are generally incurable" as this is not a matter that courts are mandated to take judicial notice under Section 1, Rule 129 of the Rules of Court. "Unless the evidence presented clearly reveals a situation where the parties or one of them, by reason of a grave and incurable psychological illness existing at the time the marriage was celebrated, was incapacitated to fulfill the obligations of marital life (and thus could not then have validly entered into a marriage), then we are compelled to uphold the indissolubility of the marital tie." This is the situation here.

APPEARANCES OF COUNSEL

Alentajan Law Office for petitioner.
Antolin P. Camero for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the August 29, 2013 Decision[2] of the Court of Appeals (CA) and its January 6, 2014 Resolution[3] in CA-G.R. CV No. 96662, which reversed and set aside the November 12, 2010 Decision[4] of the Regional Trial Court (RTC) of Parañaque City, Branch 260, in Civil Case No. 07-0070.

Factual Antecedents

On February 27, 2007, Maria Concepcion N. Singson a.k.a. Concepcion N. Singson (petitioner) filed a Petition[5] for declaration of nullity of marriage based on Article 36 of the Family Code of the Philippines[6] (Family Code). This was docketed as Civil Case No. 07-0070.

It was alleged therein that on July 6, 1974, petitioner and Benjamin L. Singson (respondent) were married before the Rev. Fr. Alfonso L. Casteig at St. Francis Church, Mandaluyong, Rizal; that said marriage produced four children, all of whom are now of legal age; that when they started living together, petitioner noticed that respondent was "dishonest, unreasonably extravagant at the expense of the family's welfare, extremely vain physically and spiritually,"[7] and a compulsive gambler; that respondent was immature, and was unable to perform his paternal duties; that respondent was also irresponsible, an easy-

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[1] *Rollo*, pp. 3-31.

[2] *Id*. at 32-50; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias.

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

[4] *Id*. at 58-68; penned by Presiding Judge Jaime M. Guray.

[5] Records, pp. 3-7.

[6] Also known as Executive Order No. 209.

[7] Records, p. 4.

going man, and guilty of infidelity; that respondent's abnormal behavior made him completely unable to render any help, support, or assistance to her; and that because she could expect no help or assistance at all from respondent she was compelled to work doubly hard to support her family as the sole breadwinner.

Petitioner also averred that at the time she filed this Petition, respondent was confined at Metro Psych Facility,[8] a rehabilitation institution in Pasig City; and that respondent's attending psychiatrist, Dr. Benita Sta. Ana-Ponio (Dr. Sta. Ana-Ponio), made the following diagnosis on respondent:

> Based on history, mental status examination and observation, he is diagnosed to be suffering from Pathological Gambling as manifested by:
>
> a. preoccupation with gambling, thinking of ways to get money with which to gamble as seen in his stealing and pawning jewelries and appliances[;]
>
> b. needs to gamble with increasing amounts of money in order to achieve the desired effect[;]
>
> c. lies to family members or others to conceal the extent of [his] involvement with gambling[;]
>
> d. committed illegal acts such as forging the signature of his wife, issuing bouncing checks in order to finance his gambling[;]
>
> e. has jeopardized his relationship with his wife, lost the respect of his children, lost a good career in banking because of gambling[;]
>
> f. [relies] on his parents, his wife, and siblings to provide money to relieve a desperate financial situation caused by gambling[;]
>
> While he apparently had Typhoid fever that resulted [in] behavioral changes as a young boy, it would be difficult to say that the psychotic episodes he manifested in 2003 and 2006 [are] etiologically related to the general medical condition that occurred in his childhood.
>
> Furthermore, [respondent] manifests an enduring pattern of behavior that deviates markedly from the expectations of our culture as manifested in the following areas:

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[8] Also referred to as Metro Psych Facility and Rehabilitation Institute in some parts of the records.

a. his ways of perceiving and interpreting [his own] self, other people, and events[;]

b. his emotional response[;]

c. his poor impulse control[;]

Such pattern is inflexible and pervasive and has led to significant impairment in social, occupational and interpersonal relationship. In [respondent's] case, this has persisted for several years, and can be traced back [to] his adolescence since he started gambling while in high school. He is therefore diagnosed to be suffering from Personality Disorder.

All these[,] put together, [hinder respondent] from performing his marital obligations.[9]

Petitioner moreover asserted that respondent came from a "distraught" family and had a "dysfunctional" childhood;[10] that respondent had all the love, care, and protection of his parents as the youngest child for some time; but that these parental love, care and protection were, however, transferred to his youngest brother who was born when respondent was almost five years old; and that these factors caused respondent emotional devastation from which he never recovered.

Petitioner added that unknown to her, respondent even as a high school student, was already betting on jai alai. She also claimed that she tried to adjust to respondent's personality disorders, but that she did not attain her goal.

Finally, petitioner claimed that she and respondent did not enter into any ante-nuptial agreement to govern their property relations as husband and wife and that they had no conjugal assets or debts.

On June 19, 2007, respondent filed his Answer.[11]

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[9] Records, pp. 5-6.

[10] *Id*. at 4.

[11] *Id*. at 77-90.

Traversing petitioner's allegations, respondent claimed that "psychological incapacity" must be characterized by gravity, juridical antecedence, and incurability, which are not present in the instant case because petitioner's allegations are not supported by facts.

Respondent further averred that it was not true that he failed to render any help, support or assistance to petitioner and their family; that the family home where petitioner and their children are living was in fact his own capital property; that his shortcomings as mentioned by petitioner do not pertain to the most grave or serious cases of personality disorders that would satisfy the standards required to obtain a decree of nullity of marriage; that petitioner's complaint is nothing more than a complaint of a woman with an unsatisfactory marriage who wants to get out of it; that contrary to petitioner's claim that he is a good-for-nothing fellow, he has a college degree in business administration, and is a bank employee, and, that it was money problem, and not his alleged personality disorder, that is the wall that divided him and petitioner.

Respondent also claimed that petitioner failed to lay the basis for the conclusions of the psychiatrist to the effect that he is suffering from pathological gambling and personality disorder; that petitioner's allegation that he came from a distraught family and that he suffered emotional devastation is vague, and bereft of particular details, and even slanderous; and that assuming that he had not acted the way petitioner expected him to conduct himself, his actions and behavior are not psychological illnesses or personality disorders, but simply physical illnesses of the body, akin to hypertension and allied sicknesses, and that these physical illnesses are not at all incurable psychiatric disorders that were present at the time of his marriage with petitioner.

Respondent furthermore claimed that he and petitioner had conjugal assets and debts; that the land where their family home is built came from his earnings, hence the family home is their conjugal property; that he and petitioner also have a house and lot in Tagaytay City, as well as bank accounts that are in petitioner's name only; and he and petitioner also have investments in shares

of stocks, cars, household appliances, furniture, and jewelry; and that these are conjugal assets because they came from petitioner's salaries and his (respondent's) own inheritance money.

Respondent moreover alleged that before the filing of the present Petition, petitioner had caused him to be admitted into the Metro Psych Facility for treatment; that on account of his confinement and treatment in this psychiatric facility, he has incurred medical expenses and professional medical fees; and that since it is petitioner who manages all their finances and conjugal assets it stands to reason that he should be awarded "spousal support."

On July 25, 2007, the RTC issued its Pre-Trial Order.[12]

Trial thereafter ensued. Petitioner's witnesses included herself, her son, Jose Angelo Singson (Jose), and Dr. Sta. Ana-Ponio.

On February 23, 2010, petitioner filed her Formal Offer of Evidence which included a photocopy of the marriage contract; the birth certificates of their four children; her son Jose's Judicial Affidavit dated April 2, 2008; a photocopy of Dr. Sta. Ana-Ponio's Judicial Affidavit dated June 25, 2008; Clinical Summary of respondent issued by Dr. Sta. Ana-Ponio dated February 11, 2007 (Clinical Summary); her (petitioner's) own Judicial Affidavit dated April 2, 2008; a photocopy of Transfer Certificate of Title (TCT) No. 179751 registered in the names of the parties' four children; and a notarized document entitled "Summary of Sources and Uses of Funds for the period November 1999 to March 31, 2008" executed by petitioner and described as a detailed summary of expenses paid for with the proceeds of respondent's share in the sale of the latter's house in Magallanes Village.[13]

Respondent filed his Comment thereon.[14]

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

[13] Folder of Exhibits, pp. 616-655; Petitioner also filed a Manifestation dated October 7, 2010 wherein she stated that she and the "Concepcion G. Nepomuceno" appearing in the Marriage Contract marked as Exhibit "A" pertains to one and the same person (Records, p. 504).

[14] Folder of Exhibits, pp. 657-660.

On March 29, 2010, the RTC admitted petitioner's exhibits.[15]

On May 13, 2010, respondent filed a Motion to Dismiss[16] "on the ground that the **totality of evidence** presented by petitioner did not establish [his] psychological incapacity x x x to comply with the essential marital obligations x x x".[17] Petitioner filed her Opposition[18] thereto, and respondent tendered his Comment thereon.[19]

On May 17, 2010, the RTC denied respondent's Motion to Dismiss and stood pat on its March 29, 2010 Order.[20]

During the September 30, 2010 hearing, respondent's counsel manifested that his client was waiving the right to present countervailing evidence. Respondent's counsel also moved that the Petition at bar be submitted for decision on the basis of the evidence already on the record. The RTC thus declared the case submitted for decision.[21]

Ruling of the Regional Trial Court

In its Decision of November 12, 2010, the RTC granted the Petition and declared the marriage between petitioner and respondent void *ab initio* on the ground of the latter's psychological incapacity. The RTC disposed thus —

> WHEREFORE, in view of the foregoing considerations, the petition is GRANTED. Judgment is hereby rendered[:]
>
> 1. *DECLARING null and void ab initio* the marriage between *MARIA CONCEPCION N. SINGSON a.k.a. CONCEPCION N. SINGSON* and *BENJAMIN L. SINGSON* solemnized on JULY 6, 1974 in Mandaluyong City or any other marriage

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[15] Records, p. 382.

[16] *Id*. at 391-408.

[17] *Id*. at 391; emphasis and underscoring in the original.

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

[19] *Id*. at 447-450.

[20] *Id*. at 418.

[21] *Id*. at 501.

between them on the ground of psychological incapacity of the respondent.

2. *ORDERING* the Local Civil Registrar of Mandaluyong City and the National Statistics Office to cancel the marriage between the petitioner and the respondent as appearing in the Registry of Marriage.

There are no other issues in this case.

Let copies of this Decision be furnished the Local Civil Registrars of Mandaluyong City and Para[ñ]aque City, the Office of the Solicitor General, the Office of the Civil Register General (National Statistics Office) and the Office of the City Prosecutor, Paranque City.

SO ORDERED.[22]

The RTC ruled that the requisites warranting a finding of psychological incapacity under Article 36 of the Family Code are present in the instant case because the totality of evidence showed that respondent is suffering from a psychological condition that is grave, incurable, and has juridical antecedence.

The RTC also found that the combined testimonies of petitioner and Dr. Sta. Ana-Ponio convincingly showed that respondent is psychologically incapacitated to perform the essential marital obligations; that respondent's inability to perform his marital obligations as set out in Articles 68 to 71 of the Family Code, was essentially due to a psychological abnormality arising from a pathological and utterly irresistible urge to gamble.

The RTC cited "[Dr. Sta. Ana-Ponio's] findings [which] reveal that respondent is suffering from ***Personality Disorder known as Pathological Gambling***."[23] It ruled that it has been shown that this personality disorder was present at the time of celebration of marriage but became manifest only later; that because of this personality disorder respondent had already jeopardized his relationship with his family; and that respondent's psychological disorder hinders the performance of his obligations as a husband and as a father.

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[22] *Rollo*, pp. 67-68.

[23] *Id.* at 63; emphasis and italics in the original.

Lastly, the RTC found that the only property owned in common by the spouses was donated in favor of the parties' children as evidenced by TCT No. 179751 — a fact not at all controverted, in view of respondent's waiver of his right to present evidence.

Respondent moved for reconsideration of this verdict.

But in its Order dated January 6, 2011,[24] the RTC denied respondent's motion for reconsideration. It reiterated that the expert witness had adequately established that respondent is suffering from "Pathological Gambling Personality Disorder" which is grave, permanent, and has juridical antecedence.

On February 4, 2011, respondent filed a Notice of Appeal[25] which was given due course by the RTC in its Order[26] dated February 28, 2011.

Ruling of the Court of Appeals

In its Decision of August 29, 2013, the CA overturned the RTC, and disposed as follows:

> WHEREFORE, the appeal is GRANTED. The Decision dated 12 November 2010 issued by the Regional Trial Court, Branch 260, Parañaque City in Civil Case No. 07-0070, declaring the marriage between Maria Concepcion N. Singson and Benjamin L. Singson null and void *ab initio*, is REVERSED AND SET ASIDE. Instead, the Petition for Declaration of Nullity of Marriage is DISMISSED.
>
> SO ORDERED.[27]

The CA held that the totality of evidence presented by petitioner failed to establish respondent's alleged psychological incapacity to perform the essential marital obligations, which in this case, was not at all proven to be grave or serious, much less incurable, and furthermore was not existing at the time of the marriage. What is more, the CA declared that any doubt

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[24] Records, pp. 591-593.

[25] *Id.* at 613-614.

[26] *Id.* at 615.

[27] *Rollo*, p. 49.

should be resolved in favor of the existence and continuation of the marriage, and against its dissolution and nullity, in obedience to the mandate of the Constitution and statutory laws; and that in this case, petitioner failed to discharge the burden of proving that respondent is suffering from a serious or grave psychological disorder that completely disables or incapacitates him from understanding and discharging the essential obligations of the marital union.

According to the CA, psychological incapacity is the downright or utter incapacity or inability to take cognizance of and to assume the basic marital obligations. The CA did not go along with the RTC, which placed heavy reliance on Dr. Sta. Ana-Ponio's finding that respondent was psychologically incapacitated to perform the essential marital obligations due to a personality disorder known as pathological gambling. The CA held that, contrary to petitioner's claim that respondent's pathological gambling was grave or serious, the evidence in fact showed that the latter was truly capable of carrying out the ordinary duties of a married man because he had a job, had provided money for the family from the sale of his own property, and he likewise provided the land on which the family home was built, and he also lives in the family home with petitioner and their children.

On top of these, the CA ruled that it is settled that mere difficulty, refusal or neglect in the performance of marital obligations, or ill will on the part of a spouse, is different from incapacity rooted in some debilitating psychological condition or illness; that the evidence at bar showed that respondent's alleged pathological gambling arose after the marriage; that in fact petitioner admitted that she was not aware of any gambling by respondent before they got married; that petitioner moreover acknowledged that respondent was a kind and a caring person when he was courting her; that petitioner likewise admitted that respondent also brought petitioner to the hospital during all four instances when she gave birth to their four children.

In other words, the CA found that respondent's purported pathological gambling was not proven to be incurable or

permanent since respondent has been undergoing treatment since 2003 and has been responding to the treatment.

Petitioner moved for reconsideration[28] of the CA's Decision. But her motion was denied by the CA in its Resolution of January 6, 2014.[29]

Issue

Hence, the instant recourse with petitioner raising the following question —

[WHETHER] THE [CA] ERRED IN REVERSING THE DECISION OF THE [RTC].[30]

Petitioner's Arguments

In praying for the reversal of the assailed CA Decision and Resolution, and in asking for the reinstatement of the RTC Decision, petitioner argues in her Petition,[31] Reply,[32] and Memorandum[33] that respondent's psychological incapacity had been duly proved in court, including its juridical antecedence, incurability, and gravity.

First, petitioner maintains that respondent failed to perform the marital duties of mutual love, respect, and support; that Dr. Sta. Ana-Ponio's expert findings are corroborated by the testimonies of petitioner and her son Jose both of whom demonstrated that respondent's psychological incapacity is grave or serious rendering him incapable to perform the essential marital obligations; that for his part, respondent had adduced no proof that he (respondent) is capable of carrying out the ordinary duties required in a marriage for the reason that everything

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[28] CA *rollo*, pp. 235-244.

[29] *Rollo*, pp. 51-52.

[30] *Id*. at 18.

[31] *Id*. at 3-31.

[32] *Id*. at 347-358.

[33] *Id*. at 519-554.

that the family had saved and built had been squandered by respondent; and that respondent's confinement at the rehabilitation facility is itself proof of the gravity or seriousness of his psychological incapacity.

Second, petitioner contends that respondent's psychological incapacity preceded the marriage, as shown in Dr. Sta. Ana-Ponio's Clinical Summary, which pointed out that such psychological incapacity, which included pathological gambling, can be traced back when respondent was already betting on *jai alai* even in high school, and this was not known to his family; that the Clinical Summary was based on information provided not only by petitioner, but by respondent's sister, and by respondent himself; that such juridical antecedence was neither questioned nor overthrown by countervailing evidence; and that the root cause could be traced back to respondent's flawed relationship with his parents which developed into a psychological disorder that existed before the marriage.

Third, petitioner insists that this Court can take judicial notice of the fact that personality disorders are generally incurable and permanent, and must continuously be treated medically; that in this case the Clinical Summary had pointed out that respondent's understanding of his gambling problem is only at the surface level; and that in point of fact Dr. Sta. Ana-Ponio had affirmed that personality disorders are incurable.

Respondent's Arguments

In his Comment[34] and Memorandum,[35] respondent counters that the assailed CA Decision should be affirmed. He argues that the grounds cited by petitioner are the self-same grounds raised by petitioner before the RTC and the CA; that petitioner's evidence indeed failed to prove convincingly that he (respondent) is psychologically incapacitated to comply with the essential marital obligations, hence there is no basis to declare the parties' marriage void *ab initio*.

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[34] *Id*. at 336-342.

[35] *Id*. at 365-516.

Our Ruling

The Petition will not succeed.

It is axiomatic that the validity of marriage and the unity of the family are enshrined in our Constitution and statutory laws, hence any doubts attending the same are to be resolved in favor of the continuance and validity of the marriage and that the burden of proving the nullity of the same rests at all times upon the petitioner.[36] "The policy of the Constitution is to protect and strengthen the family as the basic social institution, and marriage as the foundation of the family. Because of this, the Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties."[37]

Article 1 of the Family Code describes marriage as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life" and as "the foundation of the family and an inviolable social institution."

In the instant case, petitioner impugns the inviolability of this social institution by suing out pursuant to Article 36 of the Family Code, which provides that:

> Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (As amended by Executive Order 227)

Petitioner's case will thus be examined in light of the well-entrenched case law rulings interpreting and construing the quoted Article, to wit:

> 'Psychological incapacity,' as a ground to nullify a marriage under Article 36 of the Family Code, should refer to no less than a mental—not merely physical—incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed

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[36] *Suazo v. Suazo,* 629 Phil. 157, 174 (2010).

[37] *Del Rosario v. Del Rosario*, G.R. No. 222541, February 15, 2017.

and discharged by the parties to the marriage which, as so expressed in Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of 'psychological incapacity' to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. In *Santos v. CA (Santos)*, the Court first declared that psychological incapacity must be characterized by: (a) gravity (*i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage); (b) juridical antecedence (*i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage); and (c) incurability (*i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved). The Court laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic of the Phils. v. CA*, x x x [also known as the Molina guidelines]. These guidelines incorporate the basic requirements that the Court established in *Santos*.[38]

In setting aside the RTC's ruling, the CA in this case held that petitioner failed to prove that respondent was psychologically incapacitated to comply with the essential marital obligations because she failed to establish that such incapacity was grave and serious, and that it existed at the time of the marriage, and that it is incurable. We agree.

At the outset, this Court is constrained to peruse the records because of the conflicting findings between the trial court and the appellate court.[39] We thus did peruse and review the records, and we are satisfied that the CA correctly found that respondent has the capability and ability to perform his duties as a husband and father as against the RTC's rather general statement that respondent's psychological or personality disorder hinders the performance of his basic obligations as a husband and a father.

We agree with the CA that the evidence on record does not establish that respondent's psychological incapacity was grave

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[38] *Republic v. De Gracia,* 726 Phil. 502, 509-511 (2014).

[39] *Suazo v. Suazo, supra* note 36 at 181.

and serious as defined by jurisprudential parameters since "[respondent] had a job; provided money for the family from the sale of his property; provided the land where the family home was built on; and lived in the family home with petitioner-appellee and their children."[40]

Upon the other hand, petitioner herself testified that respondent had a job as the latter "was working at a certain point."[41] This is consistent with the information in Dr. Sta. Ana-Ponio's Clinical Summary and testimony, which were both included in petitioner's formal offer of evidence, respecting the parties' relationship history that petitioner and respondent met at the bank where petitioner was applying for a job and where respondent was employed as a credit investigator prior to their courtship and their marriage.[42]

It is significant to note moreover that petitioner also submitted as part of her evidence a notarized summary dated February 18, 2010 which enumerated expenses paid for by the proceeds of respondent's share in the sale of his parents' home in Magallanes, Makati City which amounted to around ₱2.9 million. Although petitioner was insinuating that this amount was insufficient to cover the family expenses from 1999 to 2008, we note that she admitted under oath that the items for their family budget, such as their children's education, the payments for association dues, and for electric bills came from this money.

And no less significant is petitioner's admission that respondent provided the land upon which the family home was built, thus —

[Respondent's counsel to the witness, petitioner]

Q: Does [respondent] [own] any real property?
A: No.

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[40] *Rollo*, p. 44.

[41] TSN, January 25, 2010, p. 22.

[42] TSN, April 20, 2009, pp. 15-16.

Q: He does not [own] any real property?
A: No.

Q: Showing to you Transfer Certificate of Title No. 413513 of the Register of Deeds of Rizal which has been transferred with the Register of Deeds of Paranaque and is now re-numbered as S-25470, which is in the name of [respondent], Filipino, of legal age, single.

x x x x x x x x x

[COURT to the witness, petitioner]

Q: Who owned this property?
A: Based on the document, it's Benjamin Singson.

Q: Where is this property located?
A: It is located in United Paranaque.

Q: Where in United Paranaque?
A: No. 2822 Daang Hari.

Q: Are you staying in that property?
A: We are staying in that property.

x x x x x x x x x

[Respondent's counsel to the witness, petitioner]

Q: How about the house there, in the United Paranaque [property], who owns it?
A: It was donated to the children.

x x x x x x x x x

[COURT to the witness, petitioner]

Q: Based on the document, who is the registered owner?
A: It says there, [respondent], Your Honor.

Q: Who owns it now?
A: The children because it was donated [to them].[43]

What's more, petitioner and respondent likewise lived together as husband and wife since their marriage on July 6, 1974 (and in the company of their four children, too). In fact, shunting

[43] TSN, January 25, 2010, pp. 33-40.

aside the time that respondent was under treatment at the Metro Psych Facility, petitioner did not allege any instance when respondent failed to live with them.

To the foregoing, we ought to add the fact that petitioner herself admitted, that respondent likewise brought her to the hospital during all four instances that she gave birth to their children.[44]

By contrast, petitioner did not proffer any convincing proof that respondent's mere confinement at the rehabilitation center confirmed the gravity of the latter's psychological incapacity.

Neither does petitioner's bare claim that respondent is a pathological gambler, is irresponsible, and is unable to keep a job, necessarily translate into unassailable proof that respondent is psychologically incapacitated to perform the essential marital obligations. It is settled that "[p]sychological incapacity under Article 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will."[45] "[I]t is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he or she must be shown to be incapable of doing so because of some psychological, not physical, illness."[46]

Nor can Dr. Sta. Ana-Ponio's testimony in open court and her Clinical Summary be taken for gospel truth in regard to the charge that respondent is afflicted with utter inability to appreciate his marital obligations. That much is clear from the following testimony—

[Petitioner's counsel to the witness, Dr. Sta. Ana-Ponio]

Q: Madam witness, do you know the respondent in this case, Benjamin Singson?

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[44] *Id*. at 9.

[45] *Republic v. Court of Appeals,* 698 Phil. 257, 265 (2012).

[46] *Republic v. Galang,* 665 Phil. 658, 673-674 (2011).

A: Yes, [S]ir, [respondent] has been my patient since 2003, during his first admission and again [in] 2006, [S]ir.

Q: So, he was confined twice in your facility, [M]adam witness?
A: Yes, [S]ir.

Q: Why was he confined, Madam witness?
A: He was initially confined because of problems with gambling and subsequently because of [behavioral] problem, [S]ir.

x x x x x x x x x

Q: What was the cause of his second confinement, Madam [W]itness?
A: Initially, he was able to cope after discharged. However, [in] September of 2006, he knocked on the doors of the maids in the middle of the night. And in one occasion, he got his car in the garage and drove out bumping the car parked right across the garage and he [also kept] taking things out from his cabinet. And if the maids would clean [these], he [would] immediately take them out again. So, he was brought to the facility in October because of his uncontrolled behavior, [S]ir.

x x x x x x x x x

Q: So, what [were] your clinical findings on the state of the respondent, Benjamin Singson, Madam witness?
A: Based on history, mental status examination and observations during his stay, I found that [respondent] is suffering from pathological gambling. Also, with his history of typhoid fever when he was younger, it is difficult to attribute the behavioral changes that he manifested in 2003 and 2006. Aside from pathological gambling, [respondent] is suffering from a personality disorder, [S]ir.

Q: What are the results or symptoms of this personality disorder with [regard] to [respondent's dealings] with other people, with his wife and his family, [M]adam witness?
A: Your Honor, may I read from my report to refresh my memory.

COURT: Go ahead.

A: Because of his maladaptive behavior, [respondent] sees [sic] his problems which [makes] his personal[,] family[,] and social life[,] and even his vocational pleasure [suffer]. He was pre-occupied with gambling, thinking of ways to get

money with which to gamble as seen in his stealing and pawning jewelries and appliances. He needs to gamble with increasing amounts of money in order to achieve his desired effects into gambling, [S]ir.

COURT: Your findings, Dr., are incorporated in your report?

A: Yes, Your Honor.

x x x x x x x x x

[Cross-examination of Dr. Sta. Ana-Ponio by respondent's counsel]

Q: Who were the ones who made the examination, Madam witness?
A: I made the examination, [S]ir, and also the psychologist did the psychological testing, [S]ir.

Q: Now, in your opinion as an expert witness, Madam witness, which we would like to request [from] this Honorable Court, later on, that you present your credentials as expert witness, you concluded that the respondent is suffering from personality disorder?
A: Yes, [S]ir.

Q: What does this mean in layman's language, [M]adam witness?
A: Personality disorder is a maladaptive pattern of behavior that has distracted his ability to perform his functions as a married man to his wife, as a father to his children and as a person who is supposed to be employed productively, [S]ir.[47]

Furthermore, "[h]abitual drunkenness, gambling and failure to find a job, [while undoubtedly negative traits, are nowhere nearly the equivalent of 'psychological incapacity'], in the absence of [incontrovertible] proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness."[48]

We now turn to the second point. Again, in view of the contrasting findings of the trial court and appellate court,[49] we take recourse to the records to assist us in evaluating the respective postures taken by the parties.

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[47] TSN, April 20, 2009, pp. 9-23.

[48] *Suazo v. Suazo, supra* note 36 at 184.

[49] *Id*. at 181.

Here again, well-entrenched is the rule that "there must be proof of a natal or supervening disabling factor that effectively incapacitated the respondent spouse from complying with the basic marital obligations x x x."[50] "A cause has to be shown and linked with the manifestations of the psychological incapacity."[51]

Again we agree with the CA that the RTC did not clearly or correctly lay down the bases or premises for this particular finding relative to respondent's psychological incapacity, thus:

> ***Second**, there is also sufficient evidence to prove that the respondent's inabilities to perform his marital obligations was a result of not mere intentional refusal on his part but are caused by psychological abnormality.* Such psychological incapacity of the respondent has been shown as already present at the time of celebration of marriage but became manifest only after the solemnization. x x x.[52]

As heretofore mentioned, the medical basis or evidence adverted to by the RTC did not specifically identify the root cause of respondent's alleged psychological incapacity. In fact, Dr. Sta. Ana-Ponio did not point to a definite or a definitive cause, *viz.* "with his history of typhoid fever when he was younger, it is difficult to attribute the behavioral changes that he manifested in 2003 and 2006."[53] Besides, Dr. Sta. Ana-Ponio admitted that it was not she herself, but another psychologist who conducted the tests.[54] And this psychologist was not presented by petitioner. More than that, Dr. Sta. Ana-Ponio's testimony regarding respondent's alleged admission that he was allegedly betting on *jai alai* when he was still in high school is essentially hearsay as no witness having personal knowledge of that fact was called to the witness stand. And, although Dr. Sta. Ana-Ponio claimed to have interviewed respondent's sister in connection therewith, the latter did testify

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[50] *Republic v. Court of Appeals, supra* note 45 at 271.

[51] *Republic v. Galang, supra* note 46 at 674.

[52] *Rollo*, p. 66 (RTC Decision, p. 9); Emphasis and italics in the original.

[53] TSN, April 20, 2009, p. 17.

[54] *Id.* at 22 and 62-63.

in court. And we are taught that "[t]he stringency by which the Court assesses the sufficiency of psychological evaluation reports is necessitated by the pronouncement in our Constitution that marriage is an inviolable institution protected by the State."[55]

Equally bereft of merit is petitioner's claim that respondent's alleged psychological incapacity could be attributed to the latter's family or childhood, which are circumstances prior to the parties' marriage; no evidence has been adduced to substantiate this fact. Nor is there basis for upholding petitioner's contention that respondent's family was "distraught" and that respondent's conduct was "dysfunctional"; again, there is no evidence to attest to this. These are very serious charges which must be substantiated by clear evidence which, unfortunately, petitioner did not at all adduce. Indeed, Dr. Sta. Ana-Ponio did not make a specific finding that this was the origin of respondent's alleged inability to appreciate marital obligations.

Needless to say, petitioner cannot lean upon her son Jose's testimony that his father's psychological incapacity existed before or at the time of marriage. It has been held that the parties' child is not a very reliable witness in an Article 36 case as "he could not have been there when the spouses were married and could not have been expected to know what was happening between his parents until long after his birth."[56]

To support her Article 36 petition, petitioner ought to have adduced convincing, competent and trustworthy evidence to establish the cause of respondent's alleged psychological incapacity and that the same antedated their marriage.[57] If anything, petitioner failed to successfully dispute the CA's finding that she was not aware of any gambling by respondent before they got married and that respondent was a kind and caring person when he was courting her.[58]

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[55] *Republic v. Pangasinan,* G.R. No. 214077, August 10, 2016.

[56] *Toring v. Toring,* 640 Phil. 434, 452 (2010).

[57] *Republic v. Galang, supra* note 46 at 675; *Republic v. Pangasinan*, *supra* note 55.

[58] TSN, May 28, 2009, pp. 9-10.

Against this backdrop, we must uphold the CA's declaration that petitioner failed to prove that respondent's alleged psychological incapacity is serious or grave and that it is incurable or permanent.

To be sure, this Court cannot take judicial notice of petitioner's assertion that "personality disorders are generally incurable" as this is not a matter that courts are mandated to take judicial notice under Section 1, Rule 129 of the Rules of Court.[59]

"Unless the evidence presented clearly reveals a situation where the parties or one of them, by reason of a grave and incurable psychological illness existing at the time the marriage was celebrated, was incapacitated to fulfill the obligations of marital life (and thus could not then have validly entered into a marriage), then we are compelled to uphold the indissolubility of the marital tie."[60] This is the situation here.

WHEREFORE, the Petition is **DENIED**. The August 29, 2013 Decision and January 6, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 96662 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

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[59] SECTION 1. *Judicial notice, when mandatory.* A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.(1a)

[60] *Agraviador v. Amparo-Agraviador,* 652 Phil. 49, 70 (2010).

SECOND DIVISION

[G.R. No. 213465. January 8, 2018]

CAREER PHILIPPINES SHIPMANAGEMENT, INC., COLUMBIA SHIPMANAGEMENT LTD. LIBERIA, and/or SAMPAGUITA D. MARAVE, *petitioners, vs.* **DONARD P. SILVESTRE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, INCLUDING LABOR TRIBUNALS, ARE ACCORDED MUCH RESPECT BY THE COURT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION ESPECIALLY WHEN THESE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS; PRESENT.— As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. By way of exception, however, the Court resolves factual issues whenever any of the following circumstances is present: 1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; 10. when the findings of fact are premised

on the supposed absence of evidence and contradicted by the evidence on record; [and] 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. This case falls under one of the said exceptions as the findings of the LA and the NLRC differed from those of the CA.

2. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; EMPLOYEES' COMPENSATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); NO COMPENSATION AND BENEFITS SHALL BE PAYABLE IN RESPECT OF ANY INJURY, INCAPACITY, DISABILITY OR DEATH OF THE SEAFARER, PROVIDED THE EMPLOYER CAN ESTABLISH OR SUBSTANTIATE BY SUBSTANTIAL EVIDENCE ITS CLAIM THAT THE EMPLOYEE'S INJURY, INCAPACITY, DISABILITY OR DEATH WAS DIRECTLY ATTRIBUTABLE TO HIS WILLFUL OR CRIMINAL ACT OR INTENTIONAL BREACH OF DUTY.— Section 20 (D) of the 2000 POEA-SEC provides: D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, **provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.** From the abovementioned provision, the *onus probandi* falls on the petitioners to establish or substantiate their claim that Silvestre's injury was caused by his willful or intentional act with the requisite quantum of evidence. In labor cases, as in other administrative proceedings, only substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. As can be gleaned from the records, petitioners never presented any evidence before the LA to support the conclusion that Silvestre's injury is directly attributable to his willful or criminal act or intentional breach of duty. The accident report, by itself, does not support the finding that Silvestre's act was willful or intentional.

3. ID.; ID.; ID.; ID.; PERMANENT TOTAL DISABILITY, DEFINED; IN DISABILITY COMPENSATION, IT IS NOT THE INJURY *PER SE* WHICH IS COMPENSATED

BUT THE INCAPACITY TO WORK.— Permanent disability transpires when the inability to work continues beyond 120 days, regardless of whether or not he loses the use of any part of his body. On the other hand, total disability means the incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do. It does not mean absolute helplessness. Accordingly, permanent total disability means the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.

4. ID.; ID.; ID.; ID.; THE COMPANY-DESIGNATED PHYSICIANS MUST ISSUE A FINAL MEDICAL ASSESSMENT ON THE SEAFARER'S DISABILITY GRADING WITHIN A PERIOD OF 120 DAYS, BUT THE PERIOD MAY BE EXTENDED TO 240 DAYS IF THERE IS A SUFFICIENT JUSTIFICATION, SUCH AS WHEN THE SEAFARER REQUIRED FURTHER MEDICAL TREATMENT OR WHEN THE SEAFARER WAS UNCOOPERATIVE; 120-DAY AND 240-DAY PERIODS MEDICAL TREATMENT AND ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN, DISCUSSED.— [C]ontrary to petitioners' allegation that the 120-day rule is obsolete, the current general rule is that company-designated physicians must issue a final medical assessment on the seafarer's disability grading within a period of 120 days. The period,as an exception, may be extended to 240 days if there is a sufficient justification, such as when the seafarer required further medical treatment or when the seafarer was uncooperative. This Court, in the case of *Marlow Navigation Philippines, Inc. v. Osias*, extensively discussed the 120-day and 240-day periods medical treatment and assessment of the company-designated physician, *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.* provided a summation of periods when the company-designated physician must assess the seafarer, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated

physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.,* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

5. ID.; ID.; ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THAT THE COMPANY-DESIGNATED PHYSICIAN HAS SUFFICIENT JUSTIFICATION TO EXTEND THE PERIOD OF TREATMENT OR ASSESSMENT.— Petitioners insist that the final medical assessment by Dr. Cruz was issued within the exceptional 240 days. Inasmuch as mere allegation is not evidence, the basic evidentiary rule is to the effect that the burden of evidence lies with the party who asserts the affirmative of an issue has the burden of proving the same with such quantum of evidence required by law. It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment. x x x. From the evidence offered, there was no indication that the company-designated physician declared that further medical treatment would address Silvestre's temporary total disability. In fact, petitioners were adamant that Silvestre was cleared from his condition on August 31, 2011. There was no medical report from the company-designated physician as to the treatment which Silvestre underwent after August 2011. The November 14, 2011 MRI was conducted to discount Silvestre's complaints of pain and headache. Petitioners cannot invoke the exceptional 240-day period for medical treatment and assessment for failure to present substantial evidence that the company-designated physician justified the extension of assessment. The Court cannot likewise consider the November 23, 2011 certification as a timely medical assessment for being issued 188 days from repatriation, and

for being presented only on appeal before the NLRC to rebut Silvestre's assumption that the company-designated physician's affidavit was the fit to work declaration.

6. ID.; ID.; ID.; ID.; IF THE COMPANY-DESIGNATED PHYSICIAN FAILS TO GIVE HIS ASSESSMENT WITHIN THE PERIOD OF 120 DAYS, WITHOUT ANY JUSTIFIABLE REASON, THEN THE SEAFARER'S DISABILITY IS CONSIDERED PERMANENT AND TOTAL FOR THE PURPOSES OF THE AWARD, REGARDLESS OF THE SEAFARER'S OWN PHYSICIAN'S DISABILITY ASSESSMENT.— Petitioners assert that there was no basis for the award of maximum disability benefits for Silvestre given that his own doctor opined that he suffers from partial permanent disability Grade of 9. On the contrary, a partial and temporary disability could, in legal contemplation, become total and permanent. In *Kestrel Shipping Co., Inc. v. Munar*, the Court ruled that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, to wit: x x x Moreover, **the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.** If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability is considered permanent and total for the purposes of the award. Here, petitioners failed to establish that the company-designated physician declared Silvestre's fitness to work within 120 days or to sufficiently justify the application of the 240-day period in the case. The disability is deemed total and permanent due to the lack of timely medical assessment of Silvestre's fitness for sea service regardless of his own physician's disability assessment.

7. ID.; ID.; ID.; ID.; MONETARY AWARD FOR PERMANENT AND TOTAL DISABILITY BENEFIT AFFIRMED WITH MODIFICATION.— The CA ordered the payment of US$1,720.00 sickness allowance to Silvestre based on his basic monthly salary of US$430.00 for the 120-day period. However,

it is noted that petitioners presented before the LA in their Reply to Silvestre's position paper three vouchers as proof of payment of sickness allowance amounting to US$1533.66, wherein Silvestre received US$602.00 for May 20 to June 30, 2011; US$444.33 for July 2011; and US$487.33 for August 1 to September 3, 2011. Silvestre simply alleged that he is entitled to sickness allowance for 120 days. However, he did not contest or disprove petitioners' claim that the allowance was paid as proven by the vouchers. As such, the amount already paid should be deducted from the total sickness allowance award. Thus, Silvestre is only entitled to US$186.34 as sickness allowance. Lastly, pursuant to the case of *Nacar v. Gallery Frames*, the Court imposes on the monetary award for permanent and total disability benefit an interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Valmores & Valmores Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is the petition for review on *certiorari* filed by herein petitioners Career Philippines Shipmanagement, Inc., Columbia Shipmanagement Ltd. Liberia and Sampaguita D. Marave (*petitioners*) assailing the Decision[1] and Resolution,[2] dated March 25, 2014 and July 11, 2014, respectively, of the Court of Appeals (*CA*) in CA-G.R. SP No. 128194, which granted respondent Donard P. Silvestre (*Silvestre*) US$60,000.00 permanent disability benefit, US$1,720.00

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring; *rollo,* pp. 58-73.

[2] *Id.* at 75.

sickness allowance and attorney's fees equivalent to 10% of the total monetary award.

The facts follow.

On November 2, 2010, petitioners hired Silvestre as an ordinary seaman on board the vessel M/V Gallia under the following terms and conditions:

1.1	Duration of Contract:	9MOS+/-1MO.
1.2	Position:	ORDINARY SEAMAN
1.3	Basic Monthly Salary:	US$430.00
1.4	Hours of Work:	44 hrs per week
1.5	Overtime: US$239.00 Lumpsum Guaranteed OT US$2.83 after 85 hours	
1.6	Vacation Leave with Pay:	11 days per month
1.7	Point of Hire	Manila, Philippines

Entitled to 1st yr Service Incentive US$5.25[3]

Around 3:45 p.m. on May 6, 2011, the *bosun* directed Silvestre to sound the bilge in Hold No. 2 and while he was climbing out of the cargo hold, he was hit in the head by the closing hatch cover and sustained an avulsed wound on his right forehead. Blood steadily dripped on his face, and he experienced blurred vision. He was brought to the CMC Medico Hospital in Pointe Noire, Congo where his wound was treated. He was discharged from the hospital after five (5) days of confinement and was given medication for pain relief and antibiotics. Thereafter, he was declared unfit to work and was recommended for repatriation.[4] He arrived in the Philippines on May 19, 2011.

Upon arrival, respondent Silvestre immediately sought medical attention at the NGC Clinic and was seen by company-designated physician Dr. Nicomedes Cruz (*Dr. Cruz*). He underwent a CT scan on May 20, 2011[5] with the following findings:

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[3] *Id.* at 150.

[4] CA *rollo,* pp. 148-149.

[5] Per radiographic report dated May 20, 2011 issued by Dr. Jarold Pauig; records, p. 53.

Impression:

Unremarkable unenhanced CT scan of the brain.
Extracalvarial soft tissue swelling, right frontal region.
Mucus retention cyst versus polyp, left maxillary sinus.[6]

Subsequently, Silvestre was advised to undergo revision of the scar as the previously sutured wound was not healing as expected. He was admitted at Manila Doctors Hospital on June 27, 2011, and was discharged on July 1, 2011.[7] Despite the procedures, Silvestre had complaints of intermittent pain and throbbing headaches. He was advised to continue taking pain relievers, and was further observed.

On September 20, 2011, Silvestre filed a complaint for disability benefits and damages against petitioners.[8] Initially, the case was dismissed for lack of interest to prosecute given that the parties failed to appear during the second mandatory conference.[9] However, the Labor Arbiter (*LA*) re-opened the case upon motion of Silvestre, and ordered the parties to file their position papers.[10]

In his Position Paper[11] dated February 13, 2012, Silvestre alleged that he has not been able to pursue his employment as an ordinary seaman from the time of his repatriation on May 19, 2011. Thus, he was deemed suffering from permanent total disability since his disability lasted for more than 120 days.[12]

Silvestre presented the Neurological Evaluation[13] dated October 7, 2011 issued by Dr. Ramon Carlos Miguel L. Alemany

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[6] *Id*.

[7] As per Medical Abstract/ Discharge Summary dated July 1, 2011; *id.* at 77.

[8] *Id.* at 1-2.

[9] *Id.* at 12

[10] *Id.* at 18.

[11] *Id.* at 59-67.

[12] *Id.* at 64.

[13] *Id*. at 79.

declaring that he was no longer fit for sea duty, an excerpt of which reads:

> Presently, Mr. Silvestre is complaining of decreased sensation on the right hemicrania and experiences abnormal sensation such as hypersensitivity to touch on the said area, exacerbated by movement and exertion. He also complains of intermittent pain on the said area. He also complained of throbbing headaches that is aggravated by exertion and movement of the head laterally.
>
> Current neurologic examination of the patient only showed abnormal perception of touch, (decreased by 50%), with hyperesthesia on the right hemicrania, otherwise normal neurologic examination.
>
> His present condition was work aggravated / related and may be permanent. Because of this, my opinion is, he is **no longer fit for sea duty**.[14]

Silvestre also presented the Medical Evaluation Report[15] dated October 12, 2011, wherein Dr. Renato P. Runas made the finding that the former was suffering from Grade 9 permanent disability, *viz.*:

> At present, [Silvestre] is still complaining numbness of the right side of the head. Frequent pain is also felt on the injured area. He is also experiencing throbbing headache aggravated by exertion and moving his head from side to side. He also claims that he is unable to hold on to his grip long enough thereby letting things fall out of his hand. Physical examination revealed decreased sensation to touch on the injured scalp and hyperesthesia on the right side of the head. Pupils are equal in size and briskly reactive. No visual impairment noted. Gait is normal. Based on the extent of the injury and symptomatic complaints of the patient, he is no longer fit for sea duty with permanent partial disability rating of Grade 9 under POEA contract.
>
> **Justification of Impediment:**
>
> **Seaman Silvestre developed a permanent disability as a result of the injury sustained onboard. The right frontal scalp avulsion injury resulted in facial disfigurement and also damaged the**

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[14] Emphasis in the original.

[15] *Id.* at 80-81.

sensory nerves on the affected side. The frequent episode of pain and throbbing headache aggravated by physical exertion greatly affected his capacity level to perform and will be a cause of frequent sick in quarters if allowed to return to his previous job. Being an Ordinary Seaman, he is tasked with hectic and heavy jobs on board which he can no longer tolerate because of his present impediment. His preinjury (*sic*) **capacity status is lost. His overall performance as a seaman is greatly compromised and will not be able to perform at 100%. He is not fit for further sea duty permanently in whatever capacity with a permanent disability rating of Grade 9 based on POEA contract.**[16]

For their part, petitioners denied any liability for permanent total disability benefits. In their Position Paper[17] dated February 7, 2012, petitioners alleged that after continuous treatment, medication, and monitoring, Silvestre's lacerated wound has healed, thus, he was found fit to work by company-designated physician Dr. Cruz.[18] They averred that proper medical tests were conducted which showed normal results to disprove Silvestre's subjective complaints of pain and headache. They insisted that the company-designated physician was entrusted with the task of providing medical care and thereafter declare the fitness to work of the seafarer or otherwise give an assessment of the degree of his disability. Thus, such physician is in the best position to assess Silvestre's condition.

In the Decision[19] dated March 5, 2012, the LA dismissed Silvestre's complaint. The LA based the dismissal on Silvestre's evidence, which is the Crew Member Accident Report[20] dated May 7, 2011.

According to the LA, the circumstances enumerated in the report, *e.g.,* Silvestre lost his helmet while the hatch was falling, and his admission that he forgot to put the safety pin of the

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[16] Emphasis in the original.

[17] *Id.* at 25-46.

[18] *Id.* at 32.

[19] Penned by Labor Arbiter Thomas T. Que, Jr.; CA *rollo,* pp. 101-109.

[20] Records, pp. 73-74.

cargo hold entrance, fairly demonstrate that he willfully did not observe the safety procedures. As an ordinary seaman for more than six (6) months, it should have been a normal routine for him to don his safety gear and follow the usual safety precautions.[21] The *fallo* of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for permanent and total disability benefits and other money claims for lack of merit.
>
> SO ORDERED.[22]

On appeal, the National Labor Relations Commission (*NLRC*) affirmed the ruling of the LA in its August 31, 2012 Decision,[23] thus:

> It is clear in the Crew Member Accident Report that there was in fact a shipboard rule on the placing of the safety pin in order to secure the cargo hatch, and of the wearing of a helmet, and that [Silvestre] admitted that he forgot to put the safety pin in position. In fact, said report also stated:
>
> "Recommendations:
>
> Crew will be briefed **again** about proper use of hatches and personal safety equipment." (underscoring and italics supplied)
>
> Complainant's non-observance of the shipboard rule or regulation with respect to safety is therefore a violation not only of Section 28 of the POEA Standard Employment Contract, but will also result in his non-recovery of benefits pursuant to Section 20(D) of the same. He thus cannot claim that he should be entitled to benefits just because his non-observance of said shipboard regulation was allegedly unintentional.
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> x x x x x x x x x
>
> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit, and the appealed Decision dismissing the instant complaint is hereby AFFIRMED.

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[21] CA *rollo,* p. 108.

[22] *Id.* at 109.

[23] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; *id.* at 147-154.

SO ORDERED.[24]

Aggrieved, Silvestre sought recourse before the CA. Ruling in favor of Silvestre, the CA disagreed with the LA and the NLRC that his injury was a product of his willful or criminal act, or a result of an intentional breach of his duty. It ruled that the accident report established that Silvestre was actually wearing his helmet when the incident happened and merely lost the same when he was climbing out of the cargo hold. Also, that Silvestre forgot to put the safety pin in its position merely meant that he failed to remember the same.[25] Furthermore, he is deemed to have suffered permanent disability because of his inability to work for more than 120 days. The dispositive portion of the decision reads:

WHEREFORE, the August 31, 2012 Decision and November 6, 2012 Resolution of the National Labor Relations Commission, as well as the March 5, 2012 Decision of the Labor Arbiter Thomas T. Que, Jr., are REVERSED AND SET ASIDE. [Petitioners] Career Philippines Shipmanagement, Inc. and Shipmanagement Ltd./Limassol, Cyprus are hereby DIRECTED to pay, jointly and severally, [Silvestre] his claims for permanent disability benefits in the sum of US$60,000.00, his sickness allowance in the sum of US$1,720.00, and attorney's fees equivalent to 10% of his total monetary award.

SO ORDERED.[26]

In its July 11, 2014 Resolution, the CA denied petitioners' motion for reconsideration. Thus, petitioners elevated the matters before this Court and raised the following issues:

THE FINDINGS OF FACT OF THE HONORABLE COURT OF APPEALS DO NOT CONFORM TO THE EVIDENCE ON RECORD AND CONTRARY TO THE FINDINGS OF THE LABOR ARBITER AND NLRC.

MOREOVER, THERE WAS A MISAPPRECIATION AND/OR MISAPPREHENSION OF FACTS AND THE HONORABLE COURT

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[24] *Id.* at 153-154. (Citation omitted)

[25] *Rollo,* p. 69.

[26] *Id.* at 73.

FAILED TO NOTICE CERTAIN RELEVANT POINTS WHICH IF CONSIDERED WOULD JUSTIFY A DIFFERENT CONCLUSION.

A. RESPONDENT SILVESTRE WAS DIAGNOSED WITH A LACERATED WOUND AND HIS REMAINING COMPLAINT WAS HYPERESTHESIA. HYPERESTHESIA REFERS TO "EXCESSIVE SENSITIVITY OF SKIN IN A PARTICULAR AREA." BOTH CONDITIONS ARE CURABLE AND CANNOT CAUSE A TOTAL AND PERMANENT DISABILITY TO RETURN TO SEA DUTIES.

IN FACT SILVESTRE'S OWN PRIVATE DOCTOR DETERMINED A PARTIAL GRADE 9 DISABILITY ONLY.

B. A FINAL FIT TO WORK ASSESSMENT WAS DETERMINED BY THE COMPANY-DESIGNATED PHYSICIAN WELL WITHIN THE 240-DAY PERIOD.

C. RESPONDENT SILVESTRE WAS GROSSLY NEGLIGENT IN ADMITTEDLY FAILING TO SECURE THE SAFETY PIN OF THE HATCH COVER. HENCE, THE ALLEGED INJURY WAS THE DIRECT RESULT OF HIS WILLFUL AND INTENTIONAL BREACH OF DUTIES.

D. THERE IS NO BASIS FOR THE AWARD OF ATTORNEY'S FEES.[27]

This Court finds the instant petition without merit.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[28] By way of exception, however, the Court resolves factual issues whenever any of the following circumstances is present:

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[27] *Id.* at 36-37. (Citation omitted)

[28] *Philippine Transmarine Carriers, Inc. v. Cristino*, G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127, citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[29]

This case falls under one of the said exceptions as the findings of the LA and the NLRC differed from those of the CA. Thus, this Court shall now proceed to resolve the issues raised in the instant petition.

Citing Section 20 (D) of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*), the LA and the NLRC ruled that Silvestre was not entitled to recover disability benefits by virtue of his willful non-observance of the shipboard rule. As stated, both the LA and the NLRC based their findings on Silvestre's evidence, the Crew Member Accident Report, which states in part *viz.*:

Description of the incident:

On the 06.05.2011 at 15:45 lt. while climbing out of cargo hold no. 2 OS Silvestre was hit by the closing hatch when he [grabbed] it. When the hatch was falling down he lost his helmet.

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[29] *Id.* at 127-128, citing *Co v. Vargas*, 676 Phil. 463, 471 (2011).

While questioning OS Silvestre he said that he forgot to put the safety pin in its position (that means the cargo hold entrance was not properly secured.)[30]

Anchoring their allegation on the said rulings, petitioners aver that the CA erred in granting Silvestre the full and maximum disability benefits despite his admission of failure to observe ship's safety rules and regulation. Petitioners insist that he was undisputedly grossly negligent when he failed to put the safety pin in its position in accordance with the safety procedures.

This Court, however, disagrees. Section 20 (D) of the 2000 POEA-SEC provides:

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, **provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.**[31]

From the abovementioned provision, the *onus probandi* falls on the petitioners to establish or substantiate their claim that Silvestre's injury was caused by his willful or intentional act with the requisite quantum of evidence. In labor cases, as in other administrative proceedings, only substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required.[32] As can be gleaned from the records, petitioners never presented any evidence before the LA to support the conclusion that Silvestre's injury is directly attributable to his willful or criminal act or intentional breach of duty. The accident report, by itself, does not support the finding that Silvestre's act was willful or intentional. We quote with approval a portion of the CA's decision:

But no such findings can be inferred from the facts of this case. For here, the Crew Member Accident Report already admits that

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[30] Records, p. 73.

[31] Emphasis and underscoring supplied.

[32] *INC Shipmanagement, Inc., et al. v. Moradas,* 724 Phil. 374, 393 (2014).

"when the hatch was falling down, he lost his helmet," meaning Silvestre was actually wearing his helmet when the incident happened but merely lost the same when he was climbing out of the cargo hold. It was also aptly argued by Silvestre in this petition that he used the word "forgot" in a manner that could not have disqualified him from the subject benefit. When he said that "he forgot to put the safety pin in its position," he meant that he merely "failed to remember" to put the safety pin in its position. His complained act, was therefore far from being intentional and deliberate. And even if indeed, his use of the word forgot is to be taken in its literal sense, still, his forgetting could have been far from being deliberate. It could not have been willful.

A willful act differs essentially from a negligent act. The one is positive and the other one is negative. Intention is always separated from negligence by a precise line of demarcation. If at all, there was merely inadvertence or negligence on the part of [respondent] Silvestre but not a willful or intentional breach of duty, as opined by both the NLRC and the Labor Arbiter.[33]

Clearly, Silvestre suffered an injury that is work-related during the term of his employment contract and such is compensable. The issue now is whether or not Silvestre was declared fit to work within the allowable periods.

Petitioners maintain that the CA erred in applying the 120-day period despite numerous decisions which clarified that the said rule is all but obsolete, modified or superseded. Invoking the case of *Vergara v. Hammonia Maritime Services, Inc.* (*Vergara*),[34] petitioners allege that the company-designated physician has 240 days to determine the fitness to work or proper disability assessment of the seafarer in accordance with the POEA Contract. Dr. Cruz issued his assessment declaring Silvestre as fit to work on November 23, 2011, well within 240 days. Hence, Silvestre cannot be deemed to be suffering from a total and permanent disability by the mere lapse of 120 days from treatment.

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[33] *Rollo,* pp. 68-69. (Citation omitted; emphases omitted)

[34] 588 Phil. 895, 913 (2008).

Permanent disability transpires when the inability to work continues beyond 120 days, regardless of whether or not he loses the use of any part of his body. On the other hand, total disability means the incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do. It does not mean absolute helplessness.[35]

Accordingly, permanent total disability means the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.[36]

The entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract.[37] The law that defines permanent and total disability of laborers would be Article 192 (c) (1) of the Labor Code, which provides that:

ART. 192. *Permanent Total Disability*. —

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

The rule referred to by Article 192 (c) (1) of the Labor Code is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:

Sec. 2. *Period of entitlement.* — (a) The income benefit shall be paid beginning on the first day of such disability. **If caused by an injury or sickness it shall not be paid longer than 120 consecutive**

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[35] *INC Shipmanagement, Inc. v. Rosales,* 744 Phil. 774, 785 (2014).

[36] *Olidana v. Jebsens Maritime, Inc.,* 772 Phil. 234, 244 (2015).

[37] *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016, 785 SCRA 89, 97.

days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.[38]

As per Silvestre's contract[39] with petitioners, his employment is covered by the 2000 POEA-SEC. Section 20(B) of the 2000 POEA-SEC[40] reads:

Section 20-B. *Compensation and Benefits for Injury or Illness.—*

The liabilities of the employer when the seafarer suffers **work-related** injury or illness during the term of his contract are as follows:

x x x x x x x x x

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work 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.**

x x x x x x x x x

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[38] Emphasis supplied.

[39] *Supra* note 3.

[40] Department Order No. 4, series of 2000, "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Vessels."

6. In case of permanent total or partial disability of the seafarer caused either by injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[41]

It was held in *Vergara* that the seafarers could not automatically claim permanent and total disability even though the 120-day period for medical evaluation was exceeded for it was possible to extend the evaluation or treatment period to 240 days.[42] Thus:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.** The seaman may of course also be declared fit to work at any time if such declaration is justified by his medical condition.[43]

However, this Court, in *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue,*[44] no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician is now expected to arrive at a definite assessment of the seafarer's

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[41] *Id.* (Emphases supplied).

[42] *Vergara v. Hammonia Maritime Services, Inc.*, *supra* note 30.

[43] *Id.* at 912.

[44] 765 Phil. 341 (2015).

fitness to work or permanent disability within the period of 120 days. As such, he must perform some significant act before he can invoke the exceptional 240-day period under the IRR. In other words, he must provide a sufficient justification to extend the original 120-day period of assessment.[45] The Court ratiocinated that:

> Certainly, the **company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR.** It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.
>
> On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the **IRR becomes absolute and it will render the law forever inoperable**. Such interpretation is contrary to the tenets of statutory construction.
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> x x x x x x x x x
>
> Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. **To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.**[46]

Contrary to petitioners' allegation that the 120-day rule is obsolete, the current general rule is that company-designated physicians must issue a final medical assessment on the seafarer's disability grading within a period of 120 days. The period, as an exception, may be extended to 240 days if there is a sufficient

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[45] *Id*. at 362.

[46] *Id.* at 362-363. (Emphasis supplied)

justification, such as when the seafarer required further medical treatment or when the seafarer was uncooperative.[47]

This Court, in the case of *Marlow Navigation Philippines, Inc. v. Osias*,[48] extensively discussed the 120-day and 240-day periods medical treatment and assessment of the company-designated physician, to wit:

> In *Crystal Shipping, Inc. v. Natividad, (Crystal Shipping)* the Court ruled that "[permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body." Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.
>
> The *Court in Vergara v. Hammonia Maritime Services, Inc. (Vergara)*, however, noted that the doctrine expressed in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations.
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> x x x x x x x x x
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> In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.
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> x x x x x x x x x
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> Then came *Carcedo v. Maine Marine Phils., Inc. (Carcedo)*. Although the said case recognized the 240-day rule in Vergara, it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated

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[47] *Hanseatic Shipping Philippines, Inc., et al. v. Ballon,* 769 Phil. 567, 585 (2015).

[48] 773 Phil. 428 (2015).

physician, **subject to the periods prescribed by law**." Carcedo further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled." (emphasis supplied).

Finally, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr. (Elburg),* it was affirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, the pronouncement in *Carcedo* was reiterated — that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.,* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

x x x x x x x x x[49]

[49] *Id.* at 439-442. (Citations omitted)

In the case at bar, Silvestre was medically repatriated on May 19, 2011. He underwent a CT scan on May 20, 2011. He was admitted at Manila Doctors Hospital on June 27, 2011, and was discharged on July 1, 2011.[50] On August 31, 2011, or after 105 days of treatment, the company-designated physician declared that Silvestre's lacerated wound has healed. Subsequently, on November 23, 2011 or after 188 days, the company-designated physician issued a medical report[51] declaring Silvestre as fit to work.

Petitioners insist that the final medical assessment by Dr. Cruz was issued within the exceptional 240 days. Inasmuch as mere allegation is not evidence, the basic evidentiary rule is to the effect that the burden of evidence lies with the party who asserts the affirmative of an issue has the burden of proving the same with such quantum of evidence required by law.[52] It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment.[53]

As discussed earlier, the company-designated physician must provide a sufficient justification to extend the original 120-day period of assessment.

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[50] As per Medical Abstract/Discharge Summary dated July 1, 2011; records p. 77.

[51] *Id*. at 179.

x x x x x x x x x

He was seen by our neurologist and noted his latest cranial MRI which is normal. He is cleared to go back to work.

Diagnosis:

Lacerated wound, frontal area
S/P Suturing of wound
S/P Revision of scar

Recommendation:

He is fit to work effective November 23, 2011.

[52] *General Milling Corporation-Independent Labor Union v. General Milling Corporation*, 667 Phil. 371, 393 (2011).

[53] *Aldaba v. Career Philippines,* G.R. No. 218242, June 21, 2017.

From the evidence offered, there was no indication that the company-designated physician declared that further medical treatment would address Silvestre's temporary total disability. In fact, petitioners were adamant that Silvestre was cleared from his condition on August 31, 2011. There was no medical report from the company-designated physician as to the treatment which Silvestre underwent after August 2011. The November 14, 2011 MRI was conducted to discount Silvestre's complaints of pain and headache. Petitioners cannot invoke the exceptional 240-day period for medical treatment and assessment for failure to present substantial evidence that the company-designated physician justified the extension of assessment. The Court cannot likewise consider the November 23, 2011 certification as a timely medical assessment for being issued 188 days from repatriation, and for being presented only on appeal before the NLRC to rebut Silvestre's assumption that the company-designated physician's affidavit was the fit to work declaration.[54]

Moreover, records are bereft of evidence supporting petitioners' contention that Silvestre was earlier declared fit to work on August 31, 2011. There was no medical certificate or evaluation report issued to substantiate the averment that there was a fit to work declaration within the authorized 120 days. The company-designated physician's affidavit merely stated that Silvestre's lacerated wound has healed. It did not contain a definite assessment that Silvestre was fit to resume sea duty at least as of September 16, 2011 (120 days), unlike the November 23, 2011 certification which categorically declared him fit to work as of the said date.

Petitioners assert that there was no basis for the award of maximum disability benefits for Silvestre given that his own doctor opined that he suffers from partial permanent disability Grade of 9. On the contrary, a partial and temporary disability could, in legal contemplation, become total and permanent. In *Kestrel Shipping Co., Inc. v. Munar*,[55] the Court ruled that the

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[54] As an attachment to petitioners' Comment; records p. 179.

[55] 702 Phil. 717 (2013).

declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, to wit:

> **Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled.** In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.
>
> Moreover, **the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.**[56]

If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability is considered permanent and total for the purposes of the award. Here, petitioners failed to establish that the company-designated physician declared Silvestre's fitness to work within 120 days or to sufficiently justify the application of the 240-day period in the case. The disability is deemed total and permanent due to the lack of

[56] *Id.* at 730-731. (Emphases supplied)

timely medical assessment of Silvestre's fitness for sea service regardless of his own physician's disability assessment.

The CA ordered the payment of US$1,720.00 sickness allowance to Silvestre based on his basic monthly salary of US$430.00 for the 120-day period. However, it is noted that petitioners presented before the LA in their Reply[57] to Silvestre's position paper three vouchers as proof of payment of sickness allowance amounting to US$1533.66, wherein Silvestre received US$602.00 for May 20 to June 30, 2011; US$444.33 for July 2011; and US$487.33 for August 1 to September 3, 2011.[58] Silvestre simply alleged that he is entitled to sickness allowance for 120 days. However, he did not contest or disprove petitioners' claim that the allowance was paid as proven by the vouchers. As such, the amount already paid should be deducted from the total sickness allowance award. Thus, Silvestre is only entitled to US$186.34 as sickness allowance.

The CA correctly awarded attorney's fees in favor of Silvestre. Under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws.[59]

Lastly, pursuant to the case of *Nacar v. Gallery Frames*,[60] the Court imposes on the monetary award for permanent and total disability benefit an interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.[61]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated March 25, 2014 and July 11, 2014, respectively, in CA-

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[57] Records, pp. 86-96.

[58] *Id.* at 98-100.

[59] *Gomez v. Crossworld Marine Services, Inc.,* G.R. No. 220002, August 2, 2017.

[60] 716 Phil. 267 (2013).

[61] *Acomarit Phils., et al. v. Dotimas*, 767 Phil. 338, 354 (2015).

G.R. SP No. 128194 are **AFFIRMED with MODIFICATIONS**: petitioners Career Philippines Shipmanagement, Inc., Columbia Shipmanagement Ltd. Liberia and/or Sampaguita D. Marave are **ORDERED TO PAY**, jointly and severally, Donard P. Silvestre sickness allowance in the amount of US$186.34 or its Peso equivalent at the exchange rate prevailing at the time of payment; and to pay interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full satisfaction.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 216057. January 8, 2018]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CEFERINO VILLACAMPA *y* CADIENTE @ "Daddy Gaga,"** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 7610 OTHERWISE KNOWN AS SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT; SEXUAL ABUSE UNDER SECTION 5, ARTICLE 111 THEREOF; ELEMENTS; MET.— The following elements of sexual abuse under Section 5, Article III of RA 7610 must be established: 1. The accused commits the act of sexual intercourse or lascivious conduct. 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child, whether male or female, is below 18 years

of age. In the present cases, all the elements of sexual abuse under RA 7610 have been met.

2. ID.; ID.; ID.; ACT OF SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT; LASCIVIOUS CONDUCT, DEFINED; COMMITTED BY THE ACCUSED IN CASE AT BAR.— The first element is the act of sexual intercourse or lascivious conduct. Lascivious conduct is defined in Section 2(h) of the Implementing Rules and Regulations of RA 7610 as "the **intentional touching**, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the **introduction of any object into the genitalia, anus or mouth, of any person,** whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person." As found by the lower courts, Villacampa inserted his finger into the vagina of his minor victims in FC Criminal Case Nos. 1359-1367. In FC Criminal Case No. 1369, Villacampa kissed CCC on the lips, face, and neck against her will. Villacampa even inserted his finger into CCC's vagina, even though this was not included in the Information against him. Thus, it is evident that Villacampa committed an act of lascivious conduct against each of his victims.

3. ID.; ID.; ID.; THE CHILD IS EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE; THE CHILD VICTIM MUST EITHER BE ABUSED FOR PROFIT, OR ENGAGES IN SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT THROUGH COERCION, INTIMIDATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP.— The second element is that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. To meet this element, the child victim must either be exploited in prostitution or subjected to other sexual abuse. In *Quimvel v. People,* the Court held that the fact that a child is under the coercion and influence of an adult is sufficient to satisfy this second element and will classify the child victim as one subjected to other sexual abuse. The Court held: To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse*." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses

children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children.

4. ID.; ID.; ID.; ID.; EVEN THOUGH THE ACCUSED COMMITTED SEXUAL ABUSE AGAINST THE CHILD VICTIM ONLY ONCE, THE VICTIM WOULD STILL BE CONSIDERED A CHILD SUBJECTED TO OTHER SEXUAL ABUSE, BECAUSE WHAT THE LAW PUNISHES IS THE MALTREATMENT OF THE CHILD, WITHOUT REGARD TO WHETHER OR NOT THIS MALTREATMENT IS HABITUAL.— The Court further clarified that the sexual abuse can happen only once, and still the victim would be considered a child subjected to other sexual abuse, because what the law punishes is the maltreatment of the child, without regard to whether or not this maltreatment is habitual. The Court held: Contrary to the exposition, the very definition of "*child abuse*" under Sec. 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of R.A. 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront. In this case, Villacampa, the common-law husband of their mother, repeated the lascivious conduct against his victims, who were all under his coercion and influence. Clearly, the second element is present and all the child victims are considered to be subjected to other sexual abuse.

5. ID.; ID.; ID.; ELEMENTS THEREOF PROVED IN CASE AT BAR; MORAL ASCENDANCY TAKES THE PLACE OF THE FORCE AND INTIMIDATION THAT IS

REQUIRED IN RAPE CASES.— [W]e find that all the elements were proven beyond reasonable doubt. Villacampa inserted his finger into the vagina of his minor victims, and in the case of DDD, he inserted his penis, threatening them by using force and intimidation. Moreover, Villacampa was the common-law husband of the mother of the victims and thus, he exerted moral ascendancy over them. Moral ascendancy takes the place of the force and intimidation that is required in rape cases. The minority of the victims was all proven during the course of the trial and also admitted by Villacampa. The victims were all subjected to sexual abuse by Villacampa as he engaged in lascivious conduct with them.

6. ID.; ID.; LASCIVIOUS CONDUCT UNDER SECTION 5 (b) of RA NO. 7610; GUIDELINES IN DESIGNATING THE OFFENSE AND THE PROPER IMPOSABLE PENALTY; APPLICATION TO THE CASE AT BAR.—We take this opportunity to reiterate our pronouncement in *People v. Caoili* regarding the proper nomenclature of the crime and penalties for lascivious conduct under Section 5(b) of RA 7610. We provided the necessary guidelines for designating the proper offense, *viz*: Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty: 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty. 2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviouness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the *second proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period. 3. If the victim is exactly Twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua.* AAA and

BBB were both under twelve (12) years of age while CCC was then fourteen (14) years old when the incident occurred. Accordingly, Villacampa should be held guilty for the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610 for FC Criminal Case Nos. 1359-1367, instead of rape through sexual assault in relation to RA 7610, as designated by the lower courts. For FC Criminal Case No. 1369, instead of acts of lasciviousness or sexual abuse in relation to RA 7610, Villacampa should be held guilty for the crime of Lascivious Conduct under Section 5(b) of RA 7610. In FC Criminal Case No. 1368, as there was actual penal penetration, Villacampa was correctly held guilty for the crime of simple rape under the RPC.

7. ID.; REVISED PENAL CODE (RPC); ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC IN RELATION TO SECTION 5(b) OF RA 7610; PROPER IMPOSABLE PENALTY.— [W]e modify the penalty imposed by the CA, pursuant to the guidelines set forth in *People v. Caoili*. x x x .The proper penalty to be applied in cases where the victims are under 12 years of age is *reclusion temporal* in its **medium period**, as specifically provided in RA 7610 [Section 5(b)]. x x x. Thus, while the accused will be prosecuted for rape under the RPC, as amended, the penalty imposed should be that prescribed by RA 7610 which is *reclusion temporal* in its medium period. Moreover, notwithstanding that RA 7610 is a special law, Villacampa is entitled to the application of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, the minimum should be the penalty next lower in degree or *reclusion temporal* in its minimum period. x x x. Thus, we find that the proper penalty for each count of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610 in FC Criminal Case Nos. 1359-1367 is the indeterminate sentence of twelve (12) years, ten (10) months and Twenty (20) days of *reclusion temporal* as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum.

8. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—With respect to civil liabilities, in accordance with prevailing jurisprudence, Villacampa should pay the victims the amounts of ₱20,000 as civil indemnity, ₱15,000 as moral damages, and ₱15,000 as exemplary damages for each count

of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610.

9. ID.; ID.; SIMPLE RAPE; PROPER IMPOSABLE PENALTY.— [A]s CCC was more than 12 years old at the time of the incidents, we find that the penalty imposed by the CA for FC Criminal Case. Nos. 1368 and 1369 is correct. For the finding of simple rape in FC Criminal Case No. 1368, we find the penalty of *reclusion perpetua* and the civil liabilities of ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱75,000 as exemplary damages proper in accordance with prevailing jurisprudence.

10. ID.; REPUBLIC ACT NO. 7610; LASCIVIOUS CONDUCT UNDER SECTION 5(b) THEREOF; PROPER IMPOSABLE PENALTY.— For the finding of Lascivious Conduct under Section 5(b) of RA 7610 in FC Criminal Case No. 1369, we affirm the indeterminate prison term of ten (10) years of *prision mayor* as minimum to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal* as maximum imposed by the CA because the penalty prescribed by RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua.*

11. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— In accordance with prevailing jurisprudence, we modify the civil liabilities – Villacampa is ordered to pay ₱20,000 as civil indemnity, ₱15,000 as moral damages, and ₱15,000 as exemplary damages. Moreover, as Section 31(f) of RA 7610 imposes a fine upon the offender, Villacampa is ordered to pay a fine of ₱15,000 for each violation of RA 7610, in accordance with prevailing jurisprudence. Villacampa is further ordered to pay interest at the rate of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until such damages are fully paid, in accordance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO,[*] *J.*:

The Case

On appeal is the 13 March 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04970.

This arose from 12 consolidated criminal cases against appellant Ceferino Villacampa *y* Cadiente @ "Daddy Gaga" (Villacampa) where he was accused of eleven counts of Rape[2] and one count of Acts of Lasciviousness[3] in relation to Republic Act No. 7610 (RA 7610).[4]

The CA affirmed the 28 March 2011 Decision[5] of the Regional Trial Court (RTC) of Pampanga, convicting Villacampa for nine counts of rape through sexual assault, one count of simple rape, and one count of acts of lasciviousness in relation to RA 7610. He was acquitted in FC Criminal Case No. 1370 for one count of rape.

The Facts

Sometime in March 2006, four minor siblings – AAA, BBB, CCC, and DDD,[6] then 11, 6, 14, and 13 years old, respectively,

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[*] Chairperson.

[1] *Rollo*, pp. 2-26. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Magdangal M. De Leon and Stephen C. Cruz concurring.

[2] FC Criminal Case Nos. 1359-1368, 1370.

[3] FC Criminal Case No. 1369.

[4] Otherwise known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." Approved on 17 June 1992.

[5] CA *rollo*, pp. 73-104. Penned by Judge Adelaida Ala-Medina.

[6] In accordance with Amended Administrative Circular No. 83-2015 issued on 5 September 2017, the identities of the parties, records and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

all had incidents with Villacampa, the common-law husband of their mother.

The findings of fact of the RTC for each of the minors, which were affirmed by the CA, are as follows:

FC Criminal Case Nos. 1359-1361

At around 6:30 in the evening of 21 March 2006, while AAA, then 11 years old, was making her way to the kitchen, she heard Villacampa call her. When she approached him, he removed her shorts, laid her down near the kitchen, and inserted his finger into her vagina. Villacampa attempted to penetrate AAA with his penis but this did not materialize as her mother and sister timely knocked on the door. Villacampa then instructed AAA to go to the comfort room where her mother followed her. AAA disclosed what Villacampa did to her. However, AAA's revelations fell on deaf ears. We note that while there were two acts involved – the act of inserting the finger and the attempted act of inserting the penis, the Information only alleged the insertion of the finger into the vagina of AAA.

On 23 March 2006, AAA was about to go to school when Villacampa told her that it was still too early to leave. He then made her lie on the *papag,* where he removed her shorts and underwear. He inserted his finger into her vagina and licked her vagina.

On 25 March 2006, when AAA was left by her mother to care for her siblings, Villacampa ordered her other siblings to play outside. Then, he removed AAA's shorts and underwear, inserted his finger into her genital area, and licked her vagina. AAA felt pain. Thereafter, Villacampa instructed AAA to put on her clothes and to go out and play.

AAA reported the incidents to her mother who ignored her. AAA confided with her father who was very furious with Villacampa's sexual abuse of AAA.

FC Criminal Case Nos. 1362-1367

BBB testified that Villacampa inserted his finger into her vagina on several occasions. The first time was when her mother

and siblings were away. BBB was sitting alone at home when Villacampa approached her and inserted his finger into her vagina. BBB cried out in pain. When her mother came home, Villacampa removed his fingers from BBB's vagina. Villacampa told BBB not to report the incident to her mother. Another time BBB was molested was when she was eating alone with Villacampa in their house. Villacampa repeated these acts numerous times – when she was playing with her siblings and Villacampa instructed her siblings to leave the house, when she was sleeping, when she was watching television, and when she was playing outside their house and Villacampa instructed BBB to return to the house. The last time the abuse happened, Villacampa threatened BBB that he would kill her mother if she reported the incident. BBB still narrated the incident to her older sister, AAA. At the time she testified before the trial court, BBB stated that she was eight years old.[7]

FC Criminal Case Nos. 1368 and 1369

On 21 March 2006, CCC, then 14 years old, was on the *papag* of her room when Villacampa entered her room. After threatening that he would kill her father, Villacampa kissed CCC on her lips and inserted his finger into her vagina. CCC could not shout as Villacampa's tongue was inside her mouth. While her testimony revealed that Villacampa inserted his finger into her vagina, the Information for FC Criminal Case No. 1369 merely stated that Villacampa touched her vagina and kissed her lips, face, and neck, against her will and without her consent.

On 25 March 2006, Villacampa and CCC's mother had a drinking spree where they forced CCC to consume a glass of Red Horse beer. Not used to drinking, CCC felt dizzy and retired to her room where she slept alone. At around 10:00 p.m., CCC was roused from her sleep by Villacampa who instructed her to remove her shorts and underwear. When CCC did not budge, Villacampa undressed her and kissed her on the lips, and forcibly inserted his penis into her vagina. CCC could only cry as she was unable to shout because Villacampa's tongue

[7] *Rollo*, p. 5.

was inside her mouth. After the incident, Villacampa threatened CCC that if she reported what had happened, he would kill her father. CCC still reported the incident to her mother who refused to believe her. On 6 April 2006, while visiting her father with DDD, CCC divulged the incident to her father. They proceeded to the Municipal Hall where she executed a sworn statement. CCC also underwent medico-legal examination.

In May 2006, CCC found out that she was pregnant. In 2006, she gave birth to a daughter, XXX, who, upon Villacampa's own application for her birth certificate, followed his surname. CCC denied having any romantic relationship with Villacampa.

FC Criminal Case No. 1370

On 25 March 2006, at around midnight, DDD, then 13 years old, was asleep in the living room of their house with her sister, BBB. While their mother was in the kitchen, Villacampa roused DDD from her sleep, covered her mouth and warned her not to report to her Mama and Tatay. Villacampa then removed her shorts and underwear and spread her legs. He inserted his penis into her vagina. DDD could not do anything but cry as she felt pain. As she was caught off guard, she was unable to wake up her sister who was sleeping not far from her. After the incident, Villacampa again warned DDD not to report the incident; otherwise, he would make good his threat to kill her father. The following morning, after Villacampa left for work, DDD reported the incident to her mother who did not believe her.

AAA, BBB, CCC, and DDD all underwent medical examination with the assistance of their father and aunt, MMM. AAA and CCC were examined by Dr. Mariglo Grace Chincuango (Dr. Chincuangco).[8] Per her findings on AAA, Dr. Chincuangco found that AAA's hymen had shallow healed lacerations at 1 o'clock and 9 o'clock positions. For CCC, Dr. Chincuangco found that CCC's hymen had deep healed lacerations at 3 o'clock and 10 o'clock positions. As to her pelvic examination, CCC's introitus admits one fingertip with ease. Her external

[8] *Id.* at 7.

examination was described as unremarkable – her uterus is small, no adrenal tenderness, bleeding or injuries.[9] Both AAA and CCC were not found to be pregnant at the time of the examination.[10] BBB and DDD were examined by Dr. Lorelei Guevarra (Dr. Guevarra).[11] The medical records issued by Dr. Guevarra were identified before the trial court by Ronelie Regala, the Administrative Officer III of the Records Section of JBL Hospital.

For his defense, Villacampa argues that the victims' testimonies were not credible and thus not enough to warrant his conviction. He posits that the victims were instructed by their father and Aunt MMM to file the cases against him. For CCC, he claims that he courted her and had a daughter with her. In this appeal, Villacampa argues that the lower courts erred in finding him guilty of the crimes charged as the prosecution failed to establish his guilt beyond reasonable doubt.

The Ruling of the RTC

In a Decision dated 28 March 2011, the RTC found Villacampa guilty beyond reasonable doubt for violating Section 5(b) of RA 7610 in FC Criminal Case Nos. 1359-1367 (rape through sexual assault) and FC Criminal Case No. 1369 (acts of lasciviousness or sexual abuse). He was likewise found guilty beyond reasonable doubt of simple rape in FC Criminal Case No. 1368. He was acquitted in FC Criminal Case No. 1370 as the trial court found that the testimony of DDD was doubtful as her description of the incident, particularly the position of Villacampa's hands, was contrary to human experience and thus not enough to overcome the presumption of innocence.[12] The RTC held:

WHEREFORE, premises considered, the Court finds the accused CEFERINO VILLACAMPA *y* CADIENTE @ "Daddy Gaga" GUILTY

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[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] CA *rollo*, p. 98.

Beyond Reasonable Doubt of Violating Sec. 5(b) of R.A. 7610 in FC Crim. Case Nos. 1359-1367, hereby imposing the penalty of imprisonment of fourteen (14) years and one (1) day of *Reclusion Temporal* as minimum to seventeen (17) years and four (4) months of *Reclusion Temporal* as maximum, the victims being under twelve (12) years of age and the payment of fine in the amount of fifteen thousand pesos (Php 15,000.00) and moral damages in the amount of twenty thousand pesos (Php 20,000.00) for each count[.] Insofar as FC Crim. Case No. 1369 is concerned, he is likewise found GUILTY Beyond Reasonable Doubt of Violating Sec. 5(b) of R.A. 7610 with the penalty of imprisonment of fourteen (14) years and one (1) day of *Reclusion Temporal* as minimum to *Reclusion Perpetua* as maximum as well as to pay moral damages and fine in the same amounts of fifteen thousand [pesos] (Php 15,000.00). In FC Crim. Case No. 1368, he is found GUILTY Beyond Reasonable Doubt of Simple Rape with the penalty of *Reclusion Perpetua* and to pay fifty thousand pesos (Php 50,000.00) as civil indemnity, fifty thousand pesos [Php 50,000.00] as moral damages and exemplary damages in the amount of thirty thousand pesos (Php 30,000[.00]). He is however Acquitted in FC Crim. Case No. 1370.

The Jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of this case in accordance with law.

SO ORDERED.[13]

The Ruling of the CA

In a Decision dated 13 March 2014, the CA affirmed, with modification as to the penalty, the Decision of the RTC. The dispositive portion of the Decision of the CA reads:

WHEREFORE, premises considered, the Consolidated Decision dated March 28, 2011 of the Regional Trial Court (RTC), Third Judicial Region, Branch 45 of San Fernando, Pampanga in FC Criminal Cases No[s]. 1359-1367, 1368 and 1369 is hereby MODIFIED as follows:

(1) In FC Criminal Case No[s]. 1359 to 1367, We find appellant Ceferino Villacampa y Cadiente GUILTY of rape through sexual assault in relation to R.A. No. 7610. He is ordered to suffer an

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[13] *Id*. at 103-104.

indeterminate prison term of [ten] (10) years of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum and to pay ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages and ₱30,000.00 as exemplary damages for each count. As a matter of clarification, contrary to the RTC findings, FC Criminal Case No. 1361 pertained to the rape of victim AAA and not to BBB;

(2) In FC Criminal Case No. 1368, We find appellant Ceferino Villacampa y Cadiente GUILTY of simple rape and is ordered to suffer the penalty of *reclusion perpetua* and to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages;

(3) In FC Criminal Case No. 1369, We find appellant Ceferino Villacampa y Cadiente GUILTY of sexual abuse under Section 5(b) of R.A. 7610 and is ordered to suffer an indeterminate prison term of ten (10) years of *prision mayor*, as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal* as maximum and to pay ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and a fine amounting to ₱15,000.00.

SO ORDERED.[14]

Villacampa filed his Notice of Appeal dated 8 April 2014 with the CA.[15]

The Issue

The issue to be resolved in this appeal is whether or not the CA gravely erred in finding Villacampa guilty of nine counts of rape through sexual assault in relation to Section 5(b) of RA 7610, one count of simple rape under the Revised Penal Code (RPC), and one count of sexual abuse under Section 5(b) of RA 7610.

The Ruling of the Court

The appeal is without merit. We affirm the findings of the CA with modification as to the penalty.

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[14] *Rollo*, pp. 24-25.

[15] *Id*. at 27.

Article 266-A of the Revised Penal Code, as amended by the Anti-Rape Law of 1997,[16] provides:

> Article 266-A. *Rape: When and How Committed.* – Rape is committed:
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> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In FC Criminal Case No. 1368, the crime involved is that of simple rape as defined in the first paragraph of the aforementioned article. Villacampa had carnal knowledge of CCC, who bore his child as a result thereof. Further, FC Criminal Case Nos. 1359-1367 involved rape through sexual assault as described in the second paragraph of Article 266-A because Villacampa inserted his finger into the vagina of his victims. It has long been established that the insertion of the finger into another person's genital or anal orifice constitutes rape through sexual assault.[17] On the other hand, FC Criminal Case No. 1369 charges Villacampa with acts of lasciviousness or sexual abuse as he is accused of kissing the lips, face, and neck of the victim. It is important to note that the victims in these cases were all

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[16] RA 8353.

[17] *People v. Magbanua*, 576 Phil. 642 (2008), citing *People v. Senieres*, 547 Phil. 674 (2007).

minors at the time of the commission of the crimes. Thus, the provisions of RA 7610 are relevant, specifically those on sexual abuse:

> Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> x x x x x x x x x
>
> (b) **Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse**; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;
>
> x x x x x x x x x (Emphasis supplied)

The following elements of sexual abuse under Section 5, Article III of RA 7610 must be established:

> 1. The accused commits the act of sexual intercourse or lascivious conduct.
>
> 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
>
> 3. The child, whether male or female, is below 18 years of age.[18]

In the present cases, all the elements of sexual abuse under RA 7610 have been met.

The first element is the act of sexual intercourse or lascivious conduct. Lascivious conduct is defined in Section 2(h) of the

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[18] *People v. Bonaagua,* 665 Phil. 750 (2011), citing *Malto v. People*, 560 Phil. 119 (2007); *Navarrete v. People,* 542 Phil. 496 (2007); *Olivarez v. Court of Appeals*, 503 Phil. 421, 431 (2005).

Implementing Rules and Regulations of RA 7610 as "the **intentional touching**, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the **introduction of any object into the genitalia, anus or mouth, of any person**, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."[19] As found by the lower courts, Villacampa inserted his finger into the vagina of his minor victims in FC Criminal Case Nos. 1359-1367. In FC Criminal Case No. 1369, Villacampa kissed CCC on the lips, face, and neck against her will. Villacampa even inserted his finger into CCC's vagina, even though this was not included in the Information against him. Thus, it is evident that Villacampa committed an act of lascivious conduct against each of his victims.

Next, the second element is that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. To meet this element, the child victim must either be exploited in prostitution or subjected to other sexual abuse. In *Quimvel v. People*,[20] the Court held that the fact that a child is under the coercion and influence of an adult is sufficient to satisfy this second element and will classify the child victim as one subjected to other sexual abuse. The Court held:

> To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse*." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.
>
> Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual

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[19] Emphasis supplied.

[20] G.R. No. 214497, 18 April 2017.

intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. x x x.[21]

The Court further clarified that the sexual abuse can happen only once, and still the victim would be considered a child subjected to other sexual abuse, because what the law punishes is the maltreatment of the child, without regard to whether or not this maltreatment is habitual. The Court held:

> Contrary to the exposition, the very definition of "*child abuse*" under Sec. 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.[22]

In this case, Villacampa, the common-law husband of their mother, repeated the lascivious conduct against his victims, who were all under his coercion and influence. Clearly, the second element is present and all the child victims are considered to be subjected to other sexual abuse.

Finally, the third element, that the child is below 18 years of age, has been sufficiently proven during the trial of the case for all of the victims.

In sum, we find that all the elements were proven beyond reasonable doubt. Villacampa inserted his finger into the vagina of his minor victims, and in the case of DDD, he inserted his penis, threatening them by using force and intimidation. Moreover, Villacampa was the common-law husband of the mother of the victims and thus, he exerted moral ascendancy over them. Moral ascendancy takes the place of the force and

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[21] *Id*.

[22] *Id*.

intimidation that is required in rape cases.[23] The minority of the victims was all proven during the course of the trial and also admitted by Villacampa. The victims were all subjected to sexual abuse by Villacampa as he engaged in lascivious conduct with them.

Proper Nomenclature and Penalties

We take this opportunity to reiterate our pronouncement in *People v. Caoili*[24] regarding the proper nomenclature of the crime and penalties for lascivious conduct under Section 5(b) of RA 7610. We provided the necessary guidelines for designating the proper offense, *viz*:

> Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:
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> 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.
>
> 2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the *second proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.
>
> 3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

AAA and BBB were both under twelve (12) years of age while CCC was then fourteen (14) years old when the incidents

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[23] *People v. Antonio*, 739 Phil. 686 (2014).

[24] G.R. Nos. 196342 and 196848, 8 August 2017.

occurred. Accordingly, Villacampa should be held guilty for the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610 for FC Criminal Case Nos. 1359-1367, instead of rape through sexual assault in relation to RA 7610, as designated by the lower courts. For FC Criminal Case No. 1369, instead of acts of lasciviousness or sexual abuse in relation to RA 7610, Villacampa should be held guilty for the crime of Lascivious Conduct under Section 5(b) of RA 7610. In FC Criminal Case No. 1368, as there was actual penal penetration, Villacampa was correctly held guilty for the crime of simple rape under the RPC.

Further, we modify the penalty imposed by the CA, pursuant to the guidelines set forth in *People v. Caoili*.[25]

The CA modified the penalty imposed by the RTC for FC Criminal Case Nos. 1359-1367, and in its stead applied the penalty prescribed under the RPC. The CA interpreted RA 7610 to mean that crimes against victims under 12 years of age are prosecuted under the RPC and therefore the penalty under the RPC – *reclusion temporal* – is applicable. The CA continued to apply the Indeterminate Sentence Law, stating that the minimum period is *prision mayor*. It considered the minority of the victims only as an aggravating circumstance. This is an erroneous interpretation.

The proper penalty to be applied in cases where the victims are under 12 years of age is *reclusion temporal* in its **medium period**, as specifically provided in RA 7610. Section 5(b) provides:

> Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to 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.
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> x x x x x x x x x

[25] *Id*.

> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: **Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;** (Boldfacing and underscoring supplied)

Thus, while the accused will be prosecuted for rape under the RPC, as amended, the penalty imposed should be that prescribed by RA 7610 which is *reclusion temporal* in its medium period. Moreover, notwithstanding that RA 7610 is a special law, Villacampa is entitled to the application of the Indeterminate Sentence Law.[26] Applying the Indeterminate Sentence Law, the minimum should be the penalty next lower in degree or *reclusion temporal* in its minimum period. We have addressed this matter squarely in *People v. Chingh*,[27] where we held:

> 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 [of] 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*

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[26] See *People v. Leonardo*, 638 Phil. 161, 198 (2010).

[27] 661 Phil. 208 (2011).

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.[28]

Thus, we find that the proper penalty for each count of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610 in FC Criminal Case Nos. 1359-1367 is the indeterminate sentence of twelve (12) years, ten (10) months and twenty (20) days of reclusion temporal as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum. With respect to civil liabilities, in accordance with prevailing jurisprudence, Villacampa should pay the victims the amounts of ₱20,000 as civil indemnity, ₱15,000 as moral damages, and ₱15,000 as exemplary damages for each count of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610.[29]

On the other hand, as CCC was more than 12 years old at the time of the incidents, we find that the penalty imposed by the CA for FC Criminal Case Nos. 1368 and 1369 is correct. For the finding of simple rape in FC Criminal Case No. 1368, we find the penalty of *reclusion perpetua* and the civil liabilities of ₱75,000 as civil indemnity, ₱75,000 as moral damages, and

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[28] *Id*. at 222-223.

[29] See *People v. Udtohan*, G.R. No. 228887, 2 August 2017, citing *People v. Aycardo,* G.R. No. 218114, 5 June 2017.

₱75,000 as exemplary damages proper in accordance with prevailing jurisprudence.[30] For the finding of Lascivious Conduct under Section 5(b) of RA 7610 in FC Criminal Case No. 1369, we affirm the indeterminate prison term of ten (10) years of *prision mayor* as minimum to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal* as maximum imposed by the CA because the penalty prescribed by RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*.[31] However, in accordance with prevailing jurisprudence, we modify the civil liabilities – Villacampa is ordered to pay ₱20,000 as civil indemnity, ₱15,000 as moral damages, and ₱15,000 as exemplary damages.[32]

Moreover, as Section 31(f) of RA 7610 imposes a fine upon the offender, Villacampa is ordered to pay a fine of ₱15,000 for each violation of RA 7610, in accordance with prevailing jurisprudence.[33]

Villacampa is further ordered to pay interest at the rate of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until such damages are fully paid, in accordance with prevailing jurisprudence.[34]

WHEREFORE, the assailed 13 March 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04970 is **AFFIRMED** with **MODIFICATIONS:**

(1) In FC Criminal Case Nos. 1359 to 1367, we find appellant Ceferino Villacampa *y* Cadiente @ "Daddy Gaga" **GUILTY** of nine counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to

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

[31] Section 5, Article III, RA 7610.

[32] See *Escalante v. People,* G.R. No. 218970, 28 June 2017. See also *Pinlac v. People*, 773 Phil. 49, 58-59 (2015).

[33] *People v. Caoili*, *supra* note 24, citing *People v. Bacus*, 767 Phil. 824 (2015).

[34] *Supra* note 32.

Section 5(b) of Republic Act No. 7610. He is sentenced to suffer an indeterminate prison term of twelve (12) years, ten (10) months and twenty (20) days of *reclusion temporal* as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum and is ordered to pay ₱15,000 as fine, ₱20,000 as civil indemnity, ₱15,000 as moral damages, and ₱15,000 as exemplary damages for each count;

(2) In FC Criminal Case No. 1368, we find appellant Ceferino Villacampa *y* Cadiente @ "Daddy Gaga" **GUILTY** of simple rape and he is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱75,000 as exemplary damages;

(3) In FC Criminal Case No. 1369, we find appellant Ceferino Villacampa *y* Cadiente @ "Daddy Gaga" **GUILTY** of Lascivious Conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to suffer an indeterminate prison term of ten (10) years of *prision mayor* as minimum to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal* as maximum and is ordered to pay ₱15,000 as fine, ₱20,000 as civil indemnity, ₱15,000 as moral damages, and ₱15,000 as exemplary damages; and

(4) Appellant Ceferino Villacampa *y* Cadiente @ "Daddy Gaga" is further ordered to pay interest at the rate of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until such damages are fully paid.

SO ORDERED.

Velasco, Jr.,[**] *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

[**] Designated additional member per Raffle dated 11 December 2017.

EN BANC

[A.C. No. 8208. January 10, 2018]

RET. JUDGE VIRGILIO ALPAJORA, *complainant, vs.* **ATTY. RONALDO ANTONIO V. CALAYAN**, *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; LAWYERS SHOULD ACT AND COMPORT THEMSELVES WITH HONESTY AND INTEGRITY IN A MANNER BEYOND REPROACH, IN ORDER TO PROMOTE THE PUBLIC'S FAITH IN THE LEGAL PROFESSION.—** It bears stressing that membership in the bar is a privilege burdened with conditions. It is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.

2. **ID.; ID.; SUSPENSION OR DISBARMENT; A CASE FOR DISBARMENT OR SUSPENSION IS NOT MEANT TO GRANT RELIEF TO A COMPLAINANT AS IN A CIVIL CASE, BUT IS INTENDED TO CLEANSE THE RANKS OF THE LEGAL PROFESSION OF ITS UNDESIRABLE MEMBERS IN ORDER TO PROTECT THE PUBLIC AND THE COURTS.—** When lawyers, in the performance of their duties, act in a manner that prejudices not only the rights of their client, but also of their colleagues and offends due administration of justice, appropriate disciplinary measures and proceedings are available such as reprimand, suspension or even disbarment to rectify their wrongful acts. The Court, however, emphasizes that a case for disbarment or suspension is not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only, but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof. In this

case, perusal of the records reveals that Atty. Calayan has displayed conduct unbecoming of a worthy lawyer.

3. ID.; ID.; THE LAWYER'S DUTY TO DEFEND HIS CLIENT'S CAUSE WITH UTMOST ZEAL IS SUBJECT TO RESTRICTIONS AND QUALIFICATIONS.— As noted by the IBP Investigating Commissioner, respondent did not deny filing several cases, both civil and criminal, against opposing parties and their counsels. In his motion for reconsideration of the IBP Board of Governors' Resolution, he again admitted such acts but expressed that it was not ill-willed. He explained that the placing of CEFI under receivership and directing the creation of a management committee and the continuation of the receiver's duties and responsibilities by virtue of the Omnibus Order spurred his filing of various pleadings and/or motions. It was in his desperation and earnest desire to save CEFI from further damage that he implored the aid of the courts. The Court is mindful of the lawyer's duty to defend his client's cause with utmost zeal. However, professional rules impose limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications. The filing of cases by respondent against the adverse parties and their counsels, as correctly observed by the Investigating Commissioner, manifests his malice in paralyzing the lawyers from exerting their utmost effort in protecting their client's interest. Even assuming *arguendo* that such acts were done without malice, it showed respondent's gross indiscretion as a colleague in the legal profession.

4. ID.; ID.; AS OFFICERS OF THE COURT, LAWYERS ARE TO ABSTAIN FROM OFFENSIVE OR MENACING LANGUAGE OR BEHAVIOR BEFORE THE COURT AND MUST REFRAIN FROM ATTRIBUTING TO A JUDGE MOTIVES THAT ARE NOT SUPPORTED BY THE RECORD OR HAVE NO MATERIALITY TO THE CASE.— As officers of the court, lawyers are duty-bound to observe and maintain the respect due to the courts and judicial officers. They are to abstain from offensive or menacing language or behavior before the court and must refrain from attributing to a judge motives that are not supported by the record or have no materiality to the case. Here, respondent has consistently attributed unsupported imputations against the complainant in his pleadings. He insisted that complainant antedated the order, dated August 15, 2008, because the envelopes where the order

came from were rubber stamped as having been mailed only on August 26, 2008. He also accused the complainant judge of being *in cahoots* and of having *deplorable close ties* with the adverse counsels; and that complainant irrefutably coached said adverse counsels. However, these bare allegations are absolutely unsupported by any piece of evidence. Respondent did not present any proof to establish complainant's alleged partiality or the antedating. The date of mailing indicated on the envelope is not the date of issue of the said order.

5. ID.; ID.; ALL LAWYERS ARE BOUND TO UPHOLD THE DIGNITY AND AUTHORITY OF THE COURTS, AND TO PROMOTE CONFIDENCE IN THE FAIR ADMINISTRATION OF JUSTICE; HENCE, NO MATTER HOW PASSIONATE A LAWYER IS TOWARDS DEFENDING HIS CLIENT'S CAUSE, HE MUST NOT FORGET TO DISPLAY THE APPROPRIATE DECORUM EXPECTED OF HIM, BEING A MEMBER OF THE LEGAL PROFESSION, AND TO CONTINUE TO AFFORD PROPER AND UTMOST RESPECT DUE TO THE COURTS.— Canon 11 and Rule 11.04 of the CPR state that: Canon 11 — A lawyer shall observe and maintain the respect due to the Courts and to judicial officers and should insist on similar conduct by others. x x x Rule 11.04 A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case. In light of the foregoing, the Court finds respondent guilty of attributing unsupported ill-motives to complainant. It must be remembered that all lawyers are bound to uphold the dignity and authority of the courts, and to promote confidence in the fair administration of justice. It is the respect for the courts that guarantees the stability of the judicial institution; elsewise, the institution would be resting on a very shaky foundation. Hence, no matter how passionate a lawyer is towards defending his client's cause, he must not forget to display the appropriate decorum expected of him, being a member of the legal profession, and to continue to afford proper and utmost respect due to the courts.

6. ID.; ID.; COMPLETE CANDOR AND HONESTY ARE EXPECTED FROM LAWYERS APPEARING AND PLEADING BEFORE THE COURTS.— It cannot be gainsaid that candidness, especially towards the courts, is essential for the expeditious administration of justice. Courts are entitled

to expect only complete candor and honesty from the lawyers appearing and pleading before them. A lawyer, on the other hand, has the fundamental duty to satisfy that expectation. Otherwise, the administration of justice would gravely suffer if indeed it could proceed at all.

7. ID.; ID.; ID.; A LAWYER WHO MISREPRESENTS THE TEXT OF A DECISION VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY.— Further, as regards his alleged misquotation, respondent argues that he should have been cited in contempt. He found justification in *Cortes vs. Bangalan x x x.* As correctly pointed out by the Investigating Commissioner, the jurisprudence quoted precisely cautions a judge against citing a party in contempt, which is totally contradictory to the position of respondent. He misrepresented the text of a decision, in violation of the CPR.

8. ID.; ID.; INDISCRIMINATE FILING OF PLEADINGS, MOTIONS, CIVIL AND CRIMINAL CASES, AND EVEN ADMINISTRATIVE CASES AGAINST DIFFERENT TRIAL COURT JUDGES RELATING TO THE SAME CONTROVERSIES AND PARTIES RUNS COUNTER TO THE SPEEDY DISPOSITION OF CASES, FRUSTRATES THE ADMINISTRATION OF JUSTICE, AND DEGRADES THE DIGNITY AND INTEGRITY OF THE COURTS.— [I]n defense of the multiple pleadings he filed, respondent avers that there is no law or rule that limits the number of motions, pleadings and even cases as long as they are sufficient in form and substance and not violative of the prohibition against forum shopping. He maintains that his pleadings were filed in utmost good faith and for noble causes, and that he was merely exercising his constitutionally protected rights to due process and speedy disposition of cases. Ironically, Atty. Calayan's indiscriminate filing of pleadings, motions, civil and criminal cases, and even administrative cases against different trial court judges relating to controversies involving CEFI, in fact, runs counter to the speedy disposition of cases. It frustrates the administration of justice. It degrades the dignity and integrity of the courts.

9. ID.; ID.; THE COURT RECOGNIZES THE RIGHT OF A LAWYER TO CRITICIZE THE ACTS OF COURTS AND JUDGES, SUBJECT TO THE CONDITION THAT SUCH CRITICISM BE *BONA FIDE,* AND SHALL NOT SPILL OVER THE WALLS OF DECENCY AND PROPRIETY,

FOR AN INTEMPERATE AND UNFAIR CRITICISM IS A GROSS VIOLATION OF THE DUTY OF RESPECT TO COURTS AND CONSTITUTES A MISCONDUCT THAT SUBJECTS A LAWYER TO DISCIPLINARY ACTION.— Respondent justifies his filing of administrative cases against certain judges, including complainant, by relying on *In Re: Almacen (Almacen)*. He claims that the mandate of the ruling laid down in *Almacen* was to encourage lawyers' criticism of erring magistrates. In *Almacen*, however, it did not *mandate* but merely recognized the right of a lawyer, both as an officer of the court and as a citizen, to criticize in *properly respectful terms* and through legitimate channels the acts of courts and judges. In addition, the Court therein emphasized that these criticisms are subject to a condition, to wit: But it is the cardinal condition of all such criticism that it shall be ***bona fide, and shall not spill over the walls of decency and propriety***. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action. Indubitably, the acts of respondent were in violation of his duty to observe and maintain the respect due to the courts of justice and judicial officers and his duty to never seek to mislead the judge or any judicial officer.

10. **ID.; ID.; A LAWYER'S DUTY IS NOT TO HIS CLIENT BUT PRIMARILY TO THE ADMINISTRATION OF JUSTICE, AS SUCH, ANY MEANS, NOT HONORABLE, FAIR AND HONEST WHICH IS RESORTED TO BY THE LAWYER, EVEN IN THE PURSUIT OF HIS DEVOTION TO HIS CLIENT'S CAUSE, IS CONDEMNABLE AND UNETHICAL.—** In his last ditch attempt to escape liability, respondent apologized for not being more circumspect with his remedies and choice of words. He admitted losing objectivity and becoming emotional while pursuing the cases involving him and the CEFI. The Court, however, reiterates that a lawyer's duty, is not to his client but primarily to the administration of justice. To that end, his client's success is wholly subordinate. His conduct ought to, and must always, be scrupulously observant of the law and ethics. Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.

For having violated the CPR and the Lawyer's Oath, respondent's conduct should be meted with a commensurate penalty.

APPEARANCES OF COUNSEL

Victor Angelo F. Tantoco for complainant.

D E C I S I O N

GESMUNDO, *J.*:

Before the Court is a Counter-Complaint[1] filed by complainant (Ret.) Judge Virgilio Alpajora *(Complainant)* against respondent Atty. Ronaldo Antonio V. Calayan *(Respondent)*, which originated from an administrative complaint filed by the latter against the former before the Office of the Court Administrator *(OCA)* for ignorance of the law and/or issuance of undue order. The administrative complaint against Judge Alpajora was dismissed by the Court in a Resolution,[2] dated March 2, 2009, on the ground that the matters raised therein were judicial in nature.

In his Comment/Opposition with Counter-Complaint to Discipline Complainant,[3] complainant charged respondent with (a) filing a malicious and harassment administrative case, (b) propensity for dishonesty in the allegations in his pleadings, (c) misquoting provisions of law, and (d) misrepresentation of facts. Complainant prayed for respondent's disbarment and cancellation of his license as a lawyer.

The Antecedents

Prior to this case, an intra-corporate case docketed as Civil Case No. 2007-10 and entitled *"Calayan Educational Foundation Inc. (CEFI), Dr. Arminda Calayan, Dr. Bernardita Calayan-Brion and Dr. Manuel Calayan vs. Atty. Ronaldo A.V. Calayan,*

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[1] *Rollo*, Vol. 1, pp. 3-15.

[2] *Id*. at pp. 1-2.

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

Susan S. Calayan and Deanna Rachelle S. Calayan," was filed before the Regional Trial Court *(RTC)* of Lucena City designated as commercial court and presided by Judge Adolfo Encomienda. Respondent was President and Chairman of the Board of Trustees of CEFI. He signed and filed pleadings as "Special Counsel *pro se*" for himself. Court proceedings ensued despite several inhibitions by judges to whom the case was re-raffled until it was finally re-raffled to complainant. Thereafter, complainant issued an Omnibus Order,[4] dated July 11, 2008 for the creation of a management committee and the appointment of its members. That Order prompted the filing of the administrative case against the Judge Alpajora.

The administrative case against complainant was dismissed. The Court, however, referred the comment/opposition with counter-complaint filed by complainant in the administrative case against him to the Office of the Bar Confidant *(OBC)* for appropriate action.

The OBC deemed it proper to re-docket the counter-complaint as a regular administrative case against respondent. Thus, in a Resolution,[5] dated June 3, 2009, upon recommendation of the OBC, the Court resolved to require respondent to submit his comment on the counter-complaint.

In its Resolution,[6] dated September 9, 2009, the Court noted respondent's comment and referred the administrative case to the Integrated Bar of the Philippines *(IBP)* for investigation, report and recommendation.

After a mandatory conference before the IBP, both parties were directed to submit their respective verified position papers.

Position of complainant

Complainant alleged that he partially tried and heard Civil Case No. 2007-10, an intra-corporate case filed against respondent, when

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[4] *Id*. at 203-211.

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

[6] *Id*. at 114.

he later voluntarily inhibited himself from it on account of the latter's filing of the administrative case against him.

The intra-corporate case was previously tried by Presiding Judge Adolfo Encomienda *(Presiding Judge Encomienda)* until he voluntarily inhibited after respondent filed an Urgent Motion to Recuse and a Supplement to Defendant's Urgent Motion to Recuse on the grounds of undue delay in disposing pending incidents, gross ignorance of the law and gross inefficiency.[7] The motions came after Presiding Judge Encomienda issued an order appointing one Atty. Antonio Acyatan *(Atty. Acyatan)* as receiver, who was directed to immediately take over the subject corporation.

After Presiding Judge Encomienda inhibited himself, the case was re-raffled to the sala of Executive Judge Norma Chionglo-Sia, who also inhibited herself because she was about to retire. The case was referred to Executive Judge Eloida R. de Leon-Diaz for proper disposition and re-raffle.[8] The case was finally raffled to complainant.[9]

Complainant averred that the administrative case against him by respondent was brought about by his issuance of the omnibus order, dated July 11, 2008, where he ordered the creation of a management committee and appointment of its members. Meanwhile, the RTC resolved that Atty. Acyatan continue to discharge his duties and responsibilities with such powers and authority as the court-appointed receiver. The trial court also authorized the foundation to pay Atty. Acyatan reimbursement expenses and professional charges. Complainant claimed that his order was not acceptable to respondent because he knew the import and effect of the said order — that he, together with his wife and daughter, would lose their positions as Chairman, Treasurer and Secretary, respectively, and as members of the Board of Trustees of the CEFI.[10]

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[7] *Id*. at 387.

[8] *Id*.

[9] *Id*. at 388.

[10] *Id*. at 385-386.

Complainant further claimed that before the records of Civil Case 2007-10 was transmitted to his sala and after he had inhibited from said case, respondent filed thirteen (13) civil and special actions before the RTC of Lucena City.[11] Atty. Calayan also filed two (2) related intra-corporate controversy cases — violating the rule on splitting causes of actions — involving the management and operation of the foundation. According to complainant, these showed the propensity and penchant of respondent in filing cases, whether or not they are baseless, frivolous or unfounded, with no other intention but to harass, malign and molest his opposing parties, including the lawyers and the handling judges. Complainant also revealed that respondent filed two (2) other administrative cases against a judge and an assisting judge in the RTC of Lucena City, which were dismissed because the issues raised were judicial in nature.[12]

Complainant also disclosed that before his sala, respondent filed eighteen (18) repetitious and prohibited pleadings.[13] Respondent continuously filed pleadings after pleadings as if to impress upon the court to finish the main intra-corporate case with such speed. To complainant's mind, the ultimate and ulterior objective of respondent in filing the numerous pleadings, motions, manifestation and explanations was to prevent the takeover of the management of CEFI and to finally dismiss the case at the pre-trial stage.

Complainant further revealed that due to the series of motions for recusation or inhibition of judges, there is no presiding judge in Lucena City available to try and hear the Calayan cases. Moreover, respondent filed nine (9) criminal charges against opposing lawyers and their respective clients before the City Prosecutor of Lucena City. In addition, there were four (4) administrative cases filed against opposing counsels pending before the IBP Commission on Bar Discipline.[14]

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[11] *Id*. at 388.

[12] *Id*. at 389.

[13] *Id*. at 390-391.

[14] *Id*. at 396-397.

Based on the foregoing, complainant asserted that respondent committed the following: (1) serious and gross misconduct in his duties as counsel for himself; (2) violated his oath as lawyer for [a] his failure to observe and maintain respect to the courts (Section 20(b), Rule 138, Rules of Court); [b] by his abuse of judicial process thru maintaining actions or proceedings inconsistent with truth and honor and his acts to mislead the judge by false statements (Section 20(d), Rule 138); (3) repeatedly violated the rules of procedures governing intra-corporate cases and maliciously misused the same to defeat the ends of justice; and (4) knowingly violated the rule against the filing of multiple actions arising from the same cause of action.

Position of respondent

In his Position Paper,[15] respondent countered that the subject case is barred by the doctrine of *res judicata*.

According to him, the counter-complaint was integrated with the Comment/Opposition of complainant in the administrative case docketed as A.M. OCA I.P.I. No. 08-2968-RTJ filed by respondent against the latter. He stressed that because no disciplinary measures were levelled on him by the OCA as an outcome of his complaint, charges for malpractice, malice or bad faith were entirely ruled out; moreso, his disbarment was decidedly eliminated.[16] Respondent argued that the doctrine of *res judicata* was embedded in the OCA's finding that his complaint was judicial in nature.[17] He likewise averred that the conversion of the administrative complaint against a judge into a disbarment complaint against him, the complaining witness, was hideously adopted to deflect the charges away from complainant. Respondent insisted that the counter-complaint was not sanctioned by the Rules of Court on disbarment and the Rules of Procedure of the Commission on Bar Discipline.[18]

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[15] *Id*. at 137-163.

[16] *Id*. at 140.

[17] *Id*.

[18] *Id*.

Respondent also claimed that the counter-complaint was unverified and thus, without complainant's own personal knowledge; instead, it is incontrovertible proof of his lack of courtesy and obedience toward proper authorities and fairness to a fellow lawyer.[19]

Further, respondent maintained that complainant committed the following: (1) grossly unethical and immoral conduct by his impleading a non-party;[20] (2) betrayal of his lawyer's oath and the Code of Professional Responsibility *(CPR)*;[21] (3) malicious and intentional delay in not terminating the pre-trial,[22] in violation of the Interim Rules because he ignored the special summary nature of the case;[23] and (4) misquoted provisions of law and misrepresented the facts.[24]

Lastly, it was respondent's submission that the counter-complaint failed to adduce the requisite quantum of evidence to disbar him, even less, to cite him in contempt of court assuming *ex gratia* the regularity of the referral of the case.[25]

Report and Recommendation of the IBP Commission on Bar Discipline

In its Report and Recommendation,[26] the Investigating Commissioner noted that, instead of refuting the allegations and evidence against him, respondent merely reiterated his charges against complainant. Instead of asserting his defense against complainant's charges, the position paper for the

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[19] *Id*. at 148.

[20] *Id*. at 141.

[21] *Id*. at 147.

[22] *Id*. at 153.

[23] *Id*. at 154.

[24] *Id*. at 155.

[25] *Id*. at 161.

[26] *Rollo*, Vol. 2, pp. 415-431.

respondent appeared more to be a motion for reconsideration of the Resolution dated March 2, 2009 rendered by the Supreme Court, dismissing the administrative case against complainant.[27]

In any case, based on the parties' position papers, the Investigating Commissioner concluded that respondent violated Section 20, Rule 138 of the Rules of Court,[28] Rules 8.01, 10.01 to 10.03, 11.03, 11.04, 12.02 and 12.04 of the CPR[29] and, thus,

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[27] *Id*. at p. 423.

[28] SEC. 20. Duties of attorneys.— It is the duty of an attorney.

(a) To maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines;

(b) To observe and maintain the respect due to the courts of justice and judicial officers;

(c) To counsel or maintain such actions or proceedings only as appear to him to be just, and such defences only as he believes to be honestly debatable under the law;

(d) To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law;

(e) To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval;

(f) To abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

(g) Not to encourage either the commencement or the continuance of an action or proceeding, or delay any man's cause, from any corrupt motive or interest;

(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or oppressed;

(i) In the defense of a person accused of crime, by all fair and honorable means, regardless of his personal opinion as to the guilt of the accused, to present every defense that the law permits, to the end that no person may be deprived of life or liberty, but by due process of law.

[29] Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

recommended his suspension from the practice of law for two (2) years,[30] for the following reasons:

First, respondent did not deny having filed four (4) cases against the counsel involved in the intra-corporate case from which the subject administrative cases stemmed, and nine (9) criminal cases against the opposing parties, their lawyers, and the receiver before the Office of the Prosecutor of Lucena City – all of which were subject of judicial notice. The Investigating Commissioner opined that such act manifested respondent's malice in paralyzing these lawyers from exerting their utmost effort in protecting their client's interest.[31]

Second, respondent committed misrepresentation when he cited a quote from former Chief Justice Hilario Davide, Jr. as a thesis when, in fact, it was a dissenting opinion. The Investigating Commissioner further opined that describing the supposed discussions by the judge with respondent's adverse counsels as contemplated crimes and frauds is not only grave but also unfounded and irrelevant to the present case.[32]

Third, respondent grossly abused his right of recourse to the courts by the filing of multiple actions concerning the same subject

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Rule 10.02 — A lawyer shall not knowingly misquote or misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the test of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behaviour before the Courts.

Rule 11.04 – A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

Rule 12.02 – A lawyer shall not file multiple actions arising from the same cause.

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

[30] *Rollo*, Vol. 2, pp. 430-431.

[31] *Id.* at pp. 424-425.

[32] *Id.* at 426.

matter or seeking substantially identical relief.[33] He admitted filing pleadings indiscriminately, but argued that it was within his right to do so and it was merely for the purpose of saving CEFI from imminent downfall.[34] The Investigating Commissioner opined that the filing of multiple actions not only was contemptuous, but also a blatant violation of the lawyer's oath.[35]

Fourth, respondent violated Canon 11 of the CPR by attributing to complainant ill-motives that were not supported by the record or had no materiality to the case.[36] He charged complainant with coaching adverse counsel on account of their alleged close ties, inefficiency in dealing with his pleadings, acting with dispatch on the adverse party's motions, partiality to the plaintiffs because he was a townmate of Presiding Judge Encomienda, and arriving at an order without predicating the same on legal bases under the principle of *stare decisis*.[37] According to the Investigating Commissioner, these charges are manifestly without any basis and also established respondent's disrespect for the complainant.[38]

Based on the findings, the Investigating Commissioner ultimately concluded:

> As a party directly involved in the subject intra-corporate controversy, it is duly noted that Respondent was emotionally affected by the ongoing case. His direct interest in the proceedings apparently clouded his judgment, on account of which he failed to act with circumspect in his choice of words and legal remedies. Such facts and circumstances mitigate Respondent's liability. Hence, it is hereby recommended that Respondent be suspended from the practice of law for two (2) years.[39]

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[33] *Id*. at 427.

[34] *Id*. at 428.

[35] *Id*. at 429.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*. at 430.

Consequently, the IBP Board of Governors issued a Resolution[40] adopting and approving the report and recommendation of the Investigating Commissioner. It recommended the suspension of respondent from the practice of law for two (2) years.

Aggrieved, respondent moved for reconsideration.

In a Resolution,[41] dated May 4, 2014, the IBP Board of Governors denied respondent's motion for reconsideration as there was no cogent reason to reverse the findings of the Commission and the motion was a mere reiteration of the matters which had already been threshed out.

Hence, pursuant to Section 12(b), Rule 139-B of the Rules of Court,[42] the Resolution of the IBP Board of Governors, together with the whole record of the case, was transmitted to the Court for final action.

Ruling of the Court

The Court adopts the findings of the Investigating Commissioner and the recommendation of the IBP Board of Governors.

It bears stressing that membership in the bar is a privilege burdened with conditions. It is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.[43]

When lawyers, in the performance of their duties, act in a manner that prejudices not only the rights of their client, but also of their

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[40] *Id.* at 413-414.

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

[42] Rule 139-B. Section 12. (b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

[43] *Spouses Amatorio vs. Attys. Dy Yap and Siton-Yap*, 755 Phil. 336, 345 (2015).

colleagues and offends due administration of justice, appropriate disciplinary measures and proceedings are available such as reprimand, suspension or even disbarment to rectify their wrongful acts.

The Court, however, emphasizes that a case for disbarment or suspension is not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.[44] Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only, but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof.[45]

In this case, perusal of the records reveals that Atty. Calayan has displayed conduct unbecoming of a worthy lawyer.

Harassing tactics against opposing counsel

As noted by the IBP Investigating Commissioner, respondent did not deny filing several cases, both civil and criminal, against opposing parties and their counsels. In his motion for reconsideration of the IBP Board of Governors' Resolution, he again admitted such acts but expressed that it was not ill-willed. He explained that the placing of CEFI under receivership and directing the creation of a management committee and the continuation of the receiver's duties and responsibilities by virtue of the Omnibus Order spurred his filing of various pleadings and/or motions.[46] It was in his desperation and earnest desire to save CEFI from further damage that he implored the aid of the courts.[47]

The Court is mindful of the lawyer's duty to defend his client's cause with utmost zeal. However, professional rules impose

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[44] *Atty. Yumul-Espina vs. Atty. Tabaquero*, A.C. No. 11238, September 21, 2016, 803 SCRA 571, 579.

[45] See note 35.

[46] *Rollo*, Vol. 2, p. 433.

[47] *Id*. at p. 434.

limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications.[48] The filing of cases by respondent against the adverse parties and their counsels, as correctly observed by the Investigating Commissioner, manifests his malice in paralyzing the lawyers from exerting their utmost effort in protecting their client's interest.[49] Even assuming *arguendo* that such acts were done without malice, it showed respondent's gross indiscretion as a colleague in the legal profession.

Unsupported ill-motives attributed to a judge

As officers of the court, lawyers are duty-bound to observe and maintain the respect due to the courts and judicial officers. They are to abstain from offensive or menacing language or behavior before the court and must refrain from attributing to a judge motives that are not supported by the record or have no materiality to the case.[50]

Here, respondent has consistently attributed unsupported imputations against the complainant in his pleadings. He insisted that complainant antedated the order, dated August 15, 2008, because the envelopes where the order came from were rubber stamped as having been mailed only on August 26, 2008.[51] He also accused the complainant judge of being *in cahoots* and of having *deplorable close ties* with the adverse counsels;[52] and that complainant irrefutably coached said adverse counsels.[53] However, these bare allegations are absolutely unsupported by any piece of evidence. Respondent did not present any proof to establish complainant's alleged partiality or the antedating. The date of mailing indicated on the envelope is not the date of issue of the said order.

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[48] *Avida Land Corporation vs. Atty. Argosino*, A.C. No. 7437, August 17, 2016, 800 SCRA 510, 520.

[49] *Rollo*, Vol. 2, p. 425.

[50] In Re: Supreme Court Resolution dated 28 April 2003 in G.R. Nos. 145817 & 145822, 685 Phil. 751, 777 (2012).

[51] *Rollo*, Vol. 1, p. 29; Vol. 2, p. 469.

[52] *Rollo*, Vol. 1, p. 143.

[53] *Id*. at p. 146.

Canon 11 and Rule 11.04 of the CPR state that:

> Canon 11 — A lawyer shall observe and maintain the respect due to the Courts and to judicial officers and should insist on similar conduct by others.
>
> x x x x x x x x x
>
> Rule 11.04 A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

In light of the foregoing, the Court finds respondent guilty of attributing unsupported ill-motives to complainant. It must be remembered that all lawyers are bound to uphold the dignity and authority of the courts, and to promote confidence in the fair administration of justice. It is the respect for the courts that guarantees the stability of the judicial institution; elsewise, the institution would be resting on a very shaky foundation.[54]

Hence, no matter how passionate a lawyer is towards defending his client's cause, he must not forget to display the appropriate decorum expected of him, being a member of the legal profession, and to continue to afford proper and utmost respect due to the courts.

Failure to observe candor, fairness and good faith before the court; failure to assist in the speedy and efficient administration of justice

It cannot be gainsaid that candidness, especially towards the courts, is essential for the expeditious administration of justice. Courts are entitled to expect only complete candor and honesty from the lawyers appearing and pleading before them. A lawyer, on the other hand, has the fundamental duty to satisfy that expectation. Otherwise, the administration of justice would gravely suffer if indeed it could proceed at all.[55]

In his Motion for Reconsideration[56] of the Resolution dated February 10, 2014 of the IBP Board of Governors, respondent wrote:

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[54] *Judge Madrid vs. Atty. Dealca,* 742 Phil. 514, 529 (2014).

[55] *Chavez vs. Viola*, 273 Phil. 206, 211 (1991).

[56] *Rollo*, Vol. 2, pp. 432-451.

Anent, the Respondent's alleged commission of falsehood in his pleadings, suffice it to state that if certain pleadings prepared by the Respondent contained some allegations that turned out to be inaccurate, the same were nevertheless unintentional and only arose out of the Respondent's honest misappreciation of certain facts;[57]

The records, however, showed that respondent's allegations were not brought about by mere inaccuracy. For one of his arguments against the complainant, respondent relied on Rule 9 of the Interim Rules of Procedure for Intra-Corporate Controversies which provides:

SECTION 1. *Creation of a Management Committee*. — As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, **A PARTY MAY APPLY** for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of: x x x [Emphasis supplied]

He stressed that the courts cannot *motu proprio* legally direct the appointment of a management committee when the *Interim Rules predicate such appointment* ***exclusively*** *upon the application of a party* in the complaint *a quo*.[58]

By employing the term "exclusively" to describe the class of persons who can apply for the appointment of a management committee,[59] respondent tried to mislead the Court. Lawyers are well aware of the tenor of a provision of law when "may" is used. "May" is construed as permissive and operating to confer discretion.[60] Thus, when the Interim Rules stated that *"a party* ***may apply*** *x x x,"* it did not connote exclusivity to a certain class. It simply meant that should a party opt for the appointment of such, it may do so. It does not, however, exclude the courts from ordering the appointment of a management committee should the surrounding circumstances of the case warrant such.

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[57] *Id*. at p. 437.

[58] *Id*. at 27.

[59] *Id*.

[60] *Social Security Commission, et al. vs. Court of Appeals*, 482 Phil. 449, 450 (2004).

Further, as regards his alleged misquotation, respondent argues that he should have been cited in contempt. He found justification in *Cortes vs. Bangalan*,[61] to wit:

> x x x. The alleged offensive and contemptuous language contained in the letter-complaint was not directed to the respondent court. As observed by the Court Administrator, "what respondent should have done in this particular case is that he should have given the Court (Supreme Court) the opportunity to rule on the complaint and not simply acted precipitately in citing complainant in contempt of court in a manner which obviously smacks of retaliation rather than the upholding of a court's honor."
>
> A judge may not hold a party in contempt of court for expressing concern on his impartiality even if the judge may have been insulted therein. While the power to punish in contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold the due administration of justice, judges, however, should exercise their contempt powers judiciously and sparingly, with utmost restraint, and with the end in view of utilizing their contempt powers for correction and preservation not for retaliation or vindication.[62]

As correctly pointed out by the Investigating Commissioner, the jurisprudence quoted precisely cautions a judge against citing a party in contempt, which is totally contradictory to the position of respondent. He misrepresented the text of a decision, in violation of the CPR.

Moreover, in defense of the multiple pleadings he filed, respondent avers that there is no law or rule that limits the number of motions, pleadings and even cases as long as they are sufficient in form and substance and not violative of the prohibition against forum shopping.[63] He maintains that his pleadings were filed in utmost good faith and for noble causes, and that he was merely exercising his constitutionally protected rights to due process and speedy disposition of cases.[64]

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[61] 379 Phil. 251 (2000).

[62] *Id*., at pp. 256-257.

[63] *Rollo*, Vol. 1, p. 149.

[64] *Rollo*, Vol. 2, p. 436.

Ironically, Atty. Calayan's indiscriminate filing of pleadings, motions, civil and criminal cases, and even administrative cases against different trial court judges relating to controversies involving CEFI, in fact, runs counter to the speedy disposition of cases. It frustrates the administration of justice. It degrades the dignity and integrity of the courts.

A lawyer does not have an unbridled right to file pleadings, motions and cases as he pleases. Limitations can be inferred from the following rules:

1. Rules of Court

    a. Rule 71, Section 3. *Indirect Contempt to be Punished After Charge and Hearing.* — After charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x x x x x x

2. Code of Professional Responsibility

    a. Canon 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

    b. Canon 10, Rule 10.03 – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

    c. Canon 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

d. Canon 12, Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a Judgment or misuse Court processes.

Respondent justifies his filing of administrative cases against certain judges, including complainant, by relying on *In Re: Almacen (Almacen)*.[65] He claims that the mandate of the ruling laid down in *Almacen* was to encourage lawyers' criticism of erring magistrates.[66]

In *Almacen*, however, it did not *mandate* but merely recognized the right of a lawyer, both as an officer of the court and as a citizen, to criticize in *properly respectful terms* and through legitimate channels the acts of courts and judges.[67] In addition, the Court therein emphasized that these criticisms are subject to a condition, to wit:

> But it is the cardinal condition of all such criticism that it shall be ***bona fide***, ***and shall not spill over the walls of decency and propriety***. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.[68] [Emphasis supplied.]

Indubitably, the acts of respondent were in violation of his duty to observe and maintain the respect due to the courts of justice and judicial officers and his duty to never seek to mislead the judge or any judicial officer.[69]

In his last ditch attempt to escape liability, respondent apologized for not being more circumspect with his remedies and choice of words. He admitted losing objectivity and becoming emotional while pursuing the cases involving him and the CEFI.

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[65] 142 Phil. 353 (1970).

[66] *Supra* note 64.

[67] *Supra* note 65 at 369.

[68] *Id*. at 371.

[69] Sec. 20(b) and (d), Rule 138, Rules of Court.

The Court, however, reiterates that a lawyer's duty, is not to his client but primarily to the administration of justice. To that end, his client's success is wholly subordinate. His conduct ought to, and must always, be scrupulously observant of the law and ethics. Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.[70]

For having violated the CPR and the Lawyer's Oath, respondent's conduct should be meted with a commensurate penalty.

WHEREFORE, the Court **ADOPTS** and **APPROVES** the Resolution of the Integrated Bar of the Philippines — Board of Governors dated September 28, 2013. Accordingly, Atty. Ronaldo Antonio V. Calayan is found **GUILTY** of violating The Lawyer's Oath and The Code of Professional Responsibility and he is hereby ordered **SUSPENDED** from the practice of law for two (2) years, with a **STERN WARNING** that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

Let copies of this decision be furnished the: (a) Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance; (b) the Integrated Bar of the Philippines; and (c) the Office of the Bar Confidant. Let a copy of this decision be attached to the personal records of the respondent.

SO ORDERED.

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

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[70] *Rural Bank of Calape, Inc. Bohol vs. Florido*, 635 Phil. 176, 180-181 (2010).

SPECIAL FIRST DIVISION

[A.C. No. 9000. January 10, 2018]

TOMAS P. TAN, JR., *complainant, vs.* **ATTY. HAIDE V. GUMBA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE PRACTICE OF LAW IS NOT A RIGHT BUT A MERE PRIVILEGE SUBJECT TO THE INHERENT REGULATORY POWER OF THE COURT.— Time and again, the Court reminds the bench and bar "that the practice of law is *not* a right but a mere privilege [subject] to the inherent regulatory power of the [Court]." It is a "privilege burdened with conditions." As such, lawyers must comply with its rigid standards, which include mental fitness, maintenance of highest level of morality, and full compliance with the rules of the legal profession.

2. ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW; GUIDELINES FOR THE LIFTING OF A SUSPENSION ORDER; RESPONDENT'S SUSPENSION FROM THE PRACTICE OF LAW COMMENCED FROM THE NOTICE OF THE DENIAL OF HER MOTION FOR RECONSIDERATION.— With regard to suspension to practice law, in *Maniago v. Atty. De Dios*, the Court laid down the guidelines for the lifting of an order of suspension, to wit: 1) After a finding that respondent lawyer must be suspended from the practice of law, the Court shall render a decision imposing the penalty; 2) Unless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has 15 days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory; 3) Upon the expiration of the period of suspension, respondent shall file a Sworn Statement with the Court, through the Office of the Bar Confidant, stating therein that he or she has desisted from the practice of law and has not appeared in any court during the period of his or her suspension; 4) Copies of the Sworn Statement shall be furnished to the Local Chapter of the IBP and to the Executive Judge of the courts where respondent has pending cases handled by him

or her, and/or where he or she has appeared as counsel; 5) The Sworn Statement shall be considered as proof of respondent's compliance with the order of suspension; 6) Any finding or report contrary to the statements made by the lawyer under oath shall be a ground for the imposition of a more severe punishment, or disbarment, as may be warranted. Pursuant to these guidelines, in this case, the Court issued a Resolution dated October 5, 2011 suspending respondent from the practice of law for six months effective immediately. Respondent filed her motion for reconsideration. And, on November 12, 2012, she received the notice of the denial of such motion per Registry Return Receipt No. 53365. While, indeed, service of a judgment or resolution must be done only personally or by registered mail, and that mere showing of a downloaded copy of the October 5, 2011 Resolution to respondent is not a valid service, the fact, however, that respondent was duly informed of her suspension remains unrebutted. Again, as stated above, she filed a motion for reconsideration on the October 5, 2011 Resolution, and the Court duly notified her of the denial of said motion. It thus follows that respondent's six months suspension commenced from the notice of the denial of her motion for reconsideration on November 12, 2012 until May 12, 2013.

3. **ID.; ID.; ID.; A SUSPENDED LAWYER WHO ENGAGES IN THE PRACTICE OF LAW DURING THE PENDENCY OF HIS OR HER SUSPENSION SHALL BE LIABLE FOR UNAUTHORIZED PRACTICE, AND VIOLATES A LAWFUL ORDER OF THE COURT. —** In *Ibana-Andrade v. Atty. Paita-Moya*, despite having received the Resolution anent her suspension, Atty. Paita-Moya continued to practice law. She filed pleadings and she appeared as counsel in courts. For which reason, the Court suspended her from the practice of law for six months in addition to her initial one month suspension, or a total of seven months. x x x. Similarly, in this case, the Court notified respondent of her suspension. However, she continued to engage in the practice of law by filing pleadings and appearing as counsel in courts during the period of her suspension. It is common sense that when the Court orders the suspension of a lawyer from the practice of law, the lawyer must desist from performing all functions which require the application of legal knowledge within the period of his or her suspension. To stress, by practice of law, we refer to "any activity, in or out of court, which requires the application of law, legal

procedure, knowledge, training, and experience. It includes performing acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill." In fine, it will amount to unauthorized practice, and a violation of a lawful order of the Court if a suspended lawyer engages in the practice of law during the pendency of his or her suspension.

4. ID.; ID.; ID.; THE LIFTING OF A SUSPENSION ORDER IS NOT AUTOMATIC, FOR IT IS STILL NECESSARY THAT THERE IS AN ORDER FROM THE COURT LIFTING THE SUSPENSION OF A LAWYER TO PRACTICE LAW.— As also stressed by the OBC in its March 24, 2015 Report, during and even after the period of her suspension and without filing a sworn statement for the lifting of her suspension, respondent signed pleadings and appeared in courts as counsel. Clearly, such acts of respondent are in violation of the order of her suspension to practice law. Moreover, the lifting of a suspension order is not automatic. It is necessary that there is an order from the Court lifting the suspension of a lawyer to practice law. To note, in *Maniago*, the Court explicitly stated that a suspended lawyer shall, upon the expiration of one's suspension, file a sworn statement with the Court, and that such statement shall be considered proof of the lawyer's compliance with the order of suspension. In this case, on February 19, 2014, the Court directed respondent to comply with the guidelines for the lifting of the suspension order against her by filing a sworn statement on the matter. However, respondent did not comply. Instead, she filed a complaint (Civil Case No. 2015-0007) against the OCA, the OBC and a certain Atty. Paraiso with the RTC. For having done so, respondent violated a lawful order of the Court, that is, to comply with the guidelines for the lifting of the order of suspension against her.

5. REMEDIAL LAW; DISBARMENT OR SUSPENSION OF ATTORNEYS; A MEMBER OF THE BAR MAY BE DISBARRED OR SUSPENDED FROM PRACTICE OF LAW FOR WILLFUL DISOBEDIENCE OF ANY LAWFUL ORDER OF A SUPERIOR COURT; SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS IMPOSED FOR FAILURE TO COMPLY WITH THE COURT'S LAWFUL ORDERS.— [R]espondent's violation of the lawful order of the Court is two-fold: 1) she filed pleadings

and appeared in court as counsel during the period of her suspension, and prior to the lifting of such order of her suspension; and 2) she did not comply with the Court's directive for her to file a sworn statement in compliance with the guidelines for the lifting of the suspension order. Under Section 27, Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended from practice of law for willful disobedience of any lawful order of a superior court, among other grounds. Here, respondent willfully disobeyed the Court's lawful orders by failing to comply with the order of her suspension, and to the Court's directive to observe the guidelines for the lifting thereof. Pursuant to prevailing jurisprudence, the suspension for six (6) months from the practice of law against respondent is in order.

APPEARANCES OF COUNSEL

Smith & Smith Law Office for complainant.

D E C I S I O N

DEL CASTILLO, *J.*:

This case is an offshoot of the administrative Complaint[1] filed by Tomas P. Tan, Jr. (complainant) against Atty. Haide V. Gumba (respondent), and for which respondent was suspended from the practice of law for six months. The issues now ripe for resolution are: a) whether respondent disobeyed a lawful order of the Court by not abiding by the order of her suspension; and b) whether respondent deserves a stiffer penalty for such violation.

Factual Antecedents

According to complainant, in August 1999, respondent obtained from him a ₱350,000.00 loan with 12% interest *per annum*. Incidental thereto, respondent executed in favor of complainant an undated Deed of Absolute Sale[2] over a 105-

[1] *Rollo*, pp. 16-19.

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

square meter lot located in Naga City, and covered by Transfer Certificate of Title No. 2055[3] under the name of respondent's father, Nicasio Vista. Attached to said Deed was a Special Power of Attorney[4] (SPA) executed by respondent's parents authorizing her to apply for a loan with a bank to be secured by the subject property. Complainant and respondent purportedly agreed that if the latter failed to pay the loan in or before August 2000, complainant may register the Deed of Absolute Sale with the Register of Deeds (RD).[5]

Respondent failed to pay her loan when it fell due. And despite repeated demands, she failed to settle her obligation. Complainant attempted to register the Deed of Absolute Sale with the RD of Naga City but to no avail because the aforesaid SPA only covered the authority of respondent to mortgage the property to a bank, and not to sell it.[6]

Complainant argued that if not for respondent's misrepresentation, he would not have approved her loan. He added that respondent committed dishonesty, and used her skill as a lawyer and her moral ascendancy over him in securing the loan. Thus, he prayed that respondent be sanctioned for her infraction.[7]

In his Commissioner's Report[8] dated February 9, 2009, Commissioner Jose I. de la Rama, Jr. (Commissioner de la Rama) faulted respondent for failing to file an answer, and participate in the mandatory conference. He further declared that the SPA specifically authorized respondent to mortgage the property with a bank. He stressed that for selling the property, and not just mortgaging it to complainant, who was not even a bank, respondent acted beyond her authority. Having done so, she

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

[4] *Id*. at 25.

[5] *Id*. at 16.

[6] *Id*. at 17.

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

[8] *Id*. at 72-77.

committed gross violation of the Lawyer's Oath as well as Canon 1,[9] Rule 1.01,[10] and Canon 7[11] of the Code of Professional Responsibility. As such, he recommended that respondent be suspended from the practice of law for one year.

In the Resolution No. XIX-2010-446[12] dated August 28, 2010, the Integrated Bar of the Philippines – Board of Governors (IBP-BOG) resolved to adopt and approve the Report and Recommendation of Commissioner de la Rama.

Action of the Supreme Court

Thereafter, the Court issued a Resolution[13] dated October 5, 2011, which sustained the findings and conclusion of the IBP. The Court nonetheless found the reduction of the penalty proper, pursuant to its sound judicial discretion and on the facts of the case. Accordingly, it suspended respondent from the practice of law for six months, effective immediately, with a warning that a repetition of same or similar act will be dealt with more severely.

On March 14, 2012, the Court resolved to serve anew the October 5, 2011 Resolution upon respondent because its previous copy sent to her was returned unserved.[14] In its August 13, 2012 Resolution,[15] the Court considered the October 5, 2011 Resolution to have been served upon respondent after the March 14, 2012 Resolution was also returned unserved. In the same

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[9] CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

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

[11] 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.

[12] *Rollo,* p. 71.

[13] *Id*. at 82-87; penned by Associate Justice Martin S. Villarama, Jr. and concurred in by then Chief Justice Renato C. Corona and Associate Justices Teresita J. Leonardo-de Castro, Lucas P. Bersamin and Mariano C. del Castillo.

[14] *Id*. at 96.

[15] *Id*. at 98.

resolution, the Court also denied with finality respondent's motion for reconsideration on the October 5, 2011 Resolution.

Subsequently, Judge Margaret N. Armea (Judge Armea) of the Municipal Trial Court in Cities of Naga City, Branch 2 wrote a letter[16] inquiring from the Office of the Court Administrator (OCA) whether respondent could continue representing her clients and appear in courts. She also asked the OCA if the decision relating to respondent's suspension, which was downloaded from the internet, constitutes sufficient notice to disqualify her to appear in courts for the period of her suspension.

According to Judge Armea, her inquiry arose because respondent represented a party in a case pending in her court; and, the counsel of the opposing party called Judge Armea's attention regarding the legal standing of respondent to appear as counsel. Judge Armea added that respondent denied that she was suspended to practice law since she (respondent) had not yet received a copy of the Court's resolution on the matter.

In her Answer/Comment[17] to the query of Judge Armea, respondent countered that by reason of such downloaded decision, Judge Armea and Executive Judge Pablo Cabillan Formaran III (Judge Formaran III) of the Regional Trial Court (RTC) of Naga City disallowed her appearance in their courts. She insisted that service of any pleading or judgment cannot be made through the internet. She further claimed that she had not received an authentic copy of the Court's October 5, 2011 Resolution.

On January 22, 2013, the Office of the Bar Confidant (OBC) referred the October 5, 2011 Resolution to the OCA for circulation to all courts.[18] In response, on January 30, 2013, the OCA issued OCA Circular No. 14-2013[19] addressed to the

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[16] *Id*. at 103.

[17] *Id*. at 119-125.

[18] *Id*. at 99.

[19] *Id*. at 176.

courts,[20] the Office of the Chief State Prosecutor (CSP), Public Attorney's Office (PAO), and the IBP informing them of the October 5, 2011 and August 13, 2012 Resolutions of the Court.

IBP's Report and Recommendation

Meanwhile, in its Notice of Resolution No. XX-2013-359[21] dated March 21, 2013, the IBP-BOG resolved to adopt and approve the Report and Recommendation[22] of Commissioner Oliver A. Cachapero (Commissioner Cachapero) to dismiss the complaint against respondent. According to Commissioner Cachapero, there is no rule allowing the service of judgments through the internet; and, Judge Armea and Judge Formaran III acted ahead of time when they implemented the suspension of respondent even before the actual service upon her of the resolution concerning her suspension.

Statement and Report of the OBC

In its November 22, 2013 Statement,[23] the OBC stressed that respondent received the August 13, 2012 Resolution (denying her motion for reconsideration on the October 5, 2011 Resolution) on November 12, 2012 per Registry Return Receipt No. 53365. Thus, the effectivity of respondent's suspension was from November 12, 2012 until May 12, 2013. The OBC also pointed out that suspension is not automatically lifted by mere lapse of the period of suspension. It is necessary that an order be issued by the Court lifting the suspension to enable the concerned lawyer to resume practice of law.

The OBC further maintained in its November 27, 2013 Report[24] that respondent has no authority to practice law and appear in

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[20] The Court of Appeals, Sandiganbayan, Court of Tax Appeals, Regional Trial Courts, Shari'a District Courts, Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'a Circuit Courts.

[21] *Id*. at 187.

[22] *Id*. at 188-192.

[23] *Id*. at 179-180.

[24] *Id*. at 200-201.

court as counsel during her suspension, and until such time that the Court has lifted the order of her suspension. Thus, the OBC made these recommendations:

> WHEREFORE, *in the light of the foregoing premises,* it is respectfully recommended that:
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> 1. Respondent be REQUIRED to file a sworn statement with motion to lift order of her suspension, attaching therewith certifications from the Office of the Executive Judge of the court where she practices [h]er profession and IBP Local Chapter of which she is affiliated, that she has ceased and desisted from the practice of law from 12 November 2012 to 12 May 2013, immediately; and
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> 2. The IBP be REQUIRED to EXPLAIN within 72 hours why they should not be sanctioned for disciplinary action for issuing said Notice of Resolution No. XX-2013-359, dated 21 March 2013, purportedly dismissing this case for lack of merit.[25]

On February 19, 2014, the Court noted[26] the OBC Report, and directed respondent to comply with the guidelines relating to the lifting of the order of her suspension as enunciated in *Maniago v. Atty. De Dios*.[27]

Upon the request of respondent, on December 2, 2014, the OBC issued a Certification,[28] which stated that respondent had been ordered suspended from the practice of law for six months, and as of the issuance of said certification, the order of her suspension had not yet been lifted.

Complaint against the OCA, the OBC and Atty. Paraiso

On February 6, 2015, respondent filed with the RTC a verified Complaint[29] for nullity of clearance, damages, and preliminary

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[25] *Id*. at 201.

[26] *Id*. at 203.

[27] 631 Phil. 139 (2010).

[28] *Rollo*, p. 264.

[29] *Id*. at 231-239.

injunction with urgent prayer for a temporary restraining order against the OCA, the OBC, and Atty. Nelson P. Paraiso (Atty. Paraiso). The case was docketed as Civil Case No. 2015-0007.

Essentially, respondent accused the OCA and the OBC of suspending her from the practice of law even if the administrative case against her was still pending with the IBP. She likewise faulted the OBC for requiring her to submit a clearance from its office before she resumes her practice of law after the suspension. In turn, she argued that Atty. Paraiso benefited from this supposed "bogus suspension" by publicly announcing the disqualification of respondent to practice law.

In its Answer,[30] the OCA argued that the RTC had no jurisdiction over the action, which seeks reversal, modification or enjoinment of a directive of the Court. The OCA also stressed that respondent should raise such matter by filing a motion for reconsideration in the administrative case, instead of filing a complaint with the RTC. It also stated that the issuance of OCA Circular No. 14-2013 was in compliance with the Court's directive to inform all courts, the CSP, the PAO, and the IBP of the suspension of respondent.

For its part, the OBC declared in a Report[31] dated March 24, 2015 that during and after the period of her suspension, without the same having been lifted, respondent filed pleadings and appeared in courts in the following cases:

> x x x (1) Civil Case No. 2013-0106 (Romy Fay Gumba v. The City Assessor of Naga City, et. al.), (2) Civil Case No. RTC 2006-0063 (Sps. Jaime M. Kalaw et. al. v. Fausto David, et. al.), (3) Other Spec. Proc. No. RTC 2012-0019 (Petition for Reconstitution of Transfer Certificate of Title No. 21128 of the Registry of Deeds of Naga City *v*. Danilo O. Laborado).[32]

The OBC likewise confirmed that as of the time it issued the March 24, 2015 Report, the Court had not yet lifted the

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[30] *Id*. at 266-271.

[31] *Id*. at 272-273.

[32] *Id*. at 272.

order of suspension against respondent. The OBC opined that for failing to comply with the order of her suspension, respondent deliberately refused to obey a lawful order of the Court. Thus, it recommended that a stiffer penalty be imposed against respondent.

On June 4, 2015, the OBC reported that the RTC dismissed Civil Case No. 2015-0007 for lack of jurisdiction, and pending resolution was respondent's motion for reconsideration.[33]

Issue

Is respondent administratively liable for engaging in the practice of law during the period of her suspension and prior to an order of the Court lifting such suspension?

Our Ruling

Time and again, the Court reminds the bench and bar "that the practice of law is *not* a right but a mere privilege [subject] to the inherent regulatory power of the [Court]."[34] It is a "privilege burdened with conditions."[35] As such, lawyers must comply with its rigid standards, which include mental fitness, maintenance of highest level of morality, and full compliance with the rules of the legal profession.[36]

With regard to suspension to practice law, in *Maniago v. Atty. De Dios*,[37] the Court laid down the guidelines for the lifting of an order of suspension, to wit:

1) After a finding that respondent lawyer must be suspended from the practice of law, the Court shall render a decision imposing the penalty;

2) Unless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has

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[33] *Id*. at 274.

[34] *Maniago v. Atty. De Dios*, *supra* note 27 at 145.

[35] *Lingan v. Atty. Calubaquib,* 737 Phil. 191, 209 (2014).

[36] *Id*.

[37] *Supra* note 27.

15 days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory;

3) Upon the expiration of the period of suspension, respondent shall file a Sworn Statement with the Court, through the Office of the Bar Confidant, stating therein that he or she has desisted from the practice of law and has not appeared in any court during the period of his or her suspension;

4) Copies of the Sworn Statement shall be furnished to the Local Chapter of the IBP and to the Executive Judge of the courts where respondent has pending cases handled by him or her, and/or where he or she has appeared as counsel;

5) The Sworn Statement shall be considered as proof of respondent's compliance with the order of suspension;

6) Any finding or report contrary to the statements made by the lawyer under oath shall be a ground for the imposition of a more severe punishment, or disbarment, as may be warranted.[38]

Pursuant to these guidelines, in this case, the Court issued a Resolution dated October 5, 2011 suspending respondent from the practice of law for six months effective immediately. Respondent filed her motion for reconsideration. And, on November 12, 2012, she received the notice of the denial of such motion per Registry Return Receipt No. 53365.

While, indeed, service of a judgment or resolution must be done only personally or by registered mail,[39] and that mere showing of a downloaded copy of the October 5, 2011 Resolution to respondent is not a valid service, the fact, however, that respondent was duly informed of her suspension remains unrebutted. Again, as stated above, she filed a motion for reconsideration on the October 5, 2011 Resolution, and the Court duly notified her of the denial of said motion. It thus follows that respondent's six months suspension commenced from the notice of the denial of her motion for reconsideration on November 12, 2012 until May 12, 2013.

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[38] *Id.* at 145-146.

[39] RULES OF COURT, Rule 13, Section 9.

In *Ibana-Andrade v. Atty. Paita-Moya*,[40] despite having received the Resolution anent her suspension, Atty. Paita-Moya continued to practice law. She filed pleadings and she appeared as counsel in courts. For which reason, the Court suspended her from the practice of law for six months in addition to her initial one month suspension, or a total of seven months.

Too, in *Feliciano v. Atty. Bautista-Lozada*,[41] respondent therein, Atty. Lozada, appeared and signed as counsel, for and in behalf of her husband, during the period of her suspension from the practice of law. For having done so, the Court ruled that she engaged in unauthorized practice of law. The Court did not give weight to Atty. Lozada's defense of good faith as she was very well aware that when she represented her husband, she was still serving her suspension order. The Court also noted that Atty. Lozada did not seek any clearance or clarification from the Court if she can represent her husband in court. In this regard, the Court suspended Atty. Lozada for six months for her willful disobedience to a lawful order of the Court.

Similarly, in this case, the Court notified respondent of her suspension. However, she continued to engage in the practice of law by filing pleadings and appearing as counsel in courts during the period of her suspension.

It is common sense that when the Court orders the suspension of a lawyer from the practice of law, the lawyer must desist from performing all functions which require the application of legal knowledge within the period of his or her suspension.[42] To stress, by practice of law, we refer to "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience. It includes performing acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill."[43] In fine, it will amount

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[40] 763 Phil. 687 (2015).

[41] 755 Phil. 349 (2015).

[42] *Feliciano v. Atty. Bautista-Lozada, id.* at 354.

[43] *Eustaquio v. Navales,* A.C. No. 10465, June 8, 2016, 792 SCRA 377, 384.

to unauthorized practice, and a violation of a lawful order of the Court if a suspended lawyer engages in the practice of law during the pendency of his or her suspension.[44]

As also stressed by the OBC in its March 24, 2015 Report, during and even after the period of her suspension and without filing a sworn statement for the lifting of her suspension, respondent signed pleadings and appeared in courts as counsel. Clearly, such acts of respondent are in violation of the order of her suspension to practice law.

Moreover, the lifting of a suspension order is not automatic. It is necessary that there is an order from the Court lifting the suspension of a lawyer to practice law. To note, in *Maniago*, the Court explicitly stated that a suspended lawyer shall, upon the expiration of one's suspension, file a sworn statement with the Court, and that such statement shall be considered proof of the lawyer's compliance with the order of suspension.

In this case, on February 19, 2014, the Court directed respondent to comply with the guidelines for the lifting of the suspension order against her by filing a sworn statement on the matter. However, respondent did not comply. Instead, she filed a complaint (Civil Case No. 2015-0007) against the OCA, the OBC and a certain Atty. Paraiso with the RTC. For having done so, respondent violated a lawful order of the Court, that is, to comply with the guidelines for the lifting of the order of suspension against her.

To recapitulate, respondent's violation of the lawful order of the Court is two-fold: 1) she filed pleadings and appeared in court as counsel during the period of her suspension, and prior to the lifting of such order of her suspension; and 2) she did not comply with the Court's directive for her to file a sworn statement in compliance with the guidelines for the lifting of the suspension order.

Under Section 27,[45] Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended from practice of law

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[44] *Feliciano v. Atty. Bautista-Lozada, supra* note 41 at 354-355.

[45] Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended

for willful disobedience of any lawful order of a superior court, among other grounds. Here, respondent willfully disobeyed the Court's lawful orders by failing to comply with the order of her suspension, and to the Court's directive to observe the guidelines for the lifting thereof. Pursuant to prevailing jurisprudence, the suspension for six (6) months from the practice of law against respondent is in order.[46]

WHEREFORE, Atty. Haide V. Gumba is hereby **SUSPENDED** from the practice of law for an additional period of six (6) months (from her original six (6) months suspension) and **WARNED** that a repetition of the same or similar offense will be dealt with more severely.

Atty. Haide V. Gumba is **DIRECTED** to inform the Court of the date of her receipt of this Decision, to determine the reckoning point when her suspension shall take effect.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is **DIRECTED** to append a copy of this Decision to the record of respondent as member of the Bar.

SO ORDERED.

Leonardo-de Castro (Chairperson), Bersamin, Leonen, and *Martires, JJ.,* concur.

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from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[46] *Paras v. Paras*, A.C. No. 5333, March 13, 2017.

EN BANC

[A.M. No. P-17-3772. January 10, 2018]
(Formerly OCA IPI No. 12-3999-P)

JOVITA B. LAMSIS, *complainant, vs.* **JUDE F. SALES, SR., Process Server, Regional Trial Court, Branch 10, La Trinidad, Benguet,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ADMINISTRATIVE CHARGES; DISGRACEFUL AND IMMORAL CONDUCT DEFINED AS A WILLFUL ACT THAT VIOLATES THE BASIC NORM OF DECENCY, MORALITY AND DECORUM ABHORRED AND CONDEMNED BY THE SOCIETY; RESPONDENT FOUND GUILTY OF DISGRACEFUL AND IMMORAL CONDUCT.— The Court agrees with the findings and recommendation of the OCA that respondent is guilty of disgraceful and immoral conduct and, considering that this is his second infraction of the same nature, should thus be dismissed from the service. Immoral conduct has been defined as conduct that is willful, flagrant or shameless, showing moral indifference to the opinion of the good and respectable members of the community, and includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness. Section 1 of the Civil Service Commission Memorandum Circular No. 15, Series of 2010 particularly defines disgraceful and immoral conduct as a willful act that violates the basic norm of decency, morality and decorum abhorred and condemned by the society.

2. ID.; ID.; ID.; ID.; IN ADMINISTRATIVE PROCEEDINGS, ONLY SUBSTANTIAL EVIDENCE, OR THAT AMOUNT OF RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION, IS REQUIRED; SATISFIED IN CASE AT BAR.— [T]he OCA's findings that respondent deliberately exposed his private organ to Jovita and exhibited "gross sexual innuendo" are well supported by the records. In this relation, the Court notes that respondent was found guilty beyond

reasonable doubt of Unjust Vexation for the same acts by the Municipal Trial Court of La Trinidad, Benguet in a Decision dated May 14, 2014, which conviction was subsequently affirmed, on appeal, by the Regional Trial Court, La Trinidad, Benguet, Branch 63 on December 23, 2014. It should be emphasized that in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. All things considered, this standard of substantial evidence has been satisfied in this case.

3. ID.; ID.; ID.; ID.; DISGRACEFUL AND IMMORAL CONDUCT IS PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE AND DISMISSAL FROM THE SERVICE FOR THE SECOND OFFENSE.— What made matters worse for respondent is the fact that this is his second offense of the same nature. As correctly noted by the OCA, respondent had been found guilty of disgraceful and immoral conduct and was sanctioned with "six (6) months suspension without pay with a warning that a repetition of the same act in the future will be dealt with more severely" in a Resolution dated October 15, 2014 in A.M. No. P-14-3267 entitled *Jennylyn L. Colingan, Court Interpreter III v. Jude F. Sales, Sr., Process Server, both of Branch 10, Regional Trial Court, La Trinidad, Benguet*. Clearly, respondent has not learned his lesson, thus, calling for the harsh penalty of dismissal from the service pursuant to Section 46 (B) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), in relation to Section 46 (b) (5), Chapter 7, Subtitle A, Title I, Book V of Executive Order No. (EO) 292, otherwise known as the "Administrative Code of 1987." Under Section 52 (a), Rule 10 of the RRACCS, in relation to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, the penalty of dismissal carries with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for holding public office.

4. ID.; ID.; ID.; COURT EMPLOYEES SHOULD BE CIRCUMSPECT ON HOW THEY CONDUCT THEMSELVES IN THEIR PROFESSIONAL AND PRIVATE AFFAIRS IN ORDER TO PRESERVE THE GOOD NAME AND INTEGRITY OF COURTS OF

> **JUSTICE .—** "It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel." Court employees should be circumspect on how they conduct themselves in their professional and private affairs in order to preserve the good name and integrity of courts of justice. Respondent's actuation in this case is reprehensible and has no place in any decent society, more so in the premises of the HOJ that deserves respect from its employees even during unofficial hours. This is a clearly offensive and indecent behavior which the Court cannot countenance.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is a complaint[1] filed by Jovita B. Lamsis (Jovita) against respondent Jude F. Sales, Sr., Process Server, Regional Trial Court of La Trinidad, Benguet, Branch 10 (RTC) for Sexual Harassment under Republic Act No. (RA) 7877,[2] which was forwarded[3] to the Office of the Court Administrator (OCA) by Executive Judge Danilo P. Camacho (Judge Camacho).

The Facts

In an undated Complaint,[4] Jovita narrated that she is an employee of Sparrow Integrated Services, Inc. (Sparrow), assigned as a janitress in the Hall of Justice, Benguet (HOJ) from 2004 up to the present. On October 6, 2012, she arrived at the RTC for her Saturday duty. While she was removing the garbage from the trash bin located at the second floor of the HOJ, someone approached her from behind, calling her name. When she turned around, she saw respondent walking towards

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[1] *Rollo,* pp. 3-5.

[2] Entitled "AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING ENVIRONMENT, AND FOR OTHER PURPOSES," approved on February 4, 1995.

[3] See Letter dated November 5, 2012; *rollo*, p. 2.

[4] *Id*. at 3-5.

her, holding his private organ and showing it to her. Shocked, she called respondent *"bastos"* and nervously ran to the first floor to seek help. She claimed that it took her two days to muster the courage to disclose her ordeal to her co-worker and later to the Vice Executive Judge.[5] She asserted that respondent's indecent act towards her constitutes sexual harassment under RA 7877 and prayed for his preventive suspension pending investigation.[6]

In his Comment[7] dated January 25, 2013, respondent pointed out that the allegations in the Complaint were essentially lifted from the October 24, 2012 Affidavit-Complaint[8] for sexual harassment filed by Jovita against him before the Office of the Provincial Prosecutor of Benguet, docketed as NPS Docket No. 1-05-INV-12J-1446.[9] Respondent admitted reporting for Saturday duty on October 6, 2012 but denied showing his organ or committing any act amounting to sexual harassment against Jovita on said date. He maintained that he was actually busy on that date inside the staff room of the RTC, which fact can be corroborated by his officemates.[10] He also asserted that Jovita filed the present administrative complaint after he filed a complaint against her for Oral Defamation, Slander by Deed and Intriguing against Honor before the *Lupong Tagapamayapa* of *Barangay* Poblacion, La Trinidad, Benguet,[11] adding that she violated the rule against forum shopping by filing the Complaint after she had filed the Affidavit-Complaint before the Prosecutor — now subject of an Information[12] for Unjust

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[5] See *id*. at 3-4 and 402- 403.

[6] See *id*. at 4.

[7] *Id*. at 8-14.

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

[9] "NPS Docket No. 1-05-INV-121-1446" in some parts of the records. See *id*. at 8-9 and 437.

[10] See *id*. at 20-21 and 437.

[11] See *id*. at 22 and 437.

[12] *Id*. at 15-16.

Vexation before the Municipal Trial Court of La Trinidad, Benguet — based on the same facts.[13] Finally, he contended that the administrative complaint before the OCA is premature for non-compliance with the procedures laid down in A.M. 03-03-13-SC Resolution dated December 14, 2004 (*Re: Rule on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary*).[14]

On May 6, 2014,[15] the OCA recommended that the administrative complaint against respondent for sexual harassment be dismissed for being premature and that the entire records of the complaint be referred to the Committee on Decorum and Investigation (CODI) for its corresponding action in accordance with A.M. 03-03-13-SC.[16]

In a Resolution[17] dated July 9, 2014, the Court adopted the OCA's recommendation. Hence, in a Memorandum[18] dated September 30, 2014, the OCA referred the administrative complaint to Judge Camacho, who was also the Chairperson of the CODI, for corresponding action as recommended.

On March 14, 2016, the OCA received the Report and Recommendation[19] of the CODI dated December 17, 2015 recommending the dismissal of the complaint for sexual harassment against respondent, without prejudice to him being charged of disgraceful and immoral conduct.[20] The CODI found Jovita's allegations as true, noting that respondent had been

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[13] See *id*. at 9-10, 423, and 437.

[14] See *id*. at 10-12 and 437.

[15] See Administrative Matter for Agenda dated May 6, 2014, *id*. at 45-47; signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Office (Legal Office) Wilhelmina D. Geronga.

[16] *Id*. at 47.

[17] *Id*. at 48-49.

[18] *Id*. at 59.

[19] *Id*. at 400-431.

[20] *Id*. at 430.

convicted of Unjust Vexation for the same act, but ruled that respondent cannot be held liable for sexual harassment under RA 7877 due to the lack of the element of moral ascendancy over Jovita. This notwithstanding, it found that respondent's actuation was reprehensible and constituted disgraceful and immoral conduct in violation of the Civil Service Rules.[21]

In a Resolution[22] dated October 10, 2016, the Court referred the administrative matter to the OCA for evaluation, report, and recommendation.

The OCA's Report and Recommendation

In a Memorandum[23] dated September 29, 2017, the OCA recommended that: (*a*) the administrative complaint against respondent be re-docketed as a regular administrative matter; and (*b*) respondent be found guilty of disgraceful and immoral conduct, this being his second offense of the same nature; that he be dismissed from the service, with forfeiture of his retirement benefits except accrued leave credits, if any, and perpetual disqualification from reemployment in the government service.[24]

The OCA agreed that respondent, a Process Server of the RTC, cannot be said to have moral ascendancy over Jovita, a critical element of sexual harassment under RA 7877, as Jovita is a contractual employee of independent contractor Sparrow. This notwithstanding, respondent's act constitutes disgraceful and immoral conduct which is classified as a grave offense and punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense in accordance with the Civil Service Rules. Considering that, per the records, respondent had been previously found guilty of immoral and disgraceful conduct – an offense

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[21] See *id*. at 429-430.

[22] *Id*. at 434.

[23] *Id*. at 436-441. Signed by Deputy Court Administrator Raul Bautista Villanueva.

[24] *Id*. at 441.

of the same nature — in A.M. No. P-14-3267,[25] the OCA concluded that respondent should be meted the "severe penalty of dismissal from the service without any mitigating circumstance to be considered in his favor."[26]

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondent is guilty of disgraceful and immoral conduct.

The Court's Ruling

The Court agrees with the findings and recommendation of the OCA that respondent is guilty of disgraceful and immoral conduct and, considering that this is his second infraction of the same nature, should thus be dismissed from the service.

Immoral conduct has been defined as conduct that is willful, flagrant or shameless, showing moral indifference to the opinion of the good and respectable members of the community,[27] and includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness.[28] Section 1 of the Civil Service Commission Memorandum Circular No. 15, Series of 2010[29] particularly defines disgraceful and immoral conduct as a willful act that violates the basic norm of decency, morality and decorum abhorred and condemned by the society.

In this case, the OCA's findings that respondent deliberately exposed his private organ to Jovita and exhibited "gross sexual

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[25] Entitled *Jennylyn L. Colingan, Court Interpreter III v. Jude F. Sales, Sr., Process Server, both of Branch 10, Regional Trial Court, La Trinidad, Benguet.*

[26] See *rollo,* pp. 440-441.

[27] *Abanag v. Mabute,* 662 Phil. 354, 358 (2011).

[28] *Court Employees of the MCTC, Ramon Magsaysay, Zamboanga del Sur v. Sy*, 512 Phil. 523, 533 (2005).

[29] "AMENDING CERTAIN PROVISIONS OF THE RULES ON THE ADMINISTRATIVE OFFENSE OF DISGRACEFUL AND IMMORAL CONDUCT," issued pursuant to CSC Resolution No. 100912 dated May 17, 2010 (Revised Rules on the Administrative Offense of Disgraceful and Immoral Conduct).

innuendo" are well supported by the records. In this relation, the Court notes that respondent was found guilty beyond reasonable doubt of Unjust Vexation for the same acts by the Municipal Trial Court of La Trinidad, Benguet in a Decision[30] dated May 14, 2014, which conviction was subsequently affirmed, on appeal, by the Regional Trial Court, La Trinidad, Benguet, Branch 63 on December 23, 2014.[31] It should be emphasized that in administrative proceedings, only substantial evidence, *i.e.,* that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required.[32] All things considered, this standard of substantial evidence has been satisfied in this case.

What made matters worse for respondent is the fact that this is his second offense of the same nature. As correctly noted by the OCA, respondent had been found guilty of disgraceful and immoral conduct and was sanctioned with "six (6) months suspension without pay with a warning that a repetition of the same act in the future will be dealt with more severely"[33] in a Resolution[34] dated October 15, 2014 in A.M. No. P-14-3267 entitled *Jennylyn L. Colingan, Court Interpreter III v. Jude F. Sales, Sr., Process Server, both of Branch 10, Regional Trial Court, La Trinidad, Benguet.* Clearly, respondent has not learned his lesson, thus, calling for the harsh penalty of dismissal from the service pursuant to Section 46 (B) (3),[35] Rule 10 of the

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[30] *Rollo,* pp. 266-274. Docketed as Criminal Case No. R-13705 and penned by Presiding Judge Delilah Gonzales-Muñoz.

[31] See Decision dated December 23, 2014 docketed as Criminal Case No. 14-CR-9988 and penned by Judge Jennifer P. Humiding; *id*. at 384-398.

[32] See Section 5, Rule 133 of the Rules of Court. See also *Banaag v. Espeleta,* 677 Phil. 552, 559 (2011).

[33] See *rollo,* pp. 440-441.

[34] *Id*. at 60-63.

[35] Section 46 (B) (3), Rule 10 of the RRACCS reads:

Section 46. *Classification of Offenses*. – x x x.

x x x x x x x x x

Revised Rules on Administrative Cases in the Civil Service[36] (RRACCS), in relation to Section 46 (b) (5),[37] Chapter 7, Subtitle A, Title I, Book V of Executive Order No. (EO) 292,[38] otherwise known as the "Administrative Code of 1987." Under Section 52 (a),[39] Rule 10 of the RRACCS, in relation to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, the penalty of dismissal carries with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for holding public office.[40]

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x x x x x x

3. Disgraceful and immoral conduct;

x x x x x x x x x

[36] Promulgated on November 8, 2011.

[37] Section 46 (b) (5), Chapter 7, Subtitle A, Title I, Book V of EO 292 provides:

CHAPTER 7
Discipline

SECTION 46. *Discipline: General Provisions.* — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

x x x x x x x x x

(5) Disgraceful and immoral conduct;

x x x x x x x x x

[38] Entitled "Instituting the Administrative Code of 1987," dated July 25, 1987.

[39] Section 52 (a), Rule 10 of RRACS states:

Section 52. *Administrative Disabilities Inherent in Certain Penalties.* –

a. 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 civil service examinations.

x x x x x x x x x

[40] Section 86 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS) has removed forfeiture of accrued leave credits as an

A final word. "It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel."[41] Court employees should be circumspect on how they conduct themselves in their professional and private affairs in order to preserve the good name and integrity of courts of justice.[42] Respondent's actuation in this case is reprehensible and has no place in any decent society, more so in the premises of the HOJ that deserves respect from its employees even during unofficial hours. This is a clearly offensive and indecent behavior which the Court cannot countenance.

WHEREFORE, the Court finds respondent Jude F. Sales, Sr., Process Server of the Regional Trial Court of La Trinidad, Benguet, Branch 10 **GUILTY** of Disgraceful and Immoral Conduct. Accordingly, he is **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations, without prejudice to his criminal liabilities.

SO ORDERED.

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

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accessory to the penalty of dismissal, thereby repealing Section 9, Rule XIV of the Omnibus Rules Implementing Book V of EO 292. (See *Igoy v. Soriano,* 527 Phil. 322, 327 [2006] and *Ombudsman v. Court of Appeals*, 576 Phil. 784, 799-800 [2008]). Section 58, Rule IV of the URACCS as reiterated in Section 52, Rule 10 of the RRACCS forfeits retirement benefits only as an accessory to the penalty of dismissal.

[41] *Banaag v. Espeleta*, *supra* note 32, at 560. See also *Diomampo v. Laribo, Jr.,* 687 Phil. 47, 54 (2012).

[42] See *Banaag v. Espeleta*, *id*. See also *Diomampo v. Laribo, Jr.*, *id*.; and *PO2 Gabriel v. Sheriff Ramos, RTC, Br. 166 Pasig City*, 708 Phil. 343, 350 (2013).

EN BANC

[A.M. No. RTJ-16-2470. January 10, 2018]
(Formerly OCA IPI No. 12-3987-RTJ)

PROSECUTOR LEO T. CAHANAP, *complainant, vs.* **JUDGE LEONOR S. QUIÑONES, Regional Trial Court, Branch 6, Iligan City, Lanao Del Norte,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT; JUDGES ARE ENJOINED TO BE PUNCTUAL IN THE PERFORMANCE OF THEIR JUDICIAL DUTIES, RECOGNIZING THAT THE TIME OF LITIGANTS, WITNESSES, AND ATTORNEYS IS OF VALUE, AND THAT IF THE JUDGE IS NOT PUNCTUAL IN HIS HABITS, HE SETS A BAD EXAMPLE TO THE BAR AND TENDS TO CREATE DISSATISFACTION IN THE ADMINISTRATION OF JUSTICE.— The Court has time and again reminded the members of the bench to faithfully observe the prescribed official hours to inspire public respect for the justice system. It has issued Supervisory Circular No. 14 dated October 22, 1985, Circular No. 13 dated July 1, 1987, and Administrative Circular No. 3-99 dated January 15, 1999 to reiterate the trial judges' mandate to exercise punctuality in the performance of their duties. x x x. The aforesaid circulars are restatements of the Canons of Judicial Ethics which enjoin judges to be punctual in the performance of their judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value, and that if the judge is not punctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction in the administration of justice. The OCA aptly found that the testimonies of the prosecutors and the court staff unquestionably proved that respondent Judge failed to observe the prescribed official hours as repeatedly enjoined by the Court. Respondent Judge's own branch clerk of court even testified that court sessions commenced between 9:00 a.m. and 10:00 a.m. although the Minutes of the Proceedings reflected the time at 8:30 a.m.

2. ID.; ID.; ID.; A DISPLAY OF PETULANCE AND IMPATIENCE IN THE CONDUCT OF TRIAL IS A NORM OF BEHAVIOR INCOMPATIBLE WITH THE NEEDFUL ATTITUDE AND SOBRIETY OF A GOOD JUDGE; PENALTY OF FINE IMPOSED UPON THE RESPONDENT JUDGE FOR OPPRESSION, A GROSS MISCONDUCT CONSTITUTING VIOLATION OF THE CODE OF JUDICIAL CONDUCT, AND FOR HABITUAL TARDINESS.— The OCA also correctly observed that respondent Judge failed to show compassion, patience, courtesy and civility to lawyers who appear before her in contravention of the mandates of the Code of Judicial Ethics, which sets the high standards of demeanor all judges must observe. Section 3, Canon 5 of the New Code of Judicial Conduct clearly provides: Section 3. Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties. In relation to Rule 3.04, Canon 3 of the Code of Judicial Conduct, provides that judges must always be courteous and patient with lawyers, litigants and witnesses appearing in his/her court x x x. Section 6, Canon 6 of the New Code of Judicial Conduct likewise states: Section 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control. The Court is convinced that respondent Judge is guilty of Oppression as shown in several incidents of misbehavior by respondent Judge. x x x. The Court has previously ruled that "[a] display of petulance and impatience in the conduct of trial is a norm of behavior incompatible with the needful attitude and sobriety of a good judge.'' Thus, the Court finds the imposition of fines amounting to Forty Thousand Pesos (₱40,000.00) and Twenty Thousand Pesos (₱20,000.00), appropriate given the prevailing facts of the present case vis-a-vis respondent Judge's record for habitual malfeasance in office.

D E C I S I O N

CAGUIOA, *J.*:

Complainant Prosecutor Leo T. Cahanap (Complainant) filed the instant administrative complaint on October 30, 2012, charging respondent Judge Leonor S. Quiñones (respondent Judge) with Gross Ignorance of the Law, Gross Misconduct and violation of the Code of Judicial Conduct for the following alleged acts of respondent Judge:

First, Complainant alleged that in his last two (2) years as a prosecutor in Branch 6, he suffered unbearable and intolerable oppression in the hands of respondent Judge.[1]

In the case of *People v. Inot,* docketed as Criminal Case No. 6-15566, respondent Judge got angry and objected to the leading questions asked during complainant's re-direct examination, notwithstanding the fact that no objections were raised by the defense counsel.[2]

In the case of *People v. Badelles*, docketed as Criminal Case No. 06-15405, respondent Judge issued an order blaming complainant for the failure of the forensic chemist to bring the chemistry reports for the other accused in the case because complainant did not sufficiently specify the chemistry reports due to the court.[3] In the same case, respondent Judge gave complainant a lecture on the proper demeanor and conduct in court while he was making a formal offer of a testimony, causing extreme embarrassment to complainant.[4]

Complainant asserted that the prosecutors, who previously appeared before respondent Judge, opted to be assigned to other courts as they too experienced humiliation and harsh treatment from her. Further, respondent Judge's staff themselves were subjected to respondent Judge's insolent behavior.[5]

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[1] *Rollo*, pp. 3, 266.

[2] *Id*. at 13.

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

[4] *Id*. at 14-15, 268.

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

Second, Complainant further accused respondent Judge of habitual tardiness which delayed the start of court sessions, usually at 9:30 or 10:00 in the morning, earning for her sala the monicker "*Branch 10*."[6]

Third, in the proceedings for the case of *People v. Heck* (Heck Case), docketed as Criminal Case Nos. 15144, 15149, 15151 and 15153 for Estafa, pending before respondent Judge's sala, respondent Judge, in open court and heard by the public, asked private complainant, Hanna Mamad, to go to her house because she was interested in buying jewelry items from her.[7]

Respondent Judge ordered her staff to provide Mamad with directions to her house.[8] Complainant averred that when he called Mamad on September 13, 2012, Mamad confirmed that respondent Judge bought jewelry from her. Court personnel have also testified that respondent Judge showed off the jewelry she bought from Mamad.[9]

Fourth, in proceedings in the case of *People v. Macapato* (Macapato Case), docketed as Criminal Case No. 16089 for Attempted Murder, respondent Judge issued an Order dated June 18, 2012, directing the release of accused Dimaampao's vehicle despite the prosecution's written opposition on the ground that the vehicle has yet to be presented as evidence in court and has yet to be formally offered before the court could acquire jurisdiction.[10]

Respondent Judge immediately set accused's subject motion for the release of accused Dimaampao's vehicle for hearing a day after it was filed, in violation of the three-day notice rule.[11] The Transcript of Stenographic Notes (TSN) of the hearing revealed that respondent Judge showed her bias and

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[6] *Id*. at 5-6, 266.

[7] *Id*. at 5, 266.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 6-7, 267.

[11] *Id*. at 6, 267.

practically acted as defense counsel, prompting the prosecution to move for the inhibition of respondent Judge.[12]

Fifth, in the case of *People v. Tingcang* (Tingcang Case), docketed as Criminal Case No. 6-6115 for Murder, respondent Judge dismissed the case provisionally without prejudice to its refiling upon the availability of the prosecution's witnesses on the ground of speedy trial.[13] The prosecution lamented that the delay in the proceedings was due to the absence of the accused who has been in hiding since 1996.[14]

Sixth, in the case of *People v. Casido* (Casido Case), docketed as Criminal Case No. 6-16034, respondent Judge dismissed a complaint for Attempted Murder due to the absence of a fatal wound on the victim, which the prosecution believed to be misplaced in an information for Attempted Murder.[15]

Seventh and lastly, complainant averred that respondent Judge also mistreated her court staff. On July 29, 2011, respondent Judge allegedly shouted at a court stenographer, and called her "*bogo*" which meant dumb.[16]

Respondent Judge berated another stenographer and shouted at the latter "*punyeta ka*"[17] and "*buwisit ka*".[18]

Comment dated January 12, 2013 of respondent Judge

Respondent Judge, in her Comment dated January 12, 2013, denied that she maltreated the prosecutors assigned to her sala. In support thereof, she submitted the following documents:

1) Certification[19] dated January 3, 2013 issued by OIC-Provincial Prosecutor Diosdado D. Cabrera, stating that Prosecutor

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[12] *Id*. at 6-7, 267.

[13] *Id*. at 7-8, 267.

[14] *Id*. at 8, 267.

[15] *Id*. at 8-9, 267-268.

[16] *Id*. at 11.

[17] Appears as "*Ponieta Ka*," *id*.

[18] *Rollo*, pp. 11, 396. Appears as "*Bwisit Ka*."

[19] *Id*. at 69.

Macacuna B. Macadatu requested for transfer for security reasons, not due to respondent Judge's maltreatment;

2) Letter[20] dated March 22, 2011 to former Secretary Leila M. De Lima by Prosecutor Macacuna B. Macadato, requesting for transfer of assignment from Iligan City to the Prosecutor's Office in Marawi City, due to a threat to his life;

3) Affidavit[21] dated December 18, 2012 executed by Prosecutor Mangontawar M. Gubat, proving that he declined to be the trial prosecutor in respondent Judge's sala for health reasons, not due to the insolent behavior of respondent Judge; and

4) Joint Affidavit[22] dated January 3, 2013 by Public Attorneys Nur Jaypha R. Bacaraman and Rashid A. Macarimbang, attesting that their re-assignment or subsequent transfer to other branches of the RTC in Iligan City is a matter of policy in their office, with due consideration to the caseloads of individual lawyers in the district or the balancing of work assignment, not due to the reported misbehavior of respondent Judge.

Relative to the Heck Case, respondent Judge denied having asked jewelry from Mamad, the private complainant in the subject case.[23]

Respondent Judge reasoned that she immediately acted on the motion of the defense in the Macapato Case because an urgent motion is exempted from the three-day notice rule. She maintained that the motion was granted and was issued in good faith in the performance of judicial functions.[24]

Respondent Judge also insisted that her order of dismissal in the Tingcang Case was issued in good faith in the performance of her judicial functions.[25]

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[20] *Id.* at 70.

[21] *Id.* at 71.

[22] *Id.* at 72.

[23] *Id.* at 55, 268.

[24] *Id.* at 57, 269.

[25] *Id.* at 58, 269.

Respondent Judge admitted her mistake in the Casido Case, averring that the finding of lack of probable cause on the basis of absence of a 'fatal injury' was an error but an error of judgment made in good faith.[26]

In response to the allegation that she unduly interfered in the court proceedings, respondent Judge explained that she merely reminded lawyers of the purpose of enforcing the rules and to elicit evidence with sufficient probative value to help in the search for truth. She maintained that she was just helping the prosecution and/or lawyers to propound questions to the witnesses whenever she found it necessary to clarify matters.[27]

On her alleged offensive and disrespectful attitude towards her staff, respondent Judge denied being oppressive to her staff. She claimed that she merely rebuked or admonished them in the exercise of her supervisory authority.[28]

Respondent Judge also admitted arriving late to court but denied that her tardiness was often or habitual. Assuming arguendo that she was habitually late, she countered that her sixty percent (60%) disposal rate of cases assigned to her from June 2010 to November 2012 would refute the issue of punctuality hurled against her.[29]

OCA Resolution dated October 9, 2014

The Office of the Court Administrator (OCA) recommended that the charges against respondent Judge relative to the issuance of the (1) Order dated June 18, 2012 in the Macapato Case, (2) Order dated June 18, 2012 in the Tingcang Case for the dismissal of the case on the ground of violation of the accused's right to speedy trial, and (3) Order relative to the Casido Case, dismissing the same for lack of probable cause, be dismissed

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[26] *Id*. at 59, 269.

[27] *Id*. at 61-62, 269-270.

[28] *Id*. at 61, 269.

[29] *Id*. at 55-56, 269.

for involving issues judicial in nature which are beyond the purview of an administrative proceeding.[30]

The OCA reasoned that a party's remedy, if prejudiced by the orders of a judge given in the course of a trial, lies with the proper reviewing court, not with OCA by means of an administrative complaint.[31] It must be understood that the statutory mandate of the OCA extends only to the administrative supervision over court officials and personnel and does not include the authority to interfere with the judicial prerogatives of a judge to try and resolve a case and its pending incidents. For the OCA to review the merits underlying each decision and order issued by respondent Judge would result in a re-evaluation of his exercise of his judicial discretion which is definitely beyond the OCA's authority. These are clearly matters for judicial adjudication.[32] It has been stressed that questions judicial in nature ought to be threshed out in a judicial proceeding and definitely not in an administrative one.[33]

With respect however to the other charges, pertaining largely to the demeanor of respondent Judge, the OCA found that the same appear to be serious.[34] However, because of the conflicting versions presented by the parties, there exist factual issues that cannot be resolved merely on the basis of the records at hand, and can be ventilated only in a formal investigation where the parties can adduce their respective evidence.[35]

The OCA thus recommended that the remaining charges filed against respondent Judge be referred to the Executive Justice of the Court of Appeals, Cagayan de Oro City, for raffle among

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[30] *Id*. at 271.

[31] *Id*.

[32] *Id*., citing *Union Bank of the Phils. v. Judge Jorge-Wagan*, A.M. OCA IPI No. 07-2716-RTJ, June 2, 2008 (Unsigned Resolution).

[33] *Id*., citing *Quilo v. Jundarino*, 611 Phil. 646, 663 (2009).

[34] *Id*. at 271.

[35] *Id*.

the Justices thereat for investigation, report and recommendation within sixty (60) days from receipt of the records.[36]

In a Resolution[37] dated February 11, 2015, the Third Division of the Court adopted the recommendations of the OCA.

Complainant filed a Motion for Reconsideration of the OCA's Report dated October 9, 2014, which was denied by the Court in a Resolution[38] dated July 1, 2015.

Report dated July 13, 2015 of Investigating Justice Maria Filomena D. Singh

Investigating Justice Maria Filomena D. Singh (Investigating Justice) recommended that respondent Judge be held administratively liable for Oppression with a fine of ₱40,000.00 and Habitual Tardiness with a fine of ₱20,000.00.[39]

The Investigating Justice also recommended that respondent Judge be transferred to a different court considering the irremediably strained relations between respondent Judge and the court staff;[40] and that the names of certain witnesses be blocked from the decision that the Court will render in this case.[41]

The testimonies of the court staff witnesses and the Branch Clerk of Court uniformly pointed to the habitual tardiness of respondent Judge in coming to work and holding court hearings, which they consistently testified to as generally starting between 9:00 and 9:30 in the morning.[42] In the judicial affidavit of complainant, he attested

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[36] *Id*. at 272.

[37] *Id*. at 273-274.

[38] *Id*. at 279-280.

[39] *Id*. at 400.

[40] *Id*. at 401.

[41] *Id*.

[42] *Id*. at 391; TSN, June 2, 2015 (Mary Jellie P. Fernando), pp. 7-8, *id*. at 291-292; TSN, June 2, 2015 (Grace Gallego-Medina), pp. 41-42, 45-46, *id*. at 325-326, 329-330; TSN, June 2, 2015 (Atty. Jihan Gift Gonzaga-Morong), pp. 63-64, 69, *id*. at 347-348, 353.

that during his time as the public prosecutor in respondent Judge's sala, respondent Judge started court hearings at 9:30 a.m., instead of 8:30 a.m.[43] The successor of complainant, Assistant City Prosecutor Diaz, also confirmed that respondent Judge commenced court sessions between 9:30 a.m. and 10:00 a.m.[44]

The testimonies of court staff witnesses also revealed that respondent Judge does not want to indicate in the Minutes of the Proceedings the actual time court sessions start. A court staff testified that one of the court's casual employee was once reprimanded by respondent Judge when she wrote in the Minutes of the Proceedings that the actual time of arrival of respondent Judge was 9:30 a.m..[45] The Branch Clerk of Court even admitted under oath that the Minutes of the Hearings and Notices indicate that court hearings start at 8:30 a.m. instead of the actual time the hearings commenced.[46]

Although the Minutes of the Proceedings in her court reflect that respondent Judge start court sessions regularly at 8:30 a.m., the uniform testimonies of the witnesses regarding respondent Judge's habitual tardiness, despite the risk of being held administratively and criminally liable, constitute substantial evidence to hold respondent Judge liable.[47]

On the charge of Oppression, the Investigating Justice found that respondent Judge failed to show compassion, patience, courtesy and civility to lawyers who appear before her in contravention of the mandates of the New Code of Judicial Conduct which sets the high standards of demeanor before all judges must observe.

Respondent Judge displayed antagonistic behavior towards Atty. Basher Macapado, who appeared as defense counsel in

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[43] *Id.*; CA Folder, p. 20.

[44] *Id.*; TSN, June 2, 2015 (Prosecutor Jasmin Guiuo-Diaz), pp. 86-87, *rollo*, pp. 370-371.

[45] *Id.*; TSN, June 2, 2015 (Mary Jellie P. Fernando), p. 14, *id.* at 298.

[46] *Id.*; TSN, June 2, 2015 (Atty. Jihan Gift Gonzaga-Morong), pp. 67-68, *id.* at 351-352.

[47] *Id.* at 392.

Criminal Case Nos. 15539, 15540 and 15541, during the hearing on May 14, 2012:

COURT:

> Atty. Macapado, during the last hearing, it was Atty. Plando who appeared. These were already testified by this witness. Next time, if you intend to do your cross-examination you better appear so you will not be wasting the court's time and these were already testified to by the witness. Where is Atty. Plando?

ATTY. MACAPADO:

> He is out of town Your Honor. As far as this is concerned Your Honor, this was not testified to by this witness.

COURT:

> It is your question (Presiding Judge banging the gavel). What is your question before this?

ATTY. MACAPADO:

> I am asking about the confirmatory test.

COURT:

> That was testified already. Listen! (banging the gavel again and raising her voice).

ATTY. MACAPADO:

> That was testified (interrupted)

COURT:

> You listen! (banging the gavel again)

ATTY. MACAPADO:

> Yes Your Honor, I am listening.

COURT:

> I will contempt you. That was already taken during the last hearing when Atty. Plando appeared and this time you were asking the same question.

ATTY. MACAPADO:

> Yes Your Honor because what this witness have testified is about confirmation and this object was not presented to the court Your Honor.

COURT:

> You are out of order Atty. Macapado. Next time before you appear you ask Atty. Plando a copy of the previous transcript so that there will be no redundancy. Have you read or are you aware?

ATTY. MACAPADO:

> Yes Your Honor because the two of us appeared.

COURT:

> Are you sure of that?

ATTY. MACAPADO:

> Yes Your Honor.

COURT:

> But that was already taken during the last hearing.

ATTY. MACAPADO:

> I am only asking the witness about this object Your Honor and this was not presented during the last hearing.

COURT:

> But you were asking, what is confirmatory test and that was already taken.

ATTY. MACAPADO:

> Yes Your Honor because she mention it now.

COURT:

> Proceed now.[48]

Through the filing of a Manifestation, Atty. Macapado apologized to the court for the incident which happened during the hearing on May 14, 2012 but prayed for respondent Judge to extend a little respect to all lawyers who appear before her court in the presence of their respective clients and other litigants.[49]

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[48] *Id*. at 393-394; TSN, May 14, 2012, pp. 6-8, *id*. at 204-206.

[49] *Id*. at 394; CA Folder, pp. 122-125.

As evidenced by the TSN taken on January 25, 2011, respondent Judge also engaged in an argument in open court with a certain Atty. Gerardo Padilla who appeared as defendants' counsel in Civil Case No. 06-7010.[50] Atty. Padilla found the behavior of respondent Judge antagonistic[51] which led to the exchange of words between respondent Judge and Atty. Padilla who was prompted to utter the words "*xxx you can do your worst and I will do my best*"[52] to respondent Judge, maintaining civility towards the court despite the exchange.

Complainant and Assistant City Prosecutor Diaz also experienced the same antagonistic and hostile behavior from respondent Judge which caused them embarrassment in open court as shown in the TSNs submitted by complainant. Complainant was scolded by respondent Judge in open court on September 10, 2012 for his failure to properly address the court.[53] On November 4, 2014, ACP Diaz felt humiliated when respondent Judge admonished her also in open court because respondent Judge felt displeased with ACP Diaz's reaction and alleged disrespectful behavior which led ACP Diaz to cry and made her unable to continue with the presentation of her witness.[54]

The Investigating Justice reasoned that if respondent Judge felt that complainant or any other lawyer must be admonished for his/her behavior or unpreparedness in court, respondent Judge could have called them privately to approach the bench or even in chambers to scold him/her, but certainly not to embarrass them in front of their clients and other litigants as the same may also cause shame to the court, if an argument ensues, and will directly affect the professional and personal lives of all involved. These incidents highlighted respondent Judge's lack of temperance and self-restraint which taints her impartiality in making decisions in the eyes of the public.[55]

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[50] *Id.*; TSN, January 25, 2011, pp. 17-22, CA Folder, pp. 143-148.

[51] *Id.; id.* at 17-18, *id*. at 143-144.

[52] *Id.; id*. at 22, *id*. at 148; italics supplied. Appears as "you can do your worst and we will do our best" in the TSN.

[53] *Id*. at 395; TSN, September 10, 2012, p. 4, *id*. at 42.

[54] *Id*.; TSN, November 4, 2014, pp. 7-12, *id.* at 229-234.

[55] *Id*. at 395.

To make matters worse, respondent Judge also exhibited conduct unbecoming of a judge when she shouted at a court staff in her chambers while correcting the court staff's draft orders which she dictated in open court and called the court staff, "*bogo ba nimo*" (you are dumb or stupid).[56] Although respondent Judge and the court staff were alone in the chambers, the court staff felt humiliated as she was berated for fifteen (15) minutes and she cried when she went to the staff room.[57]

Another court staff also experienced being berated and humiliated by respondent Judge. In correcting the court staffs eleven (11) draft orders, respondent Judge humiliated her by repeatedly pointing at her mistakes in an elevated voice in the presence of a friend of respondent Judge, who happened to be a party in a civil case pending before their court.[58] Nearly in tears, the court staff went out of the chambers and told her co-workers that she would no longer help in drafting orders in bail bond applications so she could concentrate on her drafts.[59] Respondent Judge found court staff's reaction to be improper, so respondent Judge followed her to the staff room and continued to scold her in front of the other staff members, and even called for an emergency staff meeting[60] where respondent Judge even called the court staff "*punyeta ka, buwisit ka*" in front of the other staff.[61]

The Investigating Justice emphasized in her Report that judges are expected to observe courtesy and civility at all times in addressing lawyers, litigants and witnesses appearing in his/her sala[62] considering that judges must act beyond reproach to

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[56] *Id*. at 396; TSN, June 2, 2015 (Mary Jellie P. Fernando), p. 10, *id*. at 294.

[57] *Id.; id.* at 10-11, *id*. at 294-295.

[58] *Id*.; TSN, June 2, 2015 (Vilben Arvie O. Tawakal), pp. 20-23, *id*. at 304-307.

[59] *Id.; id.* at 23-24, *id*. at 307-308.

[60] *Id.; id.* at 24, *id*. at 308.

[61] *Id.; id.* at 26, *id*. at 310.

[62] *Id*. at 392, citing *Atty. Mane v. Judge Belen*, 579 Phil. 46, 51 (2008).

maintain the court's integrity and public confidence in the judicial system.[63]

The Investigating Justice also said that respondent judge's belligerent, oppressive and tyrannical behavior towards her court staff and lack of courtesy, civility and self-restraint towards lawyers and litigants during court hearings cannot be treated with leniency. The Investigating Justice added that public confidence in the judiciary must be maintained and the tenets on the first duty of judges to conduct themselves beyond reproach must be safeguarded.[64]

OCA Report dated October 26, 2015

The OCA, in their Report dated October 26, 2015, agreed and adopted the findings of the Investigating Justice.

Apart from Complainant, three (3) court staff testified to the habitual tardiness of respondent Judge who began the court hearings between 9:00 a.m. and 9:30 a.m.[65] A former assistant City Prosecutor also confirmed that she commenced court sessions at the said time.[66] The testimonies of her staff also revealed that she did not want to indicate in the Minutes of the Proceedings the actual time when court sessions started.[67] It was also revealed that a casual employee was once reprimanded by respondent Judge when the employee wrote in the Minutes that the actual time of arrival of respondent Judge was 9:30 a.m., as corroborated by the testimony of another court staff.[68]

Respondent Judge unquestionably failed to observe the prescribed official hours as repeatedly enjoined by the Court.[69]

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[63] *Id*.

[64] *Id*. at 398.

[65] *Id*. at 403.

[66] *Id*.

[67] *Id*.

[68] *Id*.

[69] *Id*. at 404.

She admitted being late "*sometimes*" in arriving to the court and beginning the court hearings as rebuffed by contrary evidence.[70] Facing the risk of being administratively and criminally held liable, respondent Judge's own branch clerk of court even bravely testified that court sessions commenced between 9:00 a.m. and 10:00 a.m. although the Minutes of the Proceedings reflected the time at 8:30 a.m.[71]

The OCA also found that respondent Judge failed to show compassion, patience, courtesy and civility to lawyers who appear before her in contravention of the mandates of the Code of Judicial Ethics, which sets the high standards of demeanor all judges must observe.[72]

The OCA pointed out that one significant aspect that became apparent during the investigation is respondent Judge's competence in the performance of her duties.[73] True, she was exonerated in the instant complaint because the issues raised were judicial in nature and in another case for grave abuse of discretion, dishonesty and partiality for lack of merit.[74] But, as testified to by witnesses, respondent Judge did not personally prepare the court's orders, resolutions and decisions; she did not know the details of some cases before her; and she does not possess proficiency in English.[75] Yet, respondent Judge remained intractable and would not own up to her mistakes and shortcomings.[76]

The OCA held that respondent Judge violated the Code of Judicial Conduct for her repeated acts of oppression against lawyers and court staff (gross misconduct) which constitute serious charge pursuant to Rule 140, Section 8 of the Revised

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[70] *Id*.; italics supplied.

[71] *Id*.

[72] *Id*. at 405.

[73] *Id*. at 406.

[74] *Id*. at 406-407, citing *Macaraya v. Judge Quiñones*, OCA IPI No. 11-3677-RTJ, June 16, 2014 (Unsigned Resolution).

[75] *Id*. at 407.

[76] *Id*.

Rules of Court punishable by dismissal, suspension from office for more than three (3) to six (6) months or a fine of more than ₱20,000.00 to ₱40,000.00.[77]

The OCA also held that respondent Judge is also guilty of habitual tardiness which is a less serious charge sanctioned by either suspension from office for not less than one (1) nor more than three (3) months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[78]

The OCA noted that the penalties that may be imposed on respondent Judge may be mitigated by her being a first offender as she has never been previously sanctioned.[79] She has also offered her apology.[80] One staff member said that she would sometimes show motherly care and compassion towards her staff.[81] Further, her "*temper explosions*" are no longer as frequent as before.[82]

Anent Justice Singh's recommendation that respondent Judge be transferred to a different court considering the strained relations between respondent Judge and the court staff, the OCA recommended that respondent Judge be given a fair chance to change her unpleasant attitude and behavior.[83] The OCA averred that, with this present administrative case, her court staff have now become emboldened and are no longer afraid to speak up.[84] They can easily initiate another complaint against respondent Judge if circumstances warrant.[85] As a deterrent against future abuses, the OCA proposed that a periodic report be submitted to the OCA to apprise the OCA of any untoward incident

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[77] *Id*.

[78] *Id*.

[79] *Id*.

[80] *Id*.

[81] *Id*.

[82] *Id*.; italics supplied.

[83] *Id*.

[84] *Id*.

[85] *Id*.

involving respondent Judge in her dealings with her court staff and the public.[86]

The Court's Ruling

The Court agrees with the findings of the OCA.

The Court has time and again reminded the members of the bench to faithfully observe the prescribed official hours to inspire public respect for the justice system. It has issued Supervisory Circular No. 14 dated October 22, 1985, Circular No. 13 dated July 1, 1987, and Administrative Circular No. 3-99 dated January 15, 1999 to reiterate the trial judges' mandate to exercise punctuality in the performance of their duties.

Section 5 of Supervisory Circular No. 14 issued by the Court on October 22, 1985 states:

> 5. *Session Hours*. — Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts **shall hold daily sessions from Monday to Friday, from 8:30 to 12:00 noon and from 2:00 to 4:30 p.m.** assisted by a skeletal force, also on rotation, primarily to act on petitions for bail and other urgent matters. (Emphasis supplied)

Circular No. 13 dated July 1, 1987 entitled, "*Guidelines in the Administration of Justice*" provides that:

> Guidelines for Trial Courts
>
> x x x x x x x x x
>
> 1. Punctuality and strict observance of office hours. — Punctuality in the holding of scheduled hearings is an imperative. Trial judges should strictly observe the requirement of at least eight hours of service a day, five hours of which should be devoted to trial, specifically from 8:30 a.m. to 12:00 noon and from 2:00 to 4:30 as required by par. 5 of the Interim Rules issued by Supreme Court on January 11, 1983, pursuant to Sec. 16 of BP 129. (Underscoring in the original)

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[86] *Id*.

Administrative Circular No. 3-99 dated January 15, 1999 entitled, "*Strict Observance of Session Hours of Trial Courts and Effective Management of Cases To Ensure Their Speedy Disposition*," reiterates the mandate for trial judges to exercise punctuality in the performance of their duties, thus:

To insure speedy disposition of cases, the following guidelines must be faithfully observed:

I. The session hours of all Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts shall be from 8:30A.M. to noon and from 2:00 P.M. to 4:30 P.M., from Monday to Friday. The hours in the morning shall be devoted to the conduct of trial, while the hours in the afternoon shall be utilized for (1) the conduct of pre-trial conferences; (2) writing of decisions, resolutions or orders, or (3) the continuation of trial on the merits, whenever rendered necessary, as may be required by the Rules of Court, statutes, or circular in specified cases.

x x x x x x x x x

II. *Judges must be punctual at all times.*

x x x x x x x x x

IV. There should be strict adherence to the policy on avoiding postponements and needless delay.

x x x x x x x x x

VI. All trial judges must strictly comply with Circular No. 38-98, entitled "Implementing the Provisions of Republic Act No. 8493" ("An Act to Ensure a Speedy Trial of All Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, Appropriating Funds Therefor, and for Other Purposes") issued by the Honorable Chief Justice Andres R. Narvasa on 11 August 1998 and which took effect on 15 September 1998.[87] (Italics supplied)

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[87] *Yu-Asensi v. Judge Villanueva*, 379 Phil. 258, 268 (2000).

The aforesaid circulars are restatements of the Canons of Judicial Ethics which enjoin judges to be punctual in the performance of their judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value, and that if the judge is not punctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction in the administration of justice.[88]

The OCA aptly found that the testimonies of the prosecutors and the court staff unquestionably proved that respondent Judge failed to observe the prescribed official hours as repeatedly enjoined by the Court. Respondent Judge's own branch clerk of court even testified that court sessions commenced between 9:00 a.m. and 10:00 a.m. although the Minutes of the Proceedings reflected the time at 8:30 a.m.[89]

The OCA also correctly observed that respondent Judge failed to show compassion, patience, courtesy and civility to lawyers who appear before her in contravention of the mandates of the Code of Judicial Ethics, which sets the high standards of demeanor all judges must observe.[90]

Section 3, Canon 5 of the New Code of Judicial Conduct clearly provides:

> Section 3. Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

In relation to Rule 3.04, Canon 3 of the Code of Judicial Conduct, provides that judges must always be courteous and patient with lawyers, litigants and witnesses appearing in his/her court, thus:

> Rule 3.04 — A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts to the litigants.

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[88] *Id.* at 268-269; *rollo*, p. 404.

[89] *Rollo*, p. 404.

[90] *Id.* at 405.

Section 6, Canon 6 of the New Code of Judicial Conduct likewise states:

> Section 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

The Court is convinced that respondent Judge is guilty of Oppression as shown in several incidents of misbehavior by respondent Judge, some of which are stated below:

1) Respondent Judge displayed antagonistic behavior towards Atty. Macapado who appeared as defense counsel in three (3) criminal cases and who might have increased the tone of his voice in their verbal tussle. He filed with the court apologizing for the incident but prayed for respondent Judge to extend a little respect to all lawyers who appear before her court in the presence of their clients and other litigants.[91]

2) Respondent Judge engaged in an argument in open court with a certain Atty. Gerardo Padilla who appeared as defendants' counsel in Civil Case No. 06-7010.[92] Atty. Padilla found the behavior of respondent Judge antagonistic which led to the exchange of words between respondent Judge and Atty. Padilla who was prompted to utter the words "*x x x you can do you worst and I will do my best*"[93] to respondent Judge, maintaining civility towards the court despite the exchange.

3) Assistant City Prosecutor Diaz was humiliated by respondent Judge who admonished her also in open court because respondent Judge felt displeased with ACP Diaz's reaction and alleged disrespectful behavior which

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[91] *Id*. at 394; CA Folder, p. 124

[92] *Id*.; TSN, January 25, 2011, pp. 17-22, CA Folder, pp. 143-148.

[93] *Id.; id*. at 22, *id*. at 148; italics supplied.

led ACP Diaz to cry and made her unable to continue with the presentation of her witness.[94]

4) Respondent Judge exhibited conduct unbecoming of a judge when she shouted at a court staff in her chambers while correcting the court staffs draft orders which she dictated in open court and called the court staff, "*bogo ba nimo*" (you are dumb or stupid).[95] Although respondent Judge and the court staff were alone in the chambers, the court staff felt humiliated as she was berated for fifteen (15) minutes and she cried when she went to the staff room.[96]

5) Another court staff also experienced being berated and humiliated by respondent Judge. In correcting the court staff's eleven (11) draft orders, respondent Judge humiliated her by repeatedly pointing at her mistakes in an elevated voice in the presence of a friend of respondent Judge, who happened to be a party in a civil case pending before their court.[97] Nearly in tears, the court staff went out of the chambers and told her co-workers that she would no longer help in drafting orders in bail bond applications so she could concentrate on her drafts.[98] Respondent Judge found court staff's reaction to be improper, so respondent Judge followed her to the staff room and continued to scold her in front of the other staff members, and even called for an emergency staff meeting[99] where respondent Judge even called the court staff "*punyeta ka, buwisit ka*" in front of the other staff.[100]

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[94] *Id*. at 395; TSN, November 4, 2014, pp. 7-12, *id*. at 229-234.

[95] *Id*. at 396; TSN, June 2, 2015 (Mary Jellie P. Fernando), p. 10, *rollo*, p. 294.

[96] *Id.; id.* at 10-11, *id*. at 294-295.

[97] *Id*.; TSN, June 2, 2015 (Vilben Arvie O. Tawakal), pp. 20-23, *id*. at 304-307.

[98] *Id.; id*. at 23-24. *id*. at 307-308.

[99] *Id.; id.* at 24, *id*. at 308.

[100] *Id.; id.* at 26, *id*. at 310.

The Court has previously ruled that "[a] display of petulance and impatience in the conduct of trial is a norm of behavior incompatible with the needful attitude and sobriety of a good judge."[101]

Thus, the Court finds the imposition of fines amounting to Forty Thousand Pesos (₱40,000.00) and Twenty Thousand Pesos (₱20,000.00), appropriate given the prevailing facts of the present case vis-a-vis respondent Judge's record for habitual malfeasance in office.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court hereby finds respondent Presiding Judge Leonor S. Quiñones, Branch 6, Regional Trial Court, Iligan City **GUILTY** of (1) **Oppression** (gross misconduct constituting violations of the Code of Judicial Conduct) and **FINED** in the amount of Forty Thousand Pesos (₱40,000.00); and (2) **Habitual Tardiness** and **FINED** in the amount of Twenty Thousand Pesos (₱20,000.00), with **WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

The Branch Clerk of Court of Branch 6, Regional Trial Court, Iligan City is hereby **DIRECTED** to **SUBMIT** a status report on the working relationship in the court within fifteen (15) days from the end of each semester for two (2) years.

SO ORDERED.

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

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[101] *Tiongco v. Judge Salao*, 528 Phil. 969, 978 (2006), citing *Torres v. Judge Villanueva*, 387 Phil. 516, 524 (2000).

EN BANC

[A.C. No. 11111. January 10, 2018]

In Re: G.R. No. 157659 "ELIGIO P. MALLARI *vs.* GOVERNMENT SERVICE INSURANCE SYSTEM and the PROVINCIAL SHERIFF OF PAMPANGA."

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; OFTEN DESIGNATED AS VANGUARDS OF OUR LEGAL SYSTEM, LAWYERS ARE CALLED UPON TO PROTECT AND UPHOLD TRUTH AND THE RULE OF LAW, AND ARE OBLIGED TO OBSERVE THE RULES OF PROCEDURE AND NOT TO MISUSE THEM TO DEFEAT THE ENDS OF JUSTICE.— A lawyer must never be blinded by the cause of his client at the expense of justice, even if the latter turned out to be himself. He must never overlook that as officer of the court, he is primarily called upon to assist in the administration of justice. Often designated as vanguards of our legal system, lawyers are called upon to protect and uphold truth and the rule of law. They are obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice. In this case, the judgment in favor of the GSIS concerning the validity of the extrajudicial foreclosure proceedings had long became final and executory in G.R. No. 124468. Despite this, respondent, with the single purpose of delaying the execution of the judgment by the winning party, took the xxx series of actions which effectively obstructed the execution of a final and executory judgment: x x x. This Court, unable to turn a blind eye to the maneuverings employed by respondent, previously declared: x x x. His conduct contravened Rule 10.03, Canon 10 of *the Code of Professional Responsibility,* by which he was enjoined as a lawyer to "observe the rules of procedure and xxx not [to] misuse them to defeat the ends of justice." By his dilatory moves, he further breached and dishonored his Lawyer's Oath x x x.

2. ID.; ID.; A LAWYER OWES GOOD FAITH, FAIRNESS AND CANDOR TO THE COURT, AND HIS ACTS OF NOT CONDUCTING HIMSELF TO THE BEST OF HIS KNOWLEDGE AND DISCRETION WITH ALL GOOD

FIDELITY TO THE COURTS CONSTITUTE SERIOUS TRANSGRESSION OF HIS PROFESSIONAL OATH.— When asked to answer the administrative charges against him, respondent does not lament the actions he has taken. Rather, he justifies them by insisting that this Court has erred in its decisions in G.R. No. 124468 and G.R. No. 157659—decisions which have long attained finality. He again bombards the Court with arguments against the validity of the extrajudicial foreclosure proceedings in this disciplinary case knowing fully well, he being a member of the bar, that final and executory decisions may no longer be disturbed. The same holds true with regard to respondent's reliance on Article 429 of the Civil Code. His refuge, if at all, under the article is tainted with bad faith since he knew that the issue on ownership of the properties has long been settled in G.R. No. 124468. Such action on his part only affirms his misplaced zealousness and malicious intent to reopen the case in the hopes of gaining a favorable judgment. He demonstrates his propensity to abuse and misuse court processes to the detriment of the winning party and ultimately, the administration of justice. As such, he violated Canon 10 and Rule 10.03 of the CPR: Canon 10 — A lawyer owes candor, fairness and good faith to the court. x x x x Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice. Respondent owes good faith, fairness and candor to the court. By arguing a case that has already been rejected repeatedly, he abused his right of recourse to the courts. His acts of not conducting himself "to the best of his knowledge and discretion with all good fidelity to the courts" constitute serious transgression of his professional oath.

3. ID.; ID.; THE FILING OF ANOTHER ACTION CONCERNING THE SAME SUBJECT MATTER, IN VIOLATION OF THE DOCTRINE OF *RES JUDICATA*, IN ORDER TO DELAY THE EXECUTION OF A JUDGMENT, CONSTITUTES A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [T]he filing of another action concerning the same subject matter, in violation of the doctrine of *res judicata*, runs contrary to Canon 12 of the CPR, which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. Respondent's act of filing Civil Case No. 12053 (which was dismissed by the RTC on the ground of *res judicata*) further indicates his proclivity to muddle the issues

of the case in order to delay the execution of judgment in Civil Case No. 7802. By his conduct, respondent violated not only the lawyer's mandate "to delay no man for money or malice," but also Rules 12.02 and 12.04 of the CPR: Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause. x x x Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

4. ID.; ID.; A LAWYER WHO FILES MULTIPLE OR REPETITIOUS PETITIONS WHICH DELAYS THE EXECUTION OF A FINAL AND EXECUTORY JUDGMENT SUBJECTS HIMSELF TO DISCIPLINARY ACTION FOR INCOMPETENCE OR FOR WILLFUL VIOLATION OF HIS DUTIES AS AN ATTORNEY TO ACT WITH ALL GOOD FIDELITY TO THE COURTS, AND TO MAINTAIN ONLY SUCH ACTIONS AS APPEAR TO HIM TO BE JUST AND ARE CONSISTENT WITH TRUTH AND HONOR.— Respondent must be reminded that he is not merely the litigant in his case. He is also his own counsel and an officer of the court with a duty to the truth and the administration of justice: A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts, and to maintain only such actions as appear to him to be just and are consistent with truth and honor.

5. ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS IMPOSED FOR VIOLATION OF THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY.— [W]e adopt the recommendation of the IBP-CBD holding respondent guilty of violating the Lawyer's Oath; Canons 10 and 12; and Rules 10.03, 12.02, and 12.04 of the CPR. However, we deem it proper to increase the penalty of suspension from the practice of law from one (1) year to two (2) years.

D E C I S I O N

JARDELEZA, *J.*:

This is an administrative case involving a member of the bar. In our Decision in G.R. No. 157659 entitled *Eligio P. Mallari v. Government Service Insurance System and the Provincial Sheriff of Pampanga*[1] promulgated on January 25, 2010, this Court directed the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP-CBD) to investigate respondent Atty. Eligio P. Mallari (respondent) for what appear to be: (1) his deliberate disregard of the Rules of Court and jurisprudence pertinent to the issuance and implementation of the writ of possession under Act No. 3135,[2] as amended; and (2) his witting violations of the Lawyer's Oath and the Code of Professional Responsibility (CPR).[3]

The facts leading to this disciplinary action, as found by this Court in G.R. No. 157659, are as follows:

In 1968, respondent obtained two loans from the Government Service Insurance System (GSIS) in the total amount of ₱34,000. These loans were secured by mortgages over two parcels of land registered under his and his wife's names. Eventually, respondent was unable to meet his obligations to the GSIS, which prompted the latter to remind him to settle his account.[4]

On March 21, 1984, the GSIS applied for the extrajudicial foreclosure of the mortgage due to respondent's failure to settle his account. Respondent, however, was able to stall this by

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[1] 611 SCRA 32; *Rollo*, pp. 4-22. Penned by Associate Justice Lucas P. Bersamin, with the concurrence of Chief Justice Reynato S. Puno and Associate Justices Conchita Carpio Morales, Teresita J. Leonardo-De Castro, and Martin S. Villarama, Jr.

[2] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

[3] *Mallari v. Government Service Insurance System, supra* at 55.

[4] *Id.* at 36.

requesting for a final computation of his outstanding account and persuading the Sheriff to hold the publication of the foreclosure notice in abeyance. On December 13, 1984, the GSIS responded to his request and rendered a detailed explanation of the account. On May 30, 1985, it sent another updated statement of account. For failing to settle his account, the GSIS finally commenced extrajudicial foreclosure proceedings on respondent's mortgaged properties on July 21, 1986.[5]

On August 22, 1986, respondent filed a complaint for injunction with application for preliminary injunction against the GSIS and the Provincial Sheriff of Pampanga in Branch 44 of the Regional Trial Court (RTC), in San Fernando, Pampanga. This was docketed as Civil Case No. 7802.[6] The RTC ultimately decided Civil Case No. 7802 in his favor. Upon appeal by the GSIS, the CA reversed the RTC on March 27, 1996. This Court, in G.R. No. 124468, denied respondent's petition for review on *certiorari* on September 16, 1996, as well as his motion for reconsideration on January 15, 1997. As a result, the CA Decision dated March 27, 1996 became final and executory, rendering unassailable the extrajudicial foreclosure and auction sale held on September 22, 1986, and the issuance of titles in the name of the GSIS.[7]

On September 2, 1999, the GSIS filed an *ex parte* motion for execution and/or a writ of possession. The RTC issued a writ of execution *cum* writ of possession on October 21, 1999, ordering the Sheriff to place the GSIS in possession of the properties.[8] The Sheriff failed to serve the writ, however, partly because of respondent's request for an extension of time within which to vacate the properties. Respondent, however, instead filed a motion for reconsideration and/or to quash the writ of execution on March 27, 2000.[9]

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[5] *Id.*

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

[7] *Id.* at 37.

[8] *Id.*

[9] *Id.* at 38.

Respondent also filed a case for consignation with a prayer for writ of preliminary injunction or temporary restraining order against the GSIS and the provincial Sheriff in the RTC in San Fernando, Pampanga. This case, docketed as Civil Case No. 12053,[10] was dismissed by the RTC on November 10, 2000 on the ground of *res judicata*, impelling respondent to appeal the dismissal to the CA.[11]

Meanwhile, in Civil Case No. 7802, respondent filed: (1) a motion dated April 5, 2000 to hold the GSIS, *et al*. in contempt of court for painting the fence of the properties during the pendency of his motion for reconsideration and/or to quash the writ of execution; and (2) a motion dated April 17, 2000 to hold the GSIS and its local manager Arnulfo B. Cardenas in contempt of court for ordering the electric company to cut off electric services to the properties during the pendency of his motion for reconsideration and/or quash the writ of execution.[12]

Eventually, Civil Case No. 7802 was re-assigned to Branch 48, whose Presiding Judge denied the motions for contempt of court on July 30, 2001 and directed the Branch Clerk of Court to cause the re-implementation of the writ of execution *cum* writ of possession dated October 21, 1999. Respondent sought reconsideration but this was denied on February 11, 2002.[13]

Respondent assailed the orders denying his motions for contempt, the order causing the re-implementation of the writ of execution *cum* writ of possession, and the denial of his motion for reconsideration with the CA. The CA, however, denied his petition for *certiorari*.[14]

Respondent brought the matter before us in G.R. No. 157659, where we affirmed the CA's Decision. We held that the issuance

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[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 39.

[14] *Id.*

of the writ of possession in an extrajudicial foreclosure sale is purely ministerial.[15] We further stressed that respondent, as a lawyer, should have known that, as a *non-redeeming* mortgagor, he had no more right to challenge the issuance of the writ of execution *cum* writ of possession upon the *ex parte* application of the GSIS, especially after the consolidation of ownership of the properties in the GSIS.[16] Thus, his actions can only be tainted by bad faith.[17] This Court further agreed with the CA's observation that the petition before it is "part of the dilatory tactics x x x to stall the execution of a final and executory decision in Civil Case No. 7802 which has already been resolved with finality by no less than the highest tribunal of the land."[18] Thus, we deemed it proper to direct the IBP-CBD to conduct an investigation on respondent, the pertinent portion of which we quote:

> The Committee on Bar Discipline of the Integrated Bar of the Philippines is directed to investigate the petitioner for what appear to be (*a*) his deliberate disregard of the *Rules of Court* and jurisprudence pertinent to the issuance and implementation of the writ of possession under Act No. 3135, as amended; and (*b*) his witting violations of the Lawyer's Oath and the *Code of Professional Responsibility*.
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> SO ORDERED.[19] (Italics in the original.)

On February 17, 2010, the IBP-CBD notified respondent of the Decision in G.R. No. 157659 and required him to file his verified answer.[20]

In the meantime, respondent's motion for reconsideration of the Decision in G.R. No. 157659 was denied with finality by this Court on April 28, 2010.[21]

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[15] *Id.* at 43.

[16] *Id.* at 50.

[17] *Id.*

[18] *Id.* at 53.

[19] *Id.* at 55.

[20] *Rollo*, p. 209.

[21] *Id.* at 551-552.

In his answer to the disbarment complaint,[22] respondent claims that he did not deliberately disregard the Rules of Court and jurisprudence relative to the issuance and implementation of the writ of possession, as well as the Lawyer's Oath and the CPR.[23] He maintains that he is still the owner of the unlawfully foreclosed properties because: (1) the GSIS' action for mortgage has prescribed since more than 10 years had lapsed since the contracting of the obligations;[24] (2) he still has in his favor the one year right of redemption, to be counted from February 22, 1997, the finality of the decision in Civil Case No. 7802;[25] (3) he preserved his right of redemption by effecting a valid tender of payment and consignation to the GSIS on May 28, 1997;[26] and (4) due to GSIS' refusal to receive his payment, he filed the case for consignation (Civil Case No. 12053) on March 27, 2000.[27] Hence, respondent concludes that, as owner of the properties, he has the right to exclude any person from its enjoyment and disposal and may use such reasonably necessary force as allowed under Article 429 of the Civil Code.[28] In any case, he asserts that all the pleadings in this case were signed by his lawyer, Atty. Andres Ocampo, except for two: (1) reply to GSIS dated September 11, 2003; and (2) petition for review in G.R. No. 157659.[29]

The IBP-CBD, in their Report and Recommendation,[30] found that the means employed by respondent are dilatory moves to

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[22] *Id.* at 125-208.

[23] *Id.* at 147.

[24] *Id.* at 180.

[25] *Id.* at 159.

[26] *Id.* at 182.

[27] *Id.* at 81, 181.

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

[29] *Id.* at 190-192.

[30] *Id.* at 638-644.

delay the execution of the judgment in favor of the GSIS. In the process, he violated his Lawyer's Oath and Rule 10.3, Canon 10 of the CPR. The IBP-CBD thus recommended that respondent be meted a penalty of suspension from the practice of law for at least one year.[31]

In its Resolution No. XX-2013-513,[32] the IBP Board of Governors adopted the findings and recommendation of IBP Commissioner Oliver A. Cachapero. It also denied respondent's subsequent motion for reconsideration in Resolution No. XXI-2015-368.[33]

These Resolutions, together with the records of the case, were transmitted to this Court for final action, pursuant to Rule 139-B, Section 12(b).[34]

We adopt the findings of the IBP Board of Governors on respondent's unethical conduct, but modify the penalty in accord with recent jurisprudence.

A lawyer must never be blinded by the cause of his client at the expense of justice, even if the latter turned out to be himself. He must never overlook that as officer of the court, he is primarily called upon to assist in the administration of justice.[35] Often designated as vanguards of our legal system, lawyers are called upon to protect and uphold truth and the rule of law.[36] They are obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice.[37]

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[31] *Id*. at 644.

[32] *Id.* at 637.

[33] *Id.* at 821.

[34] *Id*. at 820.

[35] See *Plus Builders, Inc. v. Revilla, Jr.*, A.C. No. 7056, September 13, 2006, 501 SCRA 615, 623.

[36] *Id.* at 623-624.

[37] *Id*. at 624.

In this case, the judgment in favor of the GSIS concerning the validity of the extrajudicial foreclosure proceedings had long became final and executory in G.R. No. 124468. Despite this, respondent, with the single purpose of delaying the execution of the judgment by the winning party, took the following series of actions which effectively obstructed the execution of a final and executory judgment: (1) he caused the Sheriff to fail in his service of the writ of possession upon his representation that the GSIS had agreed to his request for extension of time to vacate the premises; yet, he did not vacate the premises and instead filed a motion for reconsideration and/or to quash the writ of execution; (2) he commenced a second case against the GSIS and the Provincial Sheriff before the RTC in San Fernando, Pampanga for consignation coupled with a prayer for a writ of preliminary injunction or temporary restraining order, knowing fully well that his right to redeem has expired; and (3) he went on to file a motion for contempt against the GSIS, *et al*. for painting the fence of the property, and for ordering the electric company to cut off electric service, despite knowledge that the GSIS' ownership over the properties has been upheld.

This Court, unable to turn a blind eye to the maneuverings employed by respondent, previously observed:

> Verily, the petitioner wittingly adopted his afore-described worthless and vexatious legal maneuvers for no other purpose except to delay the full enforcement of the writ of possession, despite knowing, being himself a lawyer, that as a non-redeeming mortgagor he could no longer impugn both the extrajudicial foreclosure and the *ex parte* issuance of the *writ of execution cum writ of possession*; and that the enforcement of the duly-issued writ of possession could not be delayed. He thus deliberately abused court procedures and processes, in order to enable himself to obstruct and stifle the fair and quick administration of justice in favor of mortgagee and purchaser GSIS.

His conduct contravened Rule 10.03, Canon 10 of the *Code of Professional Responsibility*, by which he was enjoined as a lawyer to "observe the rules of procedure and xxx not [to] misuse them to defeat the ends of justice." By his dilatory moves, he further breached and dishonored his Lawyer's Oath, particularly:

> x x x I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients x x x

We stress that the petitioner's being the party litigant himself did not give him the license to resort to dilatory moves. His zeal to defend whatever rights he then believed he had and to promote his perceived remaining interests in the property already lawful transferred to GSIS should not exceed the bounds of the law, for he remained *at all times* an officer of the Court burdened to conduct himself "with all good fidelity as well to the courts as to [his] clients." His true obligation as a lawyer should not be warped by any misplaced sense of his rights and interests as a litigant, because he was, above all, bound not to unduly delay a case, not to impede the execution of a judgment, and not to misuse Court processes. Consequently, he must be made to account for his *mis*conduct as a lawyer.[38] (Italics in the original, citations omitted.)

Notably, when asked to answer the administrative charges against him, respondent does not lament the actions he has taken. Rather, he justifies them by insisting that this Court has erred in its decisions in G.R. No. 124468 and G.R. No. 157659—decisions which have long attained finality. He again bombards the Court with arguments against the validity of the extrajudicial foreclosure proceedings in this disciplinary case knowing fully well, he being a member of the bar, that final and executory decisions may no longer be disturbed. The same holds true with regard to respondent's reliance on Article 429 of the Civil Code. His refuge, if at all, under the article is tainted with bad faith since he knew that the issue on ownership of the properties has long been settled in G.R. No. 124468. Such action on his part only affirms his misplaced zealousness and malicious intent to reopen the case in the hopes of gaining a favorable judgment. He demonstrates his propensity to abuse and misuse court processes to the detriment of the winning party and ultimately,

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[38] *Mallari v. Government Service Insurance System*, *supra* note 1 at 53-54.

the administration of justice. As such, he violated Canon 10 and Rule 10.03 of the CPR:

> Canon 10 — A lawyer owes candor, fairness and good faith to the court.
>
> x x x x x x x x x
>
> Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Respondent owes good faith, fairness and candor to the court. By arguing a case that has already been rejected repeatedly, he abused his right of recourse to the courts.[39] His acts of not conducting himself "to the best of his knowledge and discretion with all good fidelity to the courts" constitute serious transgression of his professional oath.

Moreover, the filing of another action concerning the same subject matter, in violation of the doctrine of *res judicata*, runs contrary to Canon 12[40] of the CPR, which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.[41] Respondent's act of filing Civil Case No. 12053 (which was dismissed by the RTC on the ground of *res judicata*) further indicates his proclivity to muddle the issues of the case in order to delay the execution of judgment in Civil Case No. 7802. By his conduct, respondent violated not only the lawyer's mandate "to delay no man for money or malice," but also Rules 12.02 and 12.04 of the CPR:

> Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.
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> x x x x x x x x x

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[39] *Plus Builders, Inc. v. Revilla, Jr.*, *supra* note 35 at 624.

[40] Canon 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

[41] *Alonso v. Relamida, Jr.*, A.C. No. 8481, August 3, 2010, 626 SCRA 281, 290.

Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

Respondent must be reminded that he is not merely the litigant in his case. He is also his own counsel and an officer of the court with a duty to the truth and the administration of justice:

> A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice and will be punished as contempt of court. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts, and to maintain only such actions as appear to him to be just and are consistent with truth and honor.[42] (Citation omitted.)

Respondent cannot escape liability by claiming that it was his counsel, Atty. Ocampo, who signed most of the pleadings. We note that respondent admits that he filed the petition for review in G.R. No. 157659 before us. By doing so, he ratified the previous actions taken by his counsel. For otherwise, if he did not in fact sanction these deeds, he would not have elevated before us the denial of the motions for contempt, the order causing the re-implementation of the writ of execution *cum* writ of possession, and the denial of his motion for reconsideration. This behavior on his part reveals that the actions undertaken by his counsel were under his strict instructions, or at the very least, with his consent. For having done so, respondent also breached his oath as an officer of this Court not only by filing groundless suits, but also by instructing another member of the bar to do so.

In sum, we adopt the recommendation of the IBP-CBD holding respondent guilty of violating the Lawyer's Oath; Canons 10

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[42] *Id.* at 289-290.

and 12; and Rules 10.03, 12.02, and 12.04 of the CPR. However, we deem it proper to increase the penalty of suspension from the practice of law from one (1) year to two (2) years.[43]

WHEREFORE, premises considered, respondent Atty. Eligio P. Mallari is hereby found **GUILTY** of violating the Lawyer's Oath; Canons 10 and 12; and Rules 10.03, 12.02, and 12.04 of the Code of Professional Responsibility. He is hereby suspended from the practice of law for a period of two (2) years effective upon receipt of a copy of this Decision.

SO ORDERED.

Carpio, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, and *Gesmundo, JJ.,* concur.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Tijam, and *Reyes, Jr., JJ.,* no part.

THIRD DIVISION

[G.R. No. 190817. January 10, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ROVENCY REALTY AND DEVELOPMENT CORPORATION,** *respondent.*

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[43] *Salabao v. Villaruel, Jr.*, A.C. No. 8084, August 24, 2015, 768 SCRA 1, 13; *Avida Land Corporation (formerly Laguna Properties Holdings, Inc.) v. Argosino*, A.C. No. 7437, August 17, 2016, 800 SCRA 510, 523-524, citing *Saladaga v. Astorga*, A.C. No. 4697, November 25, 2014, 741 SCRA 603.

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; THE 12-HECTARE LIMITATION ON THE ACQUISITION OF LANDS UNDER SECTION 3, ARTICLE XII OF THE 1987 CONSTITUTION DOES NOT APPLY TO PRIVATE LANDS, AS THE LIMITATION COVERS ONLY THE LANDS OF PUBLIC DOMAIN.—** The Republic argues that the trial and appellate courts erred in granting RRDC's application for the registration of the subject land, as the same has a total land area of 31.8 hectares, which is way beyond the 12-hectare limit under Section 3, Article XII of the 1987 Constitution x x x. [S]ection 3, Article XII applies only to lands of the public domain. Private lands are, therefore, outside of the prohibitions and limitations stated therein. Thus, the appellate court correctly declared that the 12-hectare limitation on the acquisition of lands under Section 3, Article XII of the 1987 Constitution has no application to private lands.

2. **ID.; ID.; PUBLIC LAND ACT; A PRIVATE CORPORATION CAN ACQUIRE LAND PROVIDED IT SUFFICIENTLY ESTABLISHED THAT THE LAND IS ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN, AND THAT THE NATURE AND DURATION OF THE POSSESSION OF ITS PREDECESSORS-IN-INTEREST CONVERTED THE SUBJECT LAND TO PRIVATE LAND BY OPERATION OF LAW.—** A case in point is the absolute prohibition on private corporations from acquiring any kind of alienable land of the public domain. This prohibition could be traced to the 1973 Constitution which limited the alienation of lands of the public domain to individuals who were citizens of the Philippines. This constitutional prohibition, however, does not necessarily mean that corporations may not apply for original registration of title to lands. In fact, the Court, in several instances, affirmed the grant of applications for original registration filed by corporations, for as long as the lands were already converted to private ownership by operation of law as a result of satisfying the requisite possession required by the Public Land Act. In *Director of Lands v. Intermediate Appellate Court* (*Director of Lands*), the Court granted the application for original registration of parcels of land filed by a corporation which acquired the lands by purchase from members of the

Dumagat tribe. The Court ratiocinated that the lands applied for registration were already private lands even before the corporation acquired them. x x x. In *Republic v. T.A.N. Properties* (*T.A.N. Properties*), the Court stressed that what is determinative for the application of the doctrine in *Director of Lands* is for the corporate applicant for land registration to establish that when it acquired the land, the same was already private land by operation of law because the statutory acquisitive prescriptive period of 30 years had already lapsed. The pronouncements in *Director of Lands* and *T.A.N. Properties* apply with equal force to the 12-hectare limitation, considering that both the limitation and the prohibition on corporations to acquire lands, do not cover ownership of private lands. Stated differently, whether RRDC can acquire the subject land and to what extent, depends on whether the pieces of evidence it presented before the trial court sufficiently established that the subject land is alienable and disposable land of the public domain; and that the nature and duration of the possession of its individual predecessors-in-interest converted the subject land to private land by operation of law.

3. ID.; ID.; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); APPLICANTS FOR ORIGINAL REGISTRATION OF TITLE TO LAND MUST FIRST ESTABLISH COMPLIANCE WITH THE REQUIREMENTS FOR REGISTRATION UNDER EITHER ON THE BASIS OF POSSESSION OR ON THE BASIS OF PRESCRIPTION.— In *Republic of the Philippines vs. Cortez*, the Court explained that applicants for original registration of title to land must first establish compliance with the provisions of either Section 14(1) or Section 14(2) of P.D. No. 1529 x x x. It must be emphasized that the requirements and bases for registration under these two provisions of law differ from one another. Section 14 (1) mandates registration on the basis of possession, while Section 14 (2) entitles registration on the basis of prescription. Thus, it is important to ascertain under what provision of Section 14 the registration is sought. A reading of the application, however, is unavailing. In its application, RRDC alleged that it and its predecessors-in-interest "had been in open, continuous, adverse, and peaceful possession in concept of owner of the subject property since time immemorial or for more than thirty years." This allegation made it unclear whether registration is

sought under Section 14(1) — possession since 12 June 1945 or earlier; or under Section 14(2) — possession for more than thirty years.

4. ID.; ID.; ID.; REGISTRATION ON THE BASIS OF POSSESSION UNDER SECTION 14(1) OF PD NO. 1529; REQUISITES.— Under Section 14(1), applicants for registration of title must sufficiently establish the following requisites: *first*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and *third*, that the possession is under a *bona fide* claim of ownership since 12 June 1945, or earlier.

5. ID.; ID.; ID.; ID.; TO PROVE THAT THE LAND SOUGHT TO BE REGISTERED IS ALIENABLE AND DISPOSABLE, THE APPLICATION FOR ORIGINAL REGISTRATION MUST BE ACCOMPANIED BY A CENRO OR PENRO CERTIFICATION, AND A COPY OF THE ORIGINAL CLASSIFICATION APPROVED BY THE DENR SECRETARY, AND CERTIFIED AS TRUE COPY BY THE LEGAL CUSTODIAN OF THE OFFICIAL RECORDS; NOT COMPLIED WITH.— The first requisite of Section 14(1) entails only that the property sought to be registered be alienable and disposable at the time of the filing of the application for registration. To prove that the land sought to be registered is alienable and disposable, the present rule is that the application for original registration must be accompanied by (1) a CENRO or PENRO Certification; and (2) a copy of the original classification approved by the DENR Secretary, and certified as true copy by the legal custodian of the official records. This strict requirement for the registration of lands enunciated in *T.A.N Properties* had been consistently applied and affirmed by the Court in a plethora of cases. In the present case, to prove that the subject land is alienable and disposable, RRDC presented a CENRO certification stating that the subject land is "alienable and disposable and not covered by any public land application." RRDC, however, failed to present a certified true copy of the original classification approved by the DENR Secretary declaring the subject land alienable and disposable. Clearly, the evidence presented by RRDC falls short of the requirements in *T.A.N. Properties*. Thus, the trial and appellate courts erred when they

ruled that the subject land is alienable and disposable part of the public domain and susceptible to original registration.

6. ID.; ID.; ID.; ID.; PROOF OF SPECIFIC ACTS OF OWNERSHIP OR DOMINION MUST BE PRESENTED TO SUBSTANTIATE THE CLAIM OF OPEN, CONTINUOUS, EXCLUSIVE, AND NOTORIOUS POSSESSION AND OCCUPATION OF THE LAND SUBJECT OF THE APPLICATION, AS APPLICANTS FOR LAND REGISTRATION CANNOT JUST OFFER GENERAL STATEMENTS WHICH ARE MERE CONCLUSIONS OF LAW RATHER THAN FACTUAL EVIDENCE OF POSSESSION.— [R]RDC also failed to prove that it and its individual predecessors-in-interest sufficiently complied with the required period and nature of possession. An applicant for land registration must exhibit that it and its predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the land under a *bona fide* claim of ownership since 12 June 1945 or earlier. It has been held that possession is open when it is patent, visible, apparent, notorious, and not clandestine; it is continuous when uninterrupted, unbroken, and not intermittent or occasional; it is exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous, that it is generally known and talked of by the public or the people in the neighborhood. In *Republic vs. Remman Enterprises, Inc*., the Court held that for purposes of land registration under Section 14(1) of P.D. No. 1529, proof of specific acts of ownership must be presented to substantiate the claim of open, continuous, exclusive, and notorious possession and occupation of the land subject of the application. Applicants for land registration cannot just offer general statements which are mere conclusions of law rather than factual evidence of possession. Actual possession is in the manifestation of acts of dominion over it of such nature as a party would actually exercise over his own property. x x x. In this case, aside from the deeds of absolute sale covering the subject land which were executed prior to 12 June 1945, RRDC did not present any evidence which would show that its predecessors-in-interest actually exercised acts of dominion over the subject land even before the cut-off period. As such, RRDC failed to prove that its possession of the land, or at the very

least, its individual predecessors-in-interest's possession over the same was not mere fiction.

7. ID.; ID.; ID.; LAND REGISTRATION ON THE BASIS OF PRESCRIPTION UNDER SECTION 14(2) OF PD NO. 1529; A LAND, ALTHOUGH CLASSIFIED AS ALIENABLE AND DISPOSABLE, IS INSUSCEPTIBLE TO ACQUISITION BY PRESCRIPTION, WHERE THERE IS NO EVIDENCE SHOWING THAT THE SAID LAND WAS EXPRESSLY DECLARED AS NO LONGER INTENDED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF THE NATIONAL WEALTH, OR THAT THE PROPERTY HAS BEEN CONVERTED INTO PATRIMONIAL PROPERTY.— RRDC also failed to establish compliance with the requirements for registration under Section 14(2). x x x. The Civil Code makes it clear that patrimonial property of the State may be acquired by private persons through prescription. This is brought about by Article 1113, which states that all things which are within the commerce of man are susceptible to prescription, and that property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription. Nonetheless, this does not necessarily mean that when a piece of land is declared alienable and disposable part of the public domain, it can already be acquired by prescription. In *Malabanan*, this Court ruled that declaration of alienability and disposability is not enough — there must be an express declaration that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial, thus: "(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. **There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.**" The classification of the land as alienable and disposable land of the public domain does not change its status as property of the public dominion under Article 420(2) of the Civil Code.

> As such, said land, although classified as alienable and disposable, is insusceptible to acquisition by prescription. In this case, RRDC did not present any evidence which would show that the subject land was expressly declared as no longer intended for public service or the development of the national wealth, or that the property has been converted into patrimonial. Hence, it failed to prove that acquisitive prescription has begun to run against the State, and that it has acquired title to the subject land by virtue thereof.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Samson A. Aguilar for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari seeking to reverse and set aside the 10 May 2009 Decision[1] and the 3 December 2009 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 00651, which affirmed the 7 November 2003 Decision[3] of the Regional Trial Court *(RTC)*, Branch 41, Cagayan de Oro City, in LRC Case No. N-2000-084, which granted the application for original registration of title to land by respondent Rovency Realty and Development Corporation *(RRDC)*.

THE FACTS

On 22 March 2001, RRDC filed before the RTC an Amended Application for Registration[4] covering a parcel of land identified as Lot No. 3009 *(subject land)* situated in Barangay Balulang, Cagayan de Oro City, described as follows:

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[1] *Rollo*, pp. 59-75.

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

[3] *Id*. at 78-91.

[4] CA *rollo*, pp. 466-470.

A parcel of land (Lot No. 3009, Cad-237, Cagayan Cadastre) situated in the Barrio of Carmen, City of Cagayan de Oro, Island of Mindanao. Bounded on the S., along line 1-2 by Lot 6648; on the NW., along line 2-3 by Lot 30011; along line 3-4 by Lot 3010; along line 4-5 by Lot 3047; along line 5-6 by Lot 3020; on the N., along line 6-7 by Lot 3007; on the SE., along line 8-9 by Lot 6645; along line 9-1 by Lot 3008; all of Cad-237, Cagayan Cadastre.

Beginning at the point marked "1" on the plan being N. 51 deg. 24'W., 1091.05 m. from PBM No. 24, Cad-237, Thence;

1-2 S.	79 deg.	15'W.	260.92 m.
2-3 N.	19 deg.	02'E.	231.49 m.
3-4 N.	13 deg.	32'E.	489.77 m.
4-5 N.	61 deg.	39'E.	302.54 m.
5-6 N.	40 deg.	09'E.	146.06 m.
6-7 S.	82 deg.	14'E.	140.06 m.
7-8 S.	24 deg.	28'E.	152.88 m.
8-9 S.	34 deg.	00'W.	448.33 m.
9-1 S.	33 deg.	26'W.	445.73 m.

beginning; containing an area of THREE HUNDRED EIGHTEEN THOUSAND THREE HUNDRED FORTY FIVE (318,345) square meters more or less. All points referred to are indicated on the plan and marked on the ground by Old BL., cyl. conc. mons. 15 x 60 cm. Bearing true, date of Original Survey August 9 & 13, 1929, and that of the preparation June 29, 2000, executed by Crisanto M. Bagares, Geodetic Engineer and approved on August 1, 2000.[5]

RRDC alleged, among others, that it is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines; that it is the absolute owner in fee simple of the subject land having acquired the same from its previous owner, P.N. Roa Enterprises, Inc., by virtue of a notarized deed of absolute sale executed on 05 March 1997; that the subject land was assessed at ₱2,228,000.00 as shown in the Tax Declaration *(TD)* No. 141011; that it has registered the subject land for taxation purposes and paid the realty taxes due therein from its acquisition, to the filing of the application; that immediately after acquiring the subject land, it took actual

[5] *Id*. at 474.

physical possession of the same and has been continuously occupying the subject land; and that it and its predecessors-in-interest have been in open, continuous, adverse, and peaceful possession in concept of owner of the subject land since time immemorial, or for more than thirty (30) years.

Attached to the application are: original copy of the technical description of the subject land[6]; the Tracing Cloth Plan of the survey plan[7]; Certification in Lieu of Surveyor's/Geodetic Engineer's Certificate[8] issued by the Chief of the Land Surveys Assistance Section, Department of Environment and Natural Resources, Region X; T.D. No. 141011 in the name of RRDC[9]; and the Deed of Absolute Sale between RRDC and P.N. Roa Enterprises, Inc., dated 5 March 1997.[10]

On 16 July 2001, an opposition to the application was filed by the Heirs of Paulino Avanceña. They alleged, that the subject land was already claimed and owned by the late Atty. Paulino Avanceña *(Paulino)*, their father and predecessor-in-interest, as early as 1926; that Paulino had been in open, continuous, notorious, adverse, and exclusive possession and occupation of the subject land; that Paulino registered the subject land for taxation purposes and has paid the taxes due thereon in 1948; that their parents, Paulino and Rizalina Neri *(Rizalina)* merely allowed and tolerated Pedro N. Roa's *(Pedro)* possession of the subject land after the latter approached them and requested that he be allowed to use the subject land for his businesses; that Pedro is one of RRDC's predecessors-in-interest; that sometime in 1994, Rizalina demanded the return of the subject land from the heirs of Pedro, but to no avail; that in 1996, Rizalina died leaving the private oppositors as the rightful heirs of the subject land; that their parents never sold the subject

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[6] *Id*.

[7] *Id*. at 475.

[8] *Id*. at 476.

[9] *Id*. at 477.

[10] *Id*. at 478-479.

land to Pedro nor to RRDC, and as such, no right or title over the subject land was passed on to RRDC. Thus, they prayed that RRDC's application be dismissed, and that their opposition be treated as their own application for registration.[11]

On 3 August 2001, the petitioner Republic of the Philippines (*Republic*), through the Office of the Solicitor General (*OSG*), filed its opposition to the application on the following grounds: that neither RRDC nor its predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land in question since 12 June 1945 or prior thereto; that the subject land exceeds the twelve (12)- hectare limit for confirmation of imperfect title set by Section 47 of Commonwealth Act *(C.A.)* No. 141, as amended by Republic Act *(R.A.)* No. 6940; and that the subject land forms part of the public domain belonging to the Republic and, thus, not subject to private appropriation.[12]

During trial, RRDC presented the following documents in support of its application: (i) Deed of Absolute Sale notarized by notary public Paulino Avanceña showing that the subject land was sold by Catalino Ebalo to Nicolas Beja and Maximo Amper on 21 June 1937[13]; (ii) Deed of Absolute Sale notarized by notary public Paulino Avanceña showing that a portion of the subject land consisting of 159,178.5 square meters (*first portion*) was sold by Maximo Amper to Perfecto Virtudazo on 07 October 1940[14]; (iii) Deed of Absolute Sale notarized by notary public Troadio C. Ubay-ubay showing that the first portion consisting of 15 hectares, 91 ares and 72 centares (159,172 square meters) was sold by Trinidad Virtudazo, Israel Virtudazo, and Adelina Virtudazo to Victor D. Beja on 22 April 1961[15]; (iv) Deed of Absolute Sale showing that the first portion of the

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[11] *Id*. at 480-484.

[12] *Id*. at 489-490.

[13] *Id*. at 500.

[14] *Id*. at 501.

[15] *Id*. at 502-503.

subject land consisting of 159,172 square meters was sold by Victor D. Beja to Pedro N. Roa on 01 February 1967[16]; (v) Deed of Absolute Sale notarized by notary public Troadio C. Ubay-ubay showing that the other portion (*second portion*) of the subject land was sold by Nicolas Beja to Victor Beja on 22 April 1961[17]; (vi) Deed of Sale showing that the second portion was sold by Victor Beja to Pedro N. Roa on 01 February 1967[18]; (vii) Deed of Exchange notarized by notary public Jose L. Sabio, Jr. showing that the two portions of the subject land were conveyed by Pedro N. Roa in favor of P.N. Roa Enterprises, Inc. on 23 September 1987;[19] and (viii) Deed of Sale notarized by Rene C. Barbaso showing that the two (2) portions of the subject land were sold by P.N. Roa Enterprises, Inc. to RRDC on 25 July 1996.[20]

RRDC also presented a certification[21]from the Community Environment and Natural Resources Office *(CENRO)*, Cagayan de Oro City, certifying that the subject land is alienable and disposable and not covered by any public land application patent and hence, no patent has been issued thereon. Lastly, RRDC presented several tax declarations in the name of its predecessors-in-interest, the earliest of which is T.D. No. 91264, which showed that realty taxes on the subject land have been paid in 1947.[22]

On the other hand, to support their claim that a patent over the subject land had been issued in the name of their father, the private oppositors presented a certification[23] issued by the Records Management Division of the Lands Management Bureau of the Department of Environment and Natural Resources which

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[16] *Id*. at 504-505.

[17] *Id*. at 507-508.

[18] *Id*. at 509-511.

[19] *Id*. at 512-514.

[20] *Id*. at 515-516.

[21] *Id*. at 551.

[22] *Id*. at 553.

[23] *Id*. at 230.

merely states that "...according to the verification made by the Geodetic Surveys Division, survey plan no. Psu-45882 with an accession no. 284578 is located at Cagayan, Misamis, as per their EDP listing. It is unfortunate however that as of this moment, this office (Records Management Division) cannot locate said records despite diligent search made thereon."

The RTC Ruling

In its decision, dated 7 November 2003, the RTC granted RRDC's application for registration of the subject land. It opined that the CENRO certification, stating that the subject land is alienable and disposable and not covered by any public land application, is sufficient to show the character of the land. It further ruled, that RRDC and its predecessors-in-interest had been in open and continuous possession under a bona fide claim of ownership over the subject land based on the documentary and testimonial evidence offered by RRDC, without discussing how these pieces of evidence established the required possession.

The trial court further brushed aside the opposition interposed by the heirs of Paulino Avanceña. It was not convinced that the evidence they presented were sufficient to grant the application in their favor. It noted that the oppositors' claim that they were the rightful owners of the subject land does not hold water considering that the deeds of sale presented by RRDC in support of their claim were notarized by Paulino himself.

The dispositive portion of the RTC decision reads:

WHEREFORE, this Court considering the evidence of the applicant, the reports of the Land Registration Authority, Director of Lands and the Certification of the CENRO, DENR, Cagayan de Oro City, hereby declares that the applicant, Rovency Realty & Development Corporation, have sufficient title proper for registration over the parcel of land subject of this application. The opposition of the Heirs of Paulino Avanceña, is hereby ordered dismissed, being lack of merit.

Accordingly, in accordance with the prayer of the applicant herein, the Commissioner, or anyone acting on his behalf is hereby directed to ISSUE A DECREE OF REGISTRATION and the CORRESPONDING CERTIFICATE OF TITLE FOR THE PARCEL OF LAND described

in the instant application in favor of ROVENCY REALTY and DEVELOPMENT CORPORATION. SO ORDERED.[24]

Unconvinced, the Republic, through the OSG, and private oppositors heirs of Paulino Avancena, elevated their respective appeals to the CA.[25]

The Republic contended that the trial court erred in granting the application for registration, considering that the land applied for is in excess of what is allowed by the Constitution; and that the Corporation Code further prohibits RRDC to acquire the subject land unless the acquisition thereof is reasonably necessary for its business. On the other hand, the Avanceña heirs insisted that they are the rightful owners of the subject land, by virtue of the homestead patent granted to their predecessor-in-interest.

The CA Ruling

In its assailed decision, dated 10 March 2009, the CA affirmed the 7 November 2003 RTC decision. The appellate court concurred with the trial court's findings that the subject land is alienable and disposable, and that RRDC has sufficiently established the required period and character of possession. Likewise, the appellate court was not persuaded by the claims of the heirs. It noted that the private oppositors anchored their claim on the alleged homestead grant to Paulino, their predecessor-in-interest, which claim was unsupported by sufficient documentary evidence.

The appellate court also ruled that the 12-hectare limit under the Constitution was not violated. It explained that Section 3 of Article XII of the 1987 Constitution, the constitutional provision which provided for the 12-hectare limit in the acquisition of land, covers only agricultural lands of the public domain. It ratiocinated that when the subject land was acquired through acquisitive prescription by RRDC's predecessors-in-

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[24] *Id*. at 557-558.

[25] *Id*. at 239-240, 279 and 432-433.

interest, it was converted into a private property and, as such, it ceased to be part of the public domain. Thus, when RRDC acquired the subject land by purchase, it was no longer within the ambit of the constitutional limitation.

As to the contention that the Corporation Code bars RRDC to acquire the subject land, the appellate court simply stated that while the said code imposes certain limitations on the acquisition of real property, there is no such prohibition. It stressed that RRDC is an artificial being imbued with the power to purchase, hold, and convey real and personal property for such purposes that are within the objects of its creation. Considering that RRDC is a corporation engaged in realty business, it has the power to purchase real properties. The dispositive portion of said decision states:

> WHEREFORE, the appeal is DENIED. The assailed November 7, 2003 Decision of the Regional Trial Court (RTC) of Misamis Oriental, Branch 41, Cagayan de Oro City is hereby AFFIRMED. SO ORDERED.[26]

The Republic moved for reconsideration; while the Heirs of Paulino Avanceña adopted the Republic's motion for reconsideration as their own. In its resolution, dated 3 December 2009, the CA denied the motion for reconsideration.

Hence, this petition.

THE ISSUES

I.

THE TRIAL COURT ERRED IN GRANTING THE AMENDED APPLICATION FOR REGISTRATION AND ORDERING THE ISSUANCE OF A DECREE OF REGISTRATION AND THE CORRESPONDING CERTIFICATE OF TITLE FOR A PARCEL OF LAND CONTAINING AN AREA OF THREE HUNDRED EIGHTEEN THOUSAND THREE HUNDRED FORTY FIVE (318,345) SQUARE METERS IN FAVOR OF ROVENCY REALTY AND DEVELOPMENT CORPORATION, DESPITE

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[26] *Id*. at 216.

THE FACTS THAT —

(i) THE LAND APPLIED FOR REGISTRATION OF TITLE IS IN EXCESS OF WHAT IS ALLOWED BY LAW; AND,

(ii) RESPONDENT'S RIGHT TO ACQUIRE THE SUBJECT PARCEL OF LAND IS FURTHER LIMITED BY THE CORPORATION CODE.

II.

RESPONDENT'S EVIDENCE IS INSUFFICIENT TO PROVE THAT IT OR ITS PREDECESSORS-IN-INTEREST HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION UNDER A BONA FIDE CLAIM OF OWNERSHIP SINCE JUNE 12, 1945 OR EARLIER AND THE SUBJECT PROPERTY IS NO LONGER INTENDED FOR PUBLIC USE OR FOR THE DEVELOPMENT OF THE NATIONAL WEALTH.[27]

THE COURT'S RULING

The petition is meritorious.

12-hectare limit under Section 3, Article XII of the 1987 Constitution

The Republic argues that the trial and appellate courts erred in granting RRDC's application for the registration of the subject land, as the same has a total land area of 31.8 hectares, which is way beyond the 12-hectare limit under Section 3, Article XII of the 1987 Constitution, which provides:

> SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. **Private corporations or associations may not hold such alienable lands of the public domain except by lease**, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. **Citizens of the**

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[27] *Rollo*, pp. 30-31.

Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant. [emphasis supplied]

As can be clearly gleaned from its language, Section 3, Article XII applies only to lands of the public domain. Private lands are, therefore, outside of the prohibitions and limitations stated therein. Thus, the appellate court correctly declared that the 12-hectare limitation on the acquisition of lands under Section 3, Article XII of the 1987 Constitution has no application to private lands.

A case in point is the absolute prohibition on private corporations from acquiring any kind of alienable land of the public domain. This prohibition could be traced from the 1973 Constitution which limited the alienation of lands of the public domain to individuals who were citizens of the Philippines. This constitutional prohibition, however, does not necessarily mean that corporations may not apply for original registration of title to lands. In fact, the Court, in several instances, affirmed the grant of applications for original registration filed by corporations,[28] for as long as the lands were already converted to private ownership by operation of law as a result of satisfying the requisite possession required by the Public Land Act.[29]

In *Director of Lands v. Intermediate Appellate Court*[30] (*Director of Lands*), the Court granted the application for original registration of parcels of land filed by a corporation which acquired the lands by purchase from members of the Dumagat tribe. The Court ratiocinated that the lands applied for registration were already private lands even before the corporation acquired them. The Court observed that the sellers, being members of the national cultural minorities, had by themselves and through their predecessors, possessed and occupied the lands since time

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[28] *Republic v. Sogod Development Corporation*, 781 Phil. 78, 89 (2016); *Director of Lands v. Bengzon*, 236 Phil. 396, 406 (1987).

[29] *Heirs of Mario Malabanan v. Republic*, 717 Phil. 141, 166 (2013).

[30] 230 Phil. 590, 597 (1986).

immemorial. As a consequence of their open, exclusive, and undisputed possession over the said lands for the period required by law for the acquisition of alienable lands of the public domain, said lands ceased to become part of the public land and were converted, by operation of law, into private ownership. As such, the sellers, if not for their conveyance of the lands in question to the corporation, were entitled to exercise the right granted to them by the Public Land Act to have their title judicially confirmed. Considering further that the lands in question were already private in character at the time the corporation acquired them, the constitutional prohibition does not apply to the corporation.

In *Republic v. T.A.N. Properties*[31] (*T.A.N. Properties*), the Court stressed that what is determinative for the application of the doctrine in *Director of Lands* is for the corporate applicant for land registration to establish that when it acquired the land, the same was already private land by operation of law because the statutory acquisitive prescriptive period of 30 years had already lapsed.

The pronouncements in *Director of Lands* and *T.A.N. Properties* apply with equal force to the 12-hectare limitation, considering that both the limitation and the prohibition on corporations to acquire lands, do not cover ownership of private lands. Stated differently, whether RRDC can acquire the subject land and to what extent, depends on whether the pieces of evidence it presented before the trial court sufficiently established that the subject land is alienable and disposable land of the public domain; and that the nature and duration of the possession of its individual predecessors-in-interest converted the subject land to private land by operation of law.

Requirements for original registration of title to land

In *Republic of the Philippines vs. Cortez*,[32] the Court explained that applicants for original registration of title to land must

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[31] 578 Phil. 441, 461 (2008).

[32] 726 Phil. 212, 220-221 (2014).

first establish compliance with the provisions of either Section 14(1) or Section 14(2) of P.D. No. 1529, which state:

> 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.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

It must be emphasized that the requirements and bases for registration under these two provisions of law differ from one another. Section 14 (1) mandates registration on the basis of possession, while Section 14 (2) entitles registration on the basis of prescription.[33] Thus, it is important to ascertain under what provision of Section 14 the registration is sought.

A reading of the application, however, is unavailing. In its application, RRDC alleged that it and its predecessors-in-interest "had been in open, continuous, adverse, and peaceful possession in concept of owner of the subject property since time immemorial or for more than thirty years." This allegation made it unclear whether registration is sought under Section 14(1) — possession since 12 June 1945 or earlier; or under Section 14(2) — possession for more than thirty years.

An examination of the 7 November 2003 RTC decision also proved futile considering that, and as previously pointed out, aside from enumerating the exhibits offered by the applicant, the trial court did not discuss how these pieces of evidence established the requisites for registration. Thus, for the proper resolution of the issues and arguments raised herein, it becomes necessary for the present application to be scrutinized based

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[33] *Espiritu v. Republic*, G.R. No. 219070, 21 June 2017.

on the requirements of the provisions of Sections 14 (1) and (2) of P.D. No. 1529.

Registration under Section 14(1) of P.D. No. 1529

Under Section 14(1), applicants for registration of title must sufficiently establish the following requisites: *first*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and *third*, that the possession is under a *bona fide* claim of ownership since 12 June 1945, or earlier.[34]

The first requisite of Section 14(1) entails only that the property sought to be registered be alienable and disposable at the time of the filing of the application for registration.[35] To prove that the land sought to be registered is alienable and disposable, the present rule is that the application for original registration must be accompanied by (1) a CENRO or PENRO Certification; and (2) a copy of the original classification approved by the DENR Secretary, and certified as true copy by the legal custodian of the official records.[36] This strict requirement for the registration of lands enunciated in *T.A.N. Properties* had been consistently applied and affirmed by the Court in a plethora of cases.[37]

In the present case, to prove that the subject land is alienable and disposable, RRDC presented a CENRO certification stating that the subject land is "alienable and disposable and not covered by any public land application." RRDC, however, failed to

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[34] *Republic v. Estate of Virginia Santos*, G.R. No. 218345, 07 December 2016.

[35] *Republic v. Roasa*, 752 Phil. 439, 447 (2015).

[36] *Republic v. De Guzman Vda. de Joson*, 728 Phil. 550, 563 (2014).

[37] *Republic v. Alora*, 762 Phil. 695, 704 (2015); *Republic v. Sps. Castuera*, 750 Phil. 884, 890-891 (2015); *Republic v. Lualhati*, 757 Phil. 119, 131 (2015); *Republic v. Sese*, 735 Phil. 108, 121 (2014).

present a certified true copy of the original classification approved by the DENR Secretary declaring the subject land alienable and disposable. Clearly, the evidence presented by RRDC falls short of the requirements in *T.A.N. Properties*. Thus, the trial and appellate courts erred when they ruled that the subject land is alienable and disposable part of the public domain and susceptible to original registration.

Furthermore, RRDC also failed to prove that it and its individual predecessors-in-interest sufficiently complied with the required period and nature of possession.

An applicant for land registration must exhibit that it and its predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the land under a *bona fide* claim of ownership since 12 June 1945 or earlier. It has been held that possession is open when it is patent, visible, apparent, notorious, and not clandestine; it is continuous when uninterrupted, unbroken, and not intermittent or occasional; it is exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous, that it is generally known and talked of by the public or the people in the neighborhood.[38]

In *Republic vs. Remman Enterprises, Inc.*,[39] the Court held that for purposes of land registration under Section 14(1) of P.D. No. 1529, proof of specific acts of ownership must be presented to substantiate the claim of open, continuous, exclusive, and notorious possession and occupation of the land subject of the application. Applicants for land registration cannot just offer general statements which are mere conclusions of law rather than factual evidence of possession. Actual possession is in the manifestation of acts of dominion over it of such nature as a party would actually exercise over his own property.

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[38] *Republic vs. Gielczyk*, 720 Phil. 385, 403 (2013).

[39] 727 Phil. 608, 625 (2014).

In *Republic v. Gielczyk*, the Court explained that "possession" and "occupation" are not synonymous to each other. Possession is broader than occupation because it includes constructive possession; whereas occupation delimits the all-encompassing effect of constructive possession. Thus, taken together with the words open, continuous, exclusive, and notorious, the word occupation means that for one's title to land to be judicially recognized, his possession of the land must not be mere fiction.[40]

In this case, aside from the deeds of absolute sale covering the subject land which were executed prior to 12 June 1945, RRDC did not present any evidence which would show that its predecessors-in-interest actually exercised acts of dominion over the subject land even before the cut-off period. As such, RRDC failed to prove that its possession of the land, or at the very least, its individual predecessors-in-interest's possession over the same was not mere fiction.

Neither would the tax declarations presented by RRDC suffice to prove the required possession. To recall, the earliest of these tax declarations dates back only to 1948. Clearly, the required possession and occupation since 12 June 1945 or earlier, was not demonstrated.

From the foregoing, it is clear that RRDC failed to prove that its individual predecessors-in-interest had been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership since 12 June 1945 or earlier; and that said possession and occupation converted the subject land into a private property by operation of law. Consequently, the subject land cannot be registered in the name of RRDC under Section 14(1) of P.D. No. 1529.

Requirements under Section 14(2) of P.D. No. 1529

RRDC also failed to establish compliance with the requirements for registration under Section 14(2).

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[40] *Supra* note 38 at 402.

In *Heirs of Mario Malabanan vs. Republic (Malabanan)*,[41] the Court explained that when Section 14(2) of P.D. No. 1529 provides that persons "who have acquired ownership over private lands by prescription under the provisions of existing laws," it unmistakably refers to the Civil Code as a valid basis for the registration of lands. The Civil Code is the only existing law that specifically allows the acquisition by prescription of private lands, including patrimonial property belonging to the State.

The Civil Code makes it clear that patrimonial property of the State may be acquired by private persons through prescription. This is brought about by Article 1113, which states that all things which are within the commerce of man are susceptible to prescription, and that property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.[42]

Nonetheless, this does not necessarily mean that when a piece of land is declared alienable and disposable part of the public domain, it can already be acquired by prescription. In *Malabanan*, this Court ruled that declaration of alienability and disposability is not enough — there must be an express declaration that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial, thus:

"(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. **There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run**."[43] [emphasis supplied]

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[41] 605 Phil. 244, 274 (2009).

[42] *Id*.

[43] *Id*. at 285.

The classification of the land as alienable and disposable land of the public domain does not change its status as property of the public dominion under Article 420(2) of the Civil Code. As such, said land, although classified as alienable and disposable, is insusceptible to acquisition by prescription.[44]

In this case, RRDC did not present any evidence which would show that the subject land was expressly declared as no longer intended for public service or the development of the national wealth, or that the property has been converted into patrimonial. Hence, it failed to prove that acquisitive prescription has begun to run against the State, and that it has acquired title to the subject land by virtue thereof.

In fine, RRDC failed to satisfy all the requisites for registration of title to land under either Sections 14(1) or (2) of P.D. No. 1529. RRDC also failed to establish that when it or P.N. Roa Enterprises, Inc., also a corporation and its direct predecessor-in-interest, acquired the subject land, it had already been converted to private property, thus, the prohibition on the corporation's acquisition of agricultural lands of the public domain under Section 3, Article XII of the 1987 Constitution applies. RRDC's application for original registration of imperfect title over Lot No. 3009 must perforce be denied.

WHEREFORE, the instant petition is **GRANTED.** The 10 March 2009 Decision and 3 December 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 00651, which affirmed the 7 November 2003 Decision of the Regional Trial Court, Branch 41, Cagayan de Oro City, in LRC Case No. N-2000-084, are hereby **REVERSED** and **SET ASIDE.** The Application for Registration of Lot No. 3009 filed by Rovency Realty and Development Corporation is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

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[44] *Supra* note 34.

THIRD DIVISION

[G.R. No. 192971. January 10, 2018]

FLORO MERCENE, *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; MATERIAL AVERMENTS NOT SPECIFICALLY DENIED ARE DEEMED ADMITTED, WHILE CONCLUSIONS OF FACT AND LAW STATED IN THE COMPLAINT ARE NOT DEEMED ADMITTED BY THE FAILURE TO MAKE A SPECIFIC DENIAL.— Mercene insists that GSIS had judicially admitted that its right to foreclose the mortgage had prescribed. He assails that GSIS failed to specifically deny the allegations in his complaint, particularly paragraphs 11.1 and 11.2 x x x. The Court agrees with Mercene that material averments not specifically denied are deemed admitted. Nonetheless, his conclusion that GSIS judicially admitted that its right to foreclose had prescribed is erroneous. It must be remembered that conclusions of fact and law stated in the complaint are not deemed admitted by the failure to make a specific denial. This is true considering that only ultimate facts must be alleged in any pleading and only material allegation of facts need to be specifically denied.

2. ID.; ID.; ID.; A CONCLUSION OF LAW IS DEFINED AS A LEGAL INFERENCE ON A QUESTION OF LAW MADE AS A RESULT OF A FACTUAL SHOWING WHERE NO FURTHER EVIDENCE IS REQUIRED; LABELLING AN OBLIGATION TO HAVE PRESCRIBED WITHOUT SPECIFYING THE CIRCUMSTANCES BEHIND IT IS A MERE CONCLUSION OF LAW.— A conclusion of law is a legal inference on a question of law made as a result of a factual showing where no further evidence is required. The allegation of prescription in Mercene's complaint is a mere conclusion of law. In *Abad v. Court of First Instance of Pangasinan*, the Court ruled that the characterization of a contract as void or voidable is a conclusion of law, to wit: A pleading should state the ultimate facts essential to the rights of action

or defense asserted, as distinguished from mere conclusions of fact, or conclusions of law. General allegations that a contract is valid or legal, or is just, fair and reasonable, are mere conclusions of law. Likewise, allegations that a contract is void, voidable, invalid, illegal, *ultra vires*, or against public policy, without stating facts showing its invalidity, are mere conclusions of law. In the same vein, labelling an obligation to have prescribed without specifying the circumstances behind it is a mere conclusion of law. x x x, the fact that GSIS had not instituted any action within ten (10) years after the loan had been contracted is insufficient to hold that prescription had set in. Thus, even if GSIS' denial would not be considered as a specific denial, only the fact that GSIS had not commenced any action, would be deemed admitted at the most. This is true considering that the circumstances to establish prescription against GSIS have not been alleged with particularity.

3. ID.; ID.; CAUSE OF ACTION; ELEMENTS.— In order for cause of action to arise, the following elements must be present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of obligation of the defendant to the plaintiff.

4. ID.; ID.; ID.; PRESCRIPTION OF THE RIGHT TO FORECLOSE MORTGAGES COMMENCES FROM THE TIME THE OBLIGATION BECOMES DUE AND DEMANDABLE IN CASES WHERE DEMAND IS UNNECESSARY, OR UPON DEMAND BY THE CREDITOR/MORTGAGOR, AS THE CASE MAY BE, AND NOT FROM THE DATE OF EXECUTION OF THE CONTRACT.— In *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al*., the Court clarified that prescription runs in mortgage contract from the time the cause of action arose and not from the time of its execution x x x. In *Maybank Philippines, Inc. v. Spouses Tarrosa*, the Court explained that the right to foreclose prescribes after ten (10) years from the time a demand for payment is made, or when then loan becomes due and demandable in cases where demand is unnecessary x x x. Thus, applying the pronouncements of the Court regarding prescription on the right to foreclose mortgages, the Court finds

that the CA did not err in concluding that Mercene's complaint failed to state a cause of action. It is undisputed that his complaint merely stated the dates when the loan was contracted and when the mortgages were annotated on the title of the lot used as a security. Conspicuously lacking were allegations concerning: the maturity date of the loan contracted and whether demand was necessary under the terms and conditions of the loan. As such, the RTC erred in ruling that GSIS' right to foreclose had prescribed because the allegations in Mercene's complaint were insufficient to establish prescription against GSIS. The only information the trial court had were the dates of the execution of the loan, and the annotation of the mortgages on the title. As elucidated in the above-mentioned decisions, prescription of the right to foreclose mortgages is not reckoned from the date of execution of the contract. Rather, prescription commences from the time the cause of action accrues; in other words, from the time the obligation becomes due and demandable, or upon demand by the creditor/mortgagor, as the case may be.

APPEARANCES OF COUNSEL

Jonathan Polines for petitioner.
Estrella Elamparo-Tayag 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 29 April 2010 Decision[1] and 20 July 2010 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 86615 which reversed the 15 September 2005 Decision[3] of the Regional Trial Court, Branch 220, Quezon City *(RTC)*.

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[1] *Rollo*, pp. 33-41. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Amy C. Lazaro-Javier.

[2] *Id*. at 54-55.

[3] *Id*. at 83-87. Penned by Judge Jose G. Paneda.

THE FACTS

On 19 January 1965, petitioner Floro Mercene *(Mercene)* obtained a loan from respondent Government Service Insurance System *(GSIS)* in the amount of ₱29,500.00. As security, a real estate mortgage was executed over Mercene's property in Quezon City, registered under Transfer Certificate of Title No. 90535. The mortgage was registered and annotated on the title on 24 March 1965.[4]

On 14 May 1968, Mercene contracted another loan with GSIS for the amount of ₱14,500.00. The loan was likewise secured by a real estate mortgage on the same parcel of land. The following day, the loan was registered and duly annotated on the title.[5]

On 11 June 2004, Mercene opted to file a complaint for Quieting of Title[6] against GSIS. He alleged that: since 1968 until the time the complaint was filed, GSIS never exercised its rights as a mortgagee; the real estate mortgage over his property constituted a cloud on the title; GSIS' right to foreclose had prescribed. In its answer,[7] GSIS assailed that the complaint failed to state a cause of action and that prescription does not run against it because it is a government entity.

During the pre-trial conference, Mercene manifested that he would file a motion for judgment on the pleadings. There being no objection, the RTC granted the motion for judgment on the pleadings.[8]

The RTC Decision

In its 15 September 2005 decision, the RTC granted Mercene's complaint and ordered the cancellation of the mortgages

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[4] *Id*. at 34.

[5] *Id*.

[6] *Id*. at 56-68.

[7] RTC records, pp. 18-21.

[8] *Rollo*, pp. 16-17.

annotated on the title. It ruled that the real estate mortgages annotated on the title constituted a cloud thereto, because the annotations appeared to be valid but was ineffective and prejudicial to the title. The trial court opined that GSIS' right as a mortgagee had prescribed because more than ten (10) years had lapsed from the time the cause of action had accrued. The RTC stated that prescription ran against GSIS because it is a juridical person with a separate personality, and with the power to sue and be sued. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1) Declaring the Real Estate Mortgage dated January 19, 1965, registered on March 24, 1965 and Real Estate Mortgage dated May 14, 1965 registered on May 15, 1968, both annotated at the back of Transfer Certificate of Title No. 90435 of the Registry of Deeds of Quezon City, registered in the name of plaintiff Floro Mercene married to Felisa Mercene, to be ineffective.
>
> 2) Ordering the Registry of Deeds of Quezon City to cancel the following entries annotated on the subject title 1) Entry No. 4148/90535: mortgage to GSIS and; 2) Entry No. 4815/ 90535: mortgage to GSIS.
>
> 3) The other claims and counter-claims are hereby denied for lack of merit.[9]

Aggrieved, GSIS appealed before the CA.

The CA Ruling

In its 30 January 2015 decision, the CA reversed the RTC decision. The appellate court posited that the trial court erred in declaring that GSIS' right to foreclose the mortgaged properties had prescribed. It highlighted that Mercene's complaint neither alleged the maturity date of the loans, nor the fact that a demand for payment was made. The CA explained that prescription commences only upon the accrual of the cause of action, and that a cause of action in a written contract accrues only when there is an actual breach or violation. Thus, the appellate court

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[9] *Id*. at 86-87.

surmised that no prescription had set in against GSIS because it has not made a demand to Mercene. It ruled:

> WHEREFORE, the appeal is GRANTED. The decision appealed from is REVERSED and SET ASIDE. The complaint for Quieting of Title is hereby DISMISSED.[10]

Mercene moved for reconsideration, but the same was denied by the CA in its assailed 7 April 2011 resolution.

Hence, this present petition raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS ERRED IN CONSIDERING ISSUES NOT RAISED BEFORE THE TRIAL COURT;

II

WHETHER THE COURT OF APPEALS ERRED IN DISREGARDING THE JUDICIAL ADMISSION ALLEGEDLY MADE BY GSIS; AND

III

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE REAL ESTATE MORTGAGES HAD YET TO PRESCRIBE.

THE COURTS RULING

The petition has no merit.

Related issues addressed by the trial courts

Mercene assails the CA decision for entertaining issues that were not addressed by the trial court. He claims that for the first time on appeal, GSIS raised the issue on whether the loans were still effective in view of his nonpayment. A reading of the CA decision, however, reveals that the appellate court did

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[10] *Id*. at 40.

not dwell on the issue of nonpayment, but instead ruled that prescription had not commenced because the cause of action had not yet accrued. Hence, it concluded that the complaint failed to state a cause of action. The appellate court did not focus on the question of payment precisely because it was raised for the first time on appeal. It is noteworthy that, in its answer, GSIS raised the affirmative defense that Mercene's complaint failed to state a cause of action.

Only ultimate facts need be specifically denied

Further, Mercene insists that GSIS had judicially admitted that its right to foreclose the mortgage had prescribed. He assails that GSIS failed to specifically deny the allegations in his complaint, particularly paragraphs 11.1 and 11.2 which read:

> 11.1. The right of the defendant GSIS, to institute the necessary action in court, to enforce its right as a mortgagee, under Real Estate Mortgages dated January 19, 1965 and May 14, 1968, respectively, by filing a complaint for judicial foreclosure of Real Estate Mortgage, with the Regional Trial Court of Quezon City, against the plaintiff, as the mortgagor, pursuant to Rule 68 of the 1997 Rules of Civil Procedures (Rules, for brevity); or by filing a petition for extra-judicial foreclosure of real estate mortgage, under Act. 3135, as amended, with the Sheriff, or with the Notary Public, of the place where the subject property is situated, for the purpose of collecting the loan secured by the said real estate mortgages, or in lieu thereof, for the purpose of consolidating title to the parcel of land xxx in the name of the defendant GSIS, has already prescribed, after ten (10) years from May 15, 1968. More particularly, since May 15, 1968, up to the present, more than thirty-five (35) years have already elapsed, without the mortgagee defendant GSIS, having instituted a mortgage action[s] against the herein plaintiff-mortgagor.
>
> x x x x x x x x x
>
> 11.2. Since the defendant GSIS has not brought any action to foreclose either the first or the second real estate mortgage on the subject real property, so as to collect the loan secured by the said real estate mortgages, or in lieu thereof, to consolidate title to the said parcel of land, covered by the documents entitled, first and second real estate mortgages, in the name of the defendant GSIS,

notwithstanding the lapse of ten (10) years from the time the cause of action accrued, either then (10) years after May 15, 1968, or after the alleged violation by the plaintiff of the terms and conditions of his real estate mortgages, therefore, the said defendant GSIS, has lost its aforesaid mortgagee's right, not only by virtue of Article 1142, N.C.C., but also under Article 476, N.C.C., which expressly provides that there may also be an action to quiet title, or remove a cloud therefrom, when the contract, instrument or other obligation has been extinguished or has terminated, or has been barred by extinctive prescription;[11]

The Court agrees with Mercene that material averments not specifically denied are deemed admitted.[12] Nonetheless, his conclusion that GSIS judicially admitted that its right to foreclose had prescribed is erroneous. It must be remembered that conclusions of fact and law stated in the complaint are not deemed admitted by the failure to make a specific denial.[13] This is true considering that only ultimate facts must be alleged in any pleading and only material allegation of facts need to be specifically denied.[14]

A conclusion of law is a legal inference on a question of law made as a result of a factual showing where no further evidence is required.[15] The allegation of prescription in Mercene's complaint is a mere conclusion of law. In *Abad v. Court of First Instance of Pangasinan*,[16] the Court ruled that the characterization of a contract as void or voidable is a conclusion of law, to wit:

A pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished from mere conclusions

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[11] RTC records, pp. 5-7.

[12] *Cua v. Wallem Philippines Shipping, Inc.*, 690 Phil. 491, 501 (2012).

[13] Riano, *CIVIL PROCEDURES (The Bar Lecture Series)* Volume I (2011), p. 317.

[14] Rules of Court, Rule 8, Sections 1 and 10.

[15] *BLACK'S LAW DICTIONARY* 9th Edition.

[16] 283 Phil. 500, 515 (1992).

of fact, or conclusions of law. General allegations that a contract is valid or legal, or is just, fair and reasonable, are mere conclusions of law. Likewise, allegations that a contract is void, voidable, invalid, illegal, *ultra vires*, or against public policy, without stating facts showing its invalidity, are mere conclusions of law.

In the same vein, labelling an obligation to have prescribed without specifying the circumstances behind it is a mere conclusion of law. As would be discussed further, the fact that GSIS had not instituted any action within ten (10) years after the loan had been contracted is insufficient to hold that prescription had set in. Thus, even if GSIS' denial would not be considered as a specific denial, only the fact that GSIS had not commenced any action, would be deemed admitted at the most. This is true considering that the circumstances to establish prescription against GSIS have not been alleged with particularity.

Commencement of the prescriptive period for real estate mortgages material in determining cause of action

In its answer, GSIS raised the affirmative defense, among others, that the complaint failed to state a cause of action. In turn, the CA ruled that Mercene's complaint did not state a cause of action because the maturity date of the loans, or the demand for the satisfaction of the obligation, was never alleged.

In order for cause of action to arise, the following elements must be present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of obligation of the defendant to the plaintiff.[17]

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[17] *Philippine Long Distance Telephone Company v. Pingol*, 644 Phil. 675, 683 (2010).

In *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*,[18] the Court clarified that prescription runs in mortgage contract from the time the cause of action arose and not from the time of its execution, to wit:

> The prescriptive period neither runs from the date of the execution of a contract nor does the prescriptive period necessarily run on the date when the loan becomes due and demandable. Prescriptive period runs from the date of demand, subject to certain exceptions.
>
> In other words, ten (10) years may lapse from the date of the execution of contract, without barring a cause of action on the mortgage when there is a gap between the period of execution of the contract and the due date or between the due date and the demand date in cases when demand is necessary.
>
> The mortgage contracts in this case were executed by Saturnino Petalcorin in 1982. The maturity dates of FISLAI's loans were repeatedly extended until the loans became due and demandable only in 1990. Respondent informed petitioner of its decision to foreclose its properties and demanded payment in 1999.
>
> **The running of the prescriptive period of respondent's action on the mortgages did not start when it executed the mortgage contracts with Saturnino Petalcorin in 1982.**
>
> The prescriptive period for filing an action may run either (1) from 1990 when the loan became due, if the obligation was covered by the exceptions under Article 1169 of the Civil Code; (2) or from 1999 when respondent demanded payment, if the obligation was not covered by the exceptions under Article 1169[19] of the Civil Code. [emphasis supplied]

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[18] G.R. Nos. 194964-65, January 11, 2016, 778 SCRA 458, 483-484.

[19] Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. However, the demand by the creditor shall not be necessary in order that delay may exist:

1) When the obligation or the law expressly so declares; or
2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

In *Maybank Philippines, Inc. v. Spouses Tarrosa*,[20] the Court explained that the right to foreclose prescribes after ten (10) years from the time a demand for payment is made, or when then loan becomes due and demandable in cases where demand is unnecessary, *viz:*

> **An action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues, *i.e.,* when the mortgagor defaults in the payment of his obligation to the mortgagee; otherwise, it will be barred by prescription and the mortgagee will lose his rights under the mortgage**. However, mere delinquency in payment does not necessarily mean delay in the legal concept. To be in default is different from mere delay in the grammatical sense, because it involves the beginning of a special condition or status which has its own peculiar effects or results.
>
> In order that the debtor may be in default, it is necessary that: *(a)* the obligation be demandable and already liquidated; *(b)* the debtor delays performance; and *(c)* the creditor requires the performance judicially or extrajudicially, unless demand is not necessary — i.e., when there is an express stipulation to that effect; where the law so provides; when the period is the controlling motive or the principal inducement for the creation of the obligation; and where demand would be useless. Moreover, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence. Thus, **it is only when demand to pay is unnecessary in case of the aforementioned circumstances, or when required, such demand is made and subsequently refused that the mortgagor can be considered in default and the mortgagee obtains the right to file an action to collect the debt or foreclose the mortgage**.

Thus, applying the pronouncements of the Court regarding prescription on the right to foreclose mortgages, the Court finds that the CA did not err in concluding that Mercene's complaint failed to state a cause of action. It is undisputed that his complaint

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3) When the demand would be useless, as when the obligor has rendered it beyond his power to perform.

[20] 771 Phil. 423, 428-429 (2015).

merely stated the dates when the loan was contracted and when the mortgages were annotated on the title of the lot used as a security. Conspicuously lacking were allegations concerning: the maturity date of the loan contracted and whether demand was necessary under the terms and conditions of the loan.

As such, the RTC erred in ruling that GSIS' right to foreclose had prescribed because the allegations in Mercene's complaint were insufficient to establish prescription against GSIS. The only information the trial court had were the dates of the execution of the loan, and the annotation of the mortgages on the title. As elucidated in the above-mentioned decisions, prescription of the right to foreclose mortgages is not reckoned from the date of execution of the contract. Rather, prescription commences from the time the cause of action accrues; in other words, from the time the obligation becomes due and demandable, or upon demand by the creditor/mortgagor, as the case may be.

In addition, there was no judicial admission on the part of GSIS with regard to prescription because treating the obligation as prescribed, was merely a conclusion of law. It would have been different if Mercene's complaint alleged details necessary to determine when GSIS' right to foreclose arose, i.e., date of maturity and whether demand was necessary.

WHEREFORE, the petition is **DENIED**. The 29 April 2010 Decision and 20 July 2010 Resolution of the Court of Appeals *(CA)* in CA-G.R. CV No. 86615 are **AFFIRMED** *in toto*.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 194214. January 10, 2018]

MARILOU PUNONGBAYAN-VISITACION, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and CARMELITA P. PUNONGBAYAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES; REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE, NOT ALTERNATIVE OR SUCCESSIVE; HENCE, *CERTIORARI* IS NOT AND CANNOT BE A SUBSTITUTE FOR AN APPEAL, ESPECIALLY IF ONE'S OWN NEGLIGENCE OR ERROR IN ONE'S CHOICE OF REMEDY OCCASIONED SUCH LOSS OR LAPSE.— In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, the Court had extensively differentiated an appeal from *certiorari*. Thus, it is settled that appeal and *certiorari* are two different remedies, which are generally not interchangeable, available to litigants. In *Butuan Development Corporation v. CA*, the Court held that the special civil action of *certiorari* is not a substitute for an appeal: A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

2. ID.; ID.; ID.; AN APPEAL AND A *CERTIORARI* ARE NOT INTERCHANGEABLE; EXCEPTIONS; PETITION FOR *CERTIORARI* TREATED AS AN APPEAL IN THE INTEREST OF SUBSTANTIAL JUSTICE IN CASE AT

BAR.— [T]he general rule that an appeal and a *certiorari* are not interchangeable admits exceptions. In *Department of Education v. Cuanan*, the Court exercised liberality and considered the petition for *certiorari* filed therein as an appeal: The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. **Recourse to a petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.** x xx. In the case at bar, the Court finds that the interest of substantial justice warrants the relaxation of the rules and treats Visitacion's petition for *certiorari* as an appeal. This is especially true considering that the same was filed within the reglementary period to file an appeal. It is noteworthy that in the litany of cases where the Court did not consider *certiorari* as an appeal, the former remedy was filed beyond the 15-day period to interpose an appeal.

3. **ID.; CIVIL PROCEDURE; APPEALS; ISSUES RAISED FOR THE FIRST TIME ON APPEAL WILL NOT BE ENTERTAINED BECAUSE TO DO SO WOULD BE ANATHEMA TO THE RUDIMENTS OF FAIRNESS AND DUE PROCESS; EXCEPTIONS; PRESENT.—** It is axiomatic that issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process. Nonetheless, there are also exceptions to the said rule. In *Del Rosario v. Bonga*, the Court explained that there are instances that issues raised for the first time on appeal may be entertained, viz: Indeed, there are exceptions to the aforecited rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised

present a matter of public policy. Further, the matters raised in the present petition warrant the relaxation of the rules concerning issues raised for the first time on appeal especially considering the jurisprudential developments since the RTC decision and the needs for substantial justice. In liberally applying the rules in the case at bar, the Court does not wish to brush aside its importance; rather, it emphasizes the nature of the said rules as tools to facilitate the attainment of substantial justice.

4. CRIMINAL LAW; REVISED PENAL CODE; LIBEL; ADMINISTRATIVE CIRCULAR (A.C.) NO. 08-08; A FINE ALONE IS GENERALLY ACCEPTABLE AS A PENALTY FOR LIBEL, BUT THE COURTS MAY IMPOSE IMPRISONMENT AS A PENALTY IF, UNDER THE CIRCUMSTANCES, A FINE IS INSUFFICIENT TO MEET THE DEMANDS OF SUBSTANTIAL JUSTICE OR WOULD DEPRECIATE THE SERIOUSNESS OF THE OFFENSE; PENALTY OF FINE, INSTEAD OF IMPRISONMENT, IMPOSED IN THE CASE AT BAR.— Relevant is Administrative Circular (*A.C.*) No. 08-08 which provides for guidelines in the imposition of penalties in libel cases. xxx. A review of A.C. No. 08-08 reveals that it was issued to embody the Court's preference, as espoused in previous jurisprudence, to impose only a fine for conviction of libel. The said circular, however, does not remove the discretion of courts to sentence to imprisonment the accused in libel cases should the circumstances warrant. In other words, judicial policy states a fine alone is generally acceptable as a penalty for libel. Nevertheless, the courts may impose imprisonment as a penalty if, under the circumstances, a fine is insufficient to meet the demands of substantial justice or would depreciate the seriousness of the offense.Thus, pursuant to the policy in A.C. No. 08-08, the Court finds that the imposition of a fine, instead of imprisonment, is sufficient in the present case. It is noteworthy that Visitacion is a first-time offender with no other criminal record under her name. Further, the degree of publication is not that widespread considering that the libelous letter was circulated only to a few individuals.

5. CIVIL LAW; DAMAGES; MORAL DAMAGES; MORAL DAMAGES CAN BE RECOVERED IN CASES OF LIBEL OR SLANDER.— Moral damages is the amount awarded to a person to have suffered physical suffering, mental anguish,

fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. It is given to ease the victim's grief and suffering, and should reasonably approximate the extent of the hurt caused and the gravity of the wrong done. The RTC found Punongbayan entitled to moral damages because Visitacion's libelous act caused her to suffer ridicule, sleepless nights, and moral damage. In *Tulfo v. People*, the Court explained that moral damages can be recovered in cases of libel or slander x x x.

6. ID.; ID.; ID.; FOR MORAL DAMAGES TO BE AWARDED, PROOF OF PECUNIARY LOSS IS UNNECESSARY BUT THE FACTUAL BASIS OF DAMAGES AND ITS CAUSAL CONNECTION TO THE DEFENDANT'S ACTS MUST BE SATISFACTORILY ESTABLISHED; PETITIONER IS ENTITLED TO AN AWARD OF MORAL DAMAGES.— For moral damages to be awarded, proof of pecuniary loss is unnecessary but the factual basis of damages and its causal connection to the defendant's acts must be satisfactorily established. In short, the complainant's injury should have been due to the actions of the offending party. Here, the evidence on record justify the award of moral damages to Punongbayan. She was a high-ranking officer of an educational institution whom Visitacion accused of criminal or improper conduct. Such accusations were not made known only to the victim but also to other persons such as her staff and employees of a bank the school had transactions with. Thus, Punongbayan's reputation was besmirched and she was humiliated before her subordinates and other people. Clearly, her reputation was tarnished after being accused of unsavory and questionable behavior, primarily attributable to Visitacion's act of circulating the letter imputing wrongdoing of Punongbayan.

7. ID.; ID.; ID.; MORAL DAMAGES ARE REASONABLE RECOMPENSE TO THE INJURY SUFFERED BY THE ONE CLAIMING IT, AND WERE NOT MEANT TO PUNISH THE OFFENDER NOR ENRICH THE OFFENDED PARTY; AWARD OF MORAL DAMAGES REDUCED IN CASE AT BAR.— In *Yuchengco v. The Manila Chronicle Publishing Corporation*, the Court explained that in awarding moral damages, the surrounding circumstances are controlling factors but should always be commensurate to the perceived injury: x x x. In *Philippine Journalists, Inc. (People's*

> *Journal) v. Thoenen*, citing *Guevarra v. Almario*, We noted that the **damages in a libel case must depend upon the facts of the particular case and the sound discretion of the court, although appellate courts were "more likely to reduce damages for libel than to increase them."** x x x.**Moral damages are not a bonanza. They are given to ease the defendant's grief and suffering. Moral damages should be reasonably approximate to the extent of the hurt caused and the gravity of the wrong done.** x x x. With this in mind, the Court finds the award of ₱3,000,000.00 as moral damages to be unwarranted. Such exorbitant amount is contrary to the essence of moral damages, which is simply a reasonable recompense to the injury suffered by the one claiming it. It was neither meant to punish the offender nor enrich the offended party. Thus, to conform with the present circumstances, the moral damages awarded should be equitably reduced to ₱500,000.00.

APPEARANCES OF COUNSEL

Calderon Davide Trinidad Tolentino and Castillo for petitioner.

Office of the Solicitor General for public respondent.

Jose Mari D. Fabrigar for private respondent.

Manuel P. Punzalan, collaborating counsel for private respondent.

D E C I S I O N

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 30 January 2009 Decision[1] and 18 October 2010 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 77040

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[1] *Rollo*, pp. 23-32; penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson.

[2] *Id*. at 34-36; penned by Associate Justice Rodrigo F. Lim Jr., and concurred in by Associate Justices Angelita A. Gacutan and Nina G. Antonio-Valenzuela.

which affirmed the 12 May 2003 Judgment[3] of the Regional Trial Court, Branch 5, Iligan City *(RTC)*.

THE FACTS

Petitioner Marilou Punongbayan-Visitacion *(Visitacion)* was the corporate secretary and assistant treasurer of St. Peter's College of Iligan City. On 26 July 1999, acting on the advice of her counsel, she wrote a letter to private respondent Carmelita P. Punongbayan *(Punongbayan)*. The correspondence substantially read:

> Upon advise of our legal counsel which I had been instructed to hereunder quote this should answer the concerns you embodied in the July 19 memo to Security Bank as well as the July 23, memo to the office of the treasurer to wit:
>
> A. You had been preening (sic) as the school's validly appointed/designated president when such is not the fact. The validity of the alleged March 10 meeting of the management is still the subject of an on-going determination by the SEC and your misrepresentation as the school's President has no basis in law and in fact.
>
> B. Even as Officer-in-Charge, your actions on school matters need prior consultation and ratification of the management committees. No such consultation/ratification was had on these matters.
>
> C. You KNOWINGLY COMMITTED ACTS OF FALSIFICATION when you misrepresented to the bank that your signature is essentially required in disbursements above ₱5,000.00. Your inordinate desire to poke into the school's finances could be the by-product of an erroneous advice from some defrocked members of the committee. Otherwise, there would have been need to calibrate amounts in the checks vis-à-vis the signatories thereto.[4]

Insulted, Punongbayan filed a Complaint for Libel against Visitacion. On 25 October 1999, the Office of the City Prosecutor

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[3] *Id*. at 37-53; penned by Judge Maximino Magno-Libre.

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

of Iligan City issued a resolution approving the filing of a case for libel against Visitacion.[5]

The RTC Ruling

In its 12 May 2003 judgment, the RTC convicted Visitacion of libel. The trial court disregarded Visitacion's defense of good faith finding that her act of writing the disputed letter was motivated by hostility or malice. It opined that if it was true that Visitacion merely wanted to safeguard the corporation funds, her resort to an uncivil and confrontational manner was unwarranted. The RTC highlighted that the letter belittled, disparaged, and willfully hurt Punongbayan's sensibilities. It ruled:

> WHEREFORE, premises considered, the Court perceives that the evidence on record is not only adequate to prove the guilt of accused beyond reasonable doubt, but overwhelming that she has committed the crime of libel, hence judgment of conviction is hereby rendered, the terms of which provide:
>
> a. Since there is no aggravating nor mitigating circumstance accused is condemned to suffer a straight prison term of one (1) year; and
>
> b. Considering that the malicious imputation of a crime referred to in the libelous letter had caused private complainant to be subjected to public contempt and ridicule, and this had caused the latter to underwent (sic) sleepless nights and moral sufferings, additionally, and in accordance with Article 104 of the Revised Penal Code, accused is adjudged to pay by way of civil liability, moral damages to the tune of Three Million Pesos (₱3,000,000.00), and the costs of the suit.[6]

Aggrieved, Visitacion filed a petition for certiorari with a prayer for Temporary Restraining Order and/or Writ of Preliminary injunction before the CA.

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[5] *Id*. at 7.

[6] *Id*. at 53.

The CA Ruling

In its 30 January 2009, the CA dismissed Visitacion's petition. The appellate court posited that the promulgation of the judgment despite Visitacion's absence was proper. It explained that under Rule 120, Section 6 of the Rules of Court, trial *in absentia* is permitted should the accused fail to appear during the date of promulgation despite due notice. The CA noted that Visitacion was notified of the scheduled promulgation through her previous counsel and was in fact able to file a motion to defer promulgation of judgment. Further, the appellate court pointed out that the sheriff visited Visitacion at her house on several occasions but she was conveniently not around during those times. Thus, it believed that her excuse for her absence was specious.

In addition, the CA expounded that Visitacion should have filed an appeal and not a petition for certiorari. The appellate court opined that it should have been through an appeal where she could have raised the issues in the present petition for certiorari. It noted that at the time Visitacion filed her petition, the period to file an appeal had yet to expire. Thus, the CA elucidated that the use of an erroneous mode of appeal is cause for dismissal of the petition for certiorari because it is not a substitute for a lost appeal. It ruled:

ACCORDINGLY, the Petition is **DISMISSED**.[7]

Visitacion moved for reconsideration but it was denied by the CA in its 18 October 2010 resolution.

Hence, this present petition raising the following:

ISSUES

I

[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW WHEN IT, IN EFFECT, BRUSHED ASIDE PETITIONER'S ALTERNATIVE PLEA FOR THE APPLICATION OF PREFERENCE OF FINE OVER IMPRISONMENT AS PENALTY FOR LIBEL;

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[7] *Id*. at 30.

II

[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW WHEN IT, IN EFFECT, AFFIRMED THE COURT A QUO'S IMPOSITION OF MORAL DAMAGES UPON PETITIONER IN THE EXCESSIVE AMOUNT OF THREE MILLION PESOS (₱3,000,000.00); AND

III

[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW IN NOT TREATING PETITIONER'S PETITION FOR CERTIORARI AS APPEAL, NOTWITHSTANDING THE FACT THAT SUCH PETITION WAS FILED WITHIN THE REGLEMENTARY PERIOD OF TIME TO FILE AN APPEAL AND DESPITE EXISTENCE OF VALID REASONS TO TREAT IT AS AN APPEAL.[8]

OUR RULING

Before proceeding to the merits of the case, we resolve certain procedural matters.

Petition for certiorari treated as an appeal

Visitacion assails that her petition for certiorari should have been treated as an appeal. On the other hand, both public and private respondents counter that the CA correctly dismissed Visitacion's petition for certiorari because it cannot be a substitute for a lost appeal and that a wrong mode of appeal is dismissible.

In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,[9] the Court had extensively differentiated an appeal from certiorari. Thus, it is settled that appeal and certiorari are two different remedies, which are generally not interchangeable, available to litigants. In *Butuan Development Corporation v. CA*,[10] the Court held that the special civil action of certiorari is not a substitute for an appeal:

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[8] *Id*. at 11.

[9] 479 Phil. 768, 779-782 (2004).

[10] G.R. No. 197358, 5 April 2017.

A party cannot substitute the special civil action of certiorari under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of certiorari. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.

Nevertheless, the general rule that an appeal and a certiorari are not interchangeable admits exceptions. In *Department of Education v. Cuanan*,[11] the Court exercised liberality and considered the petition for certiorari filed therein as an appeal:

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. **Recourse to a petition for certiorari under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.** As will be shown forthwith, exception (c) applies to the present case.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for certiorari, immediate recourse to the extraordinary remedy of certiorari is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object. These exceptions find application to Cuanan's petition for certiorari in the CA.

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[11] 594 Phil. 451 (2008).

At any rate, Cuanan's petition for certiorari before the CA could be treated as a petition for review, the petition having been filed on November 22, 2004, or thirteen (13) days from receipt on November 9, 2004 of CSC Resolution No. 041147, clearly **within the 15-day reglementary period for the filing of a petition for review. Such move would be in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice**.[12] (emphases and underslining supplied)

In the case at bar, the Court finds that the interest of substantial justice warrants the relaxation of the rules and treats Visitacion's petition for certiorari as an appeal. This is especially true considering that the same was filed within the reglementary period to file an appeal. It is noteworthy that in the litany of cases[13] where the Court did not consider certiorari as an appeal, the former remedy was filed beyond the 15-day period to interpose an appeal.

Issues raised for the first time on appeal; exceptions

The Office of the Solicitor General *(OSG)* argues that Visitacion merely raised the issue of the correctness of the penalties and liabilities imposed in her supplemental motion for reconsideration before the CA. It bewails that in her petition for certiorari, she merely questioned the propriety of the denial of her motion to inhibit before the RTC; the exclusion of some of her exhibits; and the alleged lack of personal service of the notice of the promulgation of judgment. Thus, the OSG laments that the issues put forth in Visitacion's petition for review before the Court were raised for the first time on appeal.

It is axiomatic that issues raised for the first time on appeal will not be entertained because to do so would be anathema to

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[12] *Id.* at 459-461.

[13] *Abadilla v. Spouses Obrero*, 775 Phil. 419 (2015); *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500 (2013); and *Spouses Dycoco v. CA*, 715 Phil. 550 (2013).

the rudiments of fairness and due process.[14] Nonetheless, there are also exceptions to the said rule. In *Del Rosario v. Bonga*,[15] the Court explained that there are instances that issues raised for the first time on appeal may be entertained, viz:

> Indeed, there are exceptions to the aforecited rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.

Further, the matters raised in the present petition warrant the relaxation of the rules concerning issues raised for the first time on appeal especially considering the jurisprudential developments since the RTC decision and the needs for substantial justice. In liberally applying the rules in the case at bar, the Court does not wish to brush aside its importance; rather, it emphasizes the nature of the said rules as tools to facilitate the attainment of substantial justice.[16]

Having settled procedural matters, the Court finds the petition meritorious.

Penalty imposed for libel

In her present petition for review on certiorari,[17] Visitacion no longer questions her conviction for the crime of libel. Rather, she assails the decisions of the courts *a quo* in sentencing her to one (1) year imprisonment and to pay Punongbayan ₱3,000,000.00 as moral damages.

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[14] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 753, 760 (2013).

[15] 402 Phil. 949 (2001).

[16] *Sumbilla v. Matrix Finance Corporation*, 762 Phil. 130, 137-138 (2015).

[17] *Rollo*, pp. 3-21A.

Relevant is Administrative Circular *(A.C.)* No. 08-08[18] which provides for guidelines in the imposition of penalties in libel cases. The pertinent portion thereof reads:

> The foregoing cases indicate an emergent rule of preference for the imposition of fine only rather than imprisonment in libel cases under the circumstances therein specified.
>
> All courts and judges concerned should henceforth take note of the foregoing rule of preference set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:
>
> 1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the Revised Penal Code;
>
> 2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;
>
> 3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provisions on subsidiary imprisonment.

A review of A.C. No. 08-08 reveals that it was issued to embody the Court's preference, as espoused in previous jurisprudence, to impose only a fine for conviction of libel. The said circular, however, does not remove the discretion of courts to sentence to imprisonment the accused in libel cases should the circumstances warrant. In other words, judicial policy states a fine alone is generally acceptable as a penalty for libel. Nevertheless, the courts may impose imprisonment as a penalty if, under the circumstances, a fine is insufficient to meet the demands of substantial justice or would depreciate the seriousness of the offense.

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[18] 25 January 2008.

Thus, pursuant to the policy in A.C. No. 08-08, the Court finds that the imposition of a fine, instead of imprisonment, is sufficient in the present case. It is noteworthy that Visitacion is a first-time offender with no other criminal record under her name. Further, the degree of publication is not that widespread considering that the libelous letter was circulated only to a few individuals.

Moral damages in libel cases

Visitacion likewise assails the award of moral damages. She does not question the basis for the award of moral damages per se but bewails the unjust amount set by the trial court.

Moral damages is the amount awarded to a person to have suffered physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.[19] It is given to ease the victim's grief and suffering, and should reasonably approximate the extent of the hurt caused and the gravity of the wrong done.[20]

The RTC found Punongbayan entitled to moral damages because Visitacion's libelous act caused her to suffer ridicule, sleepless nights, and moral damage. In *Tulfo v. People*,[21] the Court explained that moral damages can be recovered in cases of libel or slander, viz:

> It was the articles of Tulfo that caused injury to Atty. So, and for that Atty. So deserves the award of moral damages. **Justification for the award of moral damages is found in Art. 2219 (7) of the Civil Code, which states that moral damages may be recovered in cases of libel, slander, or any other form of defamation**. As the cases involved are criminal cases of libel, they fall squarely within the ambit of Art. 2219 (7).

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[19] Article 2217 of the Civil Code.

[20] *Mariano v. People*, 738 Phil. 448, 462 (2014).

[21] 587 Phil. 64 (2008).

Moral damages can be awarded even in the absence of actual or compensatory damages. The fact that no actual or compensatory damage was proven before the trial court does not adversely affect the offended party's right to recover moral damages.[22] (emphasis supplied)

For moral damages to be awarded, proof of pecuniary loss is unnecessary but the factual basis of damages and its causal connection to the defendant's acts must be satisfactorily established.[23] In short, the complainant's injury should have been due to the actions of the offending party.

Here, the evidence on record justify the award of moral damages to Punongbayan. She was a high-ranking officer of an educational institution whom Visitacion accused of criminal or improper conduct. Such accusations were not made known only to the victim but also to other persons such as her staff and employees of a bank the school had transactions with. Thus, Punongbayan's reputation was besmirched and she was humiliated before her subordinates and other people. Clearly, her reputation was tarnished after being accused of unsavory and questionable behavior, primarily attributable to Visitacion's act of circulating the letter imputing wrongdoing of Punongbayan.

In addition, it is noteworthy that in her present petition for review on certiorari before the Court, Visitacion simply challenges the unreasonable amount of moral damages awarded and prays for its reduction. By inference, she admits she had caused Punongbayan injury, thus, the issue remains to be the amount of moral damages warranted under the circumstances.

In *Yuchengco v. The Manila Chronicle Publishing Corporation*,[24] the Court explained that in awarding moral damages, the surrounding circumstances are controlling factors but should always be commensurate to the perceived injury:

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[22] *Id.* at 96-97.

[23] *Almendras, Jr. v. Almendras*, 750 Phil. 634, 644-645 (2015).

[24] 677 Phil. 422 (2011).

While there is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, the same should not be palpably and scandalously excessive. **Moral damages are not intended to impose a penalty to the wrongdoer, neither to enrich the claimant at the expense of the defendant.**

Even petitioner, in his Comment dated June 21, 2010, agree that moral damages "are not awarded in order to punish the respondents or to make the petitioner any richer than he already is, but to enable the latter to find some cure for the moral anguish and distress he has undergone by reason of the defamatory and damaging articles which the respondents wrote and published." Further, petitioner cites as sufficient basis for the award of damages the plain reason that he had to "go through the ordeal of defending himself everytime someone approached him to ask whether or not the statements in the defamatory article are true."

In *Philippine Journalists, Inc. (People's Journal) v. Thoenen*, citing *Guevarra v. Almario,* We noted that the **damages in a libel case must depend upon the facts of the particular case and the sound discretion of the court, although appellate courts were "more likely to reduce damages for libel than to increase them."** So it must be in this case.

Moral damages are not a bonanza. They are given to ease the defendant's grief and suffering. Moral damages should be reasonably approximate to the extent of the hurt caused and the gravity of the wrong done. The Court, therefore, finds the award of moral damages in the first and second cause of action in the amount of ₱2,000,000.00 and ₱25,000,000.00, respectively, to be too excessive and holds that an award of ₱1,000,000.00 and ₱10,000,000.00, respectively, as moral damages are more reasonable.[25] (emphases supplied)

With this in mind, the Court finds the award of ₱3,000,000.00 as moral damages to be unwarranted. Such exorbitant amount is contrary to the essence of moral damages, which is simply a reasonable recompense to the injury suffered by the one claiming it. It was neither meant to punish the offender nor enrich the offended party. Thus, to conform with the present

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[25] *Id.* at 435-436.

circumstances, the moral damages awarded should be equitably reduced to ₱500,000.00.

WHEREFORE, the petition is **GRANTED**. The 12 May 2003 Judgment of the Regional Trial Court, Branch 5, Iligan City, in Criminal Case No. 7939 is **AFFIRMED** with **MODIFICATION**. Petitioner Marilou Punongbayan-Visitacion is sentenced to pay a fine in the amount of Six Thousand Pesos (₱6,000.00), with subsidiary imprisonment in case of insolvency, and to pay private respondent Carmelita P. Punongbayan ₱500,000.00 as moral damages.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 195614. January 10, 2018]

DIGITAL TELECOMMUNICATIONS PHILS., INC./JOHN GOKONGWEI, JR., *petitioner, vs.* **NEILSON M. AYAPANA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE ENTIRE CASE BECOMES OPEN TO REVIEW, AND THE COURT CAN 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.— [T]his Court addresses respondent's contention that petitioner can no longer raise the issue on the validity of his dismissal

since it has failed to file a motion for reconsideration from the NLRC's decision, thus, it is bound by the NLRC's finding on this issue. Respondent errs. It is settled that the entire case becomes open to review, and the Court can 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. The issue of whether respondent was validly dismissed, though ruled upon by the NLRC without an appeal from petitioner, is pivotal in determining respondent's entitlement to back wages and separation pay, which was raised by respondent in his appeal to the CA. It is clearly necessary to arriving at a just disposition of the controversy. Thus, it was proper for the CA to pass upon said issue, and for petitioner to interpose an appeal therefrom.

2. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; THE WILLFUL BREACH BY THE EMPLOYEE OF THE TRUST REPOSED IN HIM BY HIS EMPLOYER OR THE LATTER'S DULY AUTHORIZED REPRESENTATIVE IS A JUST CAUSE FOR DISMISSAL; REQUISITES TO BE VALID; PRESENT.—** A perusal of the notice of dismissal issued by petitioner to respondent shows that the ground relied upon by the former was the latter's breach of the trust and confidence reposed in him by the company, contrary to the ruling of the CA, which based its decision on gross and habitual neglect, a separate ground under Article 297 of the Labor Code. The willful breach by the employee of the trust reposed in him by his employer or the latter's duly authorized representative is a just cause for dismissal. However, the validity of a dismissal based on this ground is premised upon the concurrence of these conditions: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be a willful act that would justify the loss of trust and confidence.

3. **ID.; ID.; ID.; ID.; RANK-AND-FILE EMPLOYEES WHO ARE ROUTINELY CHARGED WITH THE CARE AND CUSTODY OF THE EMPLOYER'S MONEY OR PROPERTY ARE CLASSIFIED AS OCCUPYING POSITIONS OF TRUST AND CONFIDENCE.—** In a number of cases, this Court has held that rank-and-file employees who are routinely charged with the care and custody of the employer's

money or property are classified as occupying positions of trust and confidence. x x x. It is not disputed that respondent was tasked to solicit subscribers for petitioner's FEX line and, in the course thereof, collect money for subscriptions and issue official receipts therefor, as was the case in the transaction subject of this controversy. Being involved in the handling of the company's funds, respondent undeniably occupies a position of trust and confidence.

4. **ID.; ID.; ID.; ID.; A FINDING THAT AN EMPLOYER'S TRUST AND CONFIDENCE HAS BEEN BREACHED BY THE EMPLOYEE MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE, AND MUST NOT BE BASED ON THE EMPLOYER'S WHIMS OR CAPRICES OR SUSPICIONS; OTHERWISE, THE EMPLOYEE WOULD ETERNALLY REMAIN AT THE MERCY OF THE EMPLOYER.—** It must be emphasized that a finding that an employer's trust and confidence has been breached by the employee must be supported by substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. It must not be based on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer. The totality of the circumstances in the case at bar supports a conclusion that respondent's dismissal was based on substantial evidence that he had willfully breached the trust reposed upon him by petitioner, and that petitioner was not actuated by mere whim or capriciousness.

5. **ID.; ID.; ID.; ID.; EMPLOYERS ARE ALLOWED A WIDER LATITUDE OF DISCRETION IN TERMINATING THE SERVICES OF EMPLOYEES WHO PERFORM FUNCTIONS BY WHICH THEIR NATURE REQUIRE THE EMPLOYER'S FULL TRUST AND CONFIDENCE. AS SUCH, THE MERE EXISTENCE OF BASIS FOR BELIEVING THAT THE EMPLOYEE HAS BREACHED THE TRUST AND CONFIDENCE OF THE EMPLOYER IS SUFFICIENT AND DOES NOT REQUIRE PROOF BEYOND REASONABLE DOUBT.—** All the x x x circumstances militated against respondent's claim of good faith and clearly established an act that justified the Company's loss of trust and confidence in him. In *Bristol Myers Squibb (Phils.), Inc. v. Baban*, the Court held that "as a general rule, employers

are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt."

6. **ID.; ID.; ID.; ID.; THE DISCIPLINE, DISMISSAL, AND RECALL OF EMPLOYEES ARE MANAGEMENT PREROGATIVES, LIMITED ONLY BY THOSE IMPOSED BY LABOR LAWS AND DICTATED BY THE PRINCIPLES OF EQUITY AND SOCIAL JUSTICE.—** [N]o bad faith or ill will could be imputed to the company in dismissing respondent because the latter was apprised of the charges against him and was given an opportunity to submit a written explanation, which he complied with. A hearing was also conducted. It must be remembered that the discipline, dismissal, and recall of employees are management prerogatives, limited only by those imposed by labor laws and dictated by the principles of equity and social justice. This Court finds that petitioner exercised its management prerogatives consistent with these principles.

7. **ID.; ID.; ID.; ID.; SEPARATION PAY MAY BE GRANTED BASED ON EQUITY AND AS A MEASURE OF SOCIAL JUSTICE, AS LONG AS THE DISMISSAL WAS FOR CAUSES OTHER THAN SERIOUS MISCONDUCT, WILLFUL DISOBEDIENCE, GROSS AND HABITUAL NEGLECT OF DUTY, FRAUD OR WILLFUL BREACH OF TRUST, AND COMMISSION OF A CRIME AGAINST THE EMPLOYER OR HIS FAMILY. —** Generally, an employee dismissed for any of the just causes under Article 297 is not entitled to separation pay. By way of exception, the Court has allowed the grant of separation pay based on equity and as a measure of social justice, as long as the dismissal was for causes other than serious conduct or those manifesting moral depravity. This Court is mindful of the new rule it established in *Toyota v. NLRC*, where the Court held that "in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee." However, the Court also recognizes that some cases merit a relaxation of

this rule, taking into consideration their peculiar circumstances. Here, while it is clear that respondent's act constitutes a willful breach of trust and confidence that justified his dismissal, it also appears that he was primarily actuated by zealousness in acquiring and retaining subscribers rather than any intent to misappropriate company funds; as he admitted in his response to the notice to explain that offering an alternative FEX line to Lim was part of his strategy to ensure her subscription. x x x. To be sure, his zealousness was manifested through acts that showed an inordinate lapse of judgment warranting his dismissal in accordance with management prerogative, but this Court considers in his favor the above circumstances in granting him separation pay in the amount of one (1) month pay for every year of service.

APPEARANCES OF COUNSEL

Castro Canilao & Associates for petitioner.
Tagle-Chua Cruz & Aquino for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 7 October 2010 Decision[1] and 4 February 2011 Resolution[2] rendered by the Court of Appeals (*CA*) in CA-G.R. SP No. 112160. The CA affirmed with modification the 29 June 2009 Decision[3] and 28 October 2009 Resolution[4] of the National Labor Relations Commission (*NLRC*)

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[1] *Rollo*, pp. 34-41; penned by Associate Justice Juan Q. Enriquez, with Associate Justice Ramon M. Bato Jr. and Associate Justice Florito S. Macalino, concurring.

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

[3] *Id*. at 71-76; penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

[4] *Id*. at 77.

in NLRC LAC Case No. 05-001831-08, which declared Neilson M. Ayapana (*respondent*) to have been illegally dismissed.

THE FACTS

Digital Telecommunications Philippines, Inc. (*petitioner* or *the company*) hired respondent as Key Accounts Manager for its telecommunication products and services in the areas of Quezon, Marinduque, and Laguna provinces, with a monthly basic pay of ₱13,100.00. Respondent was tasked, among others, to offer and sell DIGITEL's foreign exchange (*FEX*) line to prospective customers.

On 6 September 2006, respondent successfully offered two (2) FEX lines for Atimonan, Quezon, to Estela Lim (*Lim*), the owner of Star Lala Group of Companies (*Star Lala*). He received from Lim the total amount of ₱7,000.00 (*the subject amount*) for the two lines, for which he issued two (2) official receipts. Respondent, however, did not remit the subject amount to petitioner on the same date.

On 7 September 2006, petitioner's sales team, which included respondent, held a meeting during which respondent learned, from his immediate superior, that there was no available FEX line in Atimonan, Quezon; and that it was not possible to have a FEX line in the area due to technical constraints. On the same day, respondent retrieved from Lim the two (2) official receipts issued to the latter and replaced them with an acknowledgment receipt.

On 23 November 2006, Teresita Cielo (*Cielo*), secretary of Lim, went to petitioner's business office to pay bills and to ask for the refund of the subject amount. Upon verification by Myra Santiago (*Santiago*), petitioner's customer representative, she found that there was no existing application for the said service under the name of Star Lala Group of Companies.

When Santiago found that respondent was the sales person handling Lim's transaction, she informed respondent of Cielo's request for refund on that same day; but it was only on 28 November 2006, or five (5) days from said notice, that respondent was able to make the refund.

On 29 November 2006, petitioner issued a Notice to Explain[5] to respondent, asking him to explain: why he offered an inexistent FEX line; why he withdrew the official receipts issued to Lim and replaced them with an acknowledgment receipt; why he did not immediately remit the proceeds of the transaction to petitioner's business center; and why he retained the subject amount for 84 days.

On 30 November 2006, respondent submitted a written response.[6] He explained that he was not aware of the unavailability of the Atimonan line at the time he offered it to Lim; that he retrieved the official receipts to avoid explaining the late remittance to the treasury department because, at the time, Lim was still undecided whether to take up respondent's alternative offer of subscribing to a FEX line in Lucena until such time that an Atimonan line could become available; that he issued the acknowledgment receipt as proof that the subject amount is in his possession; that prior to 23 November 2006, he made several attempts to obtain Cielo's advice as to the return of the subject amount, to no avail; and that after being informed of Cielo's request on 23 November 2006, he went to Star Lala's office, which was closed, and thereafter tried to obtain Cielo's address in order to return the money, to no avail. According to respondent, he handed the subject amount to Santiago after she informed him that Cielo would retrieve the money from her.

On 4 December 2006, petitioner sent a Notice of Offense[7] to respondent, scheduling his administrative hearing and requesting his presence there.

On 19 January 2007, petitioner issued a Notice of Dismissal[8] finding respondent guilty of "breach by the employee of the trust and confidence reposed in him by management or by a

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[5] *Id*. at 57.

[6] *Id*. at 58-59.

[7] *Id*. at 60.

[8] *Id*. at 61.

company representative" under petitioner's disciplinary rules, which merited dismissal for the first offense.

Aggrieved, respondent filed a complaint for illegal dismissal. The Labor Arbiter dismissed the complaint, ruling that substantial evidence exists that respondent was involved in an event that justified petitioner's loss of trust and confidence in him, and therefore, he was validly dismissed from employment.[9] Respondent then appealed to the NLRC.

The NLRC Ruling

The NLRC reversed and set aside the decision of the Labor Arbiter. It ruled that respondent was merely guilty of imprudence and not of bad faith or malice. The NLRC found that dismissal was too harsh a penalty, especially since respondent appeared to have a clean record except for the Notice of Final Warning[10] issued to him by petitioner on 17 October 2005. The NLRC also considered in respondent's favor the certificates of commendation issued to him for being the most outstanding account manager in 2001 and 2002, as well as the service award he received in 2006. Consequently, it ordered the petitioner to pay respondent separation pay in the amount of ₱78,600.00 computed at one-month pay for every year of service, *viz*:

> WHEREFORE, the appeal filed by complainant is GRANTED IN PART. The Decision of Labor Arbiter Melchisedek A. Guan dated March 6, 2008 is REVERSED and SET ASIDE, and a NEW ONE rendered finding dismissal a harsh penalty and ordering respondents to pay complainant separation pay in the sum of ₱78,600.00 as computed above.
>
> SO ORDERED.[11]

Respondent thereafter filed a motion for reconsideration, which was denied by the NLRC. Unsatisfied with the decision, respondent appealed to the CA.

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[9] *Id*. at 63-68; penned by Labor Arbiter Melchisedek A. Guan.

[10] *Id*. at 78.

[11] *Id*. at 75.

The CA Ruling

The CA affirmed the NLRC ruling with modification that petitioner was further ordered to pay full back wages inclusive of allowances and other benefits or their monetary equivalent, *viz*:

> WHEREFORE, premises considered, the Decision dated June 29, 2009 of the National Labor Relations Commission (*NLRC*) in NLRC LAC Case No. 05-001831-08 is AFFIRMED with MODIFICATION that private respondent DIGITEL is ordered to pay petitioner separation pay and full back wages inclusive of allowances and other benefits or their monetary equivalent from January 19, 2007 up to the finality of this Decision.
>
> SO ORDERED.[12]

The CA held that respondent's dismissal was not valid because neglect of duty, as a just cause for dismissal, must not only be gross but also habitual. An isolated act of negligence cannot be ground for dismissal, and respondent was found negligent in only one instance.

Aggrieved, petitioner filed a motion for reconsideration, which was denied by the CA. Hence, this petition.

ISSUES

Petitioner raises the following issues:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S FINDING THAT NO JUST CAUSE EXISTS TO WARRANT RESPONDENT AYAPANA'S DISMISSAL DESPITE THE LAW AND EVIDENCE TO THE CONTRARY.

II.

THE COURT OF APPEALS ERRED IN AWARDING BACK WAGES AND SEPARATION PAY TO RESPONDENT AYAPANA DESPITE LACK OF LEGAL BASIS.

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[12] *Id.* at 41.

Simply put, this Court is tasked to consider whether the CA correctly held that respondent's dismissal was invalid and that he is entitled to full back wages and separation pay.

DISCUSSION

Incipiently, this Court addresses respondent's contention that petitioner can no longer raise the issue on the validity of his dismissal since it has failed to file a motion for reconsideration from the NLRC's decision, thus, it is bound by the NLRC's finding on this issue.

Respondent errs. It is settled that the entire case becomes open to review, and the Court can 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.[13]

The issue of whether respondent was validly dismissed, though ruled upon by the NLRC without an appeal from petitioner, is pivotal in determining respondent's entitlement to back wages and separation pay, which was raised by respondent in his appeal to the CA. It is clearly necessary to arriving at a just disposition of the controversy. Thus, it was proper for the CA to pass upon said issue, and for petitioner to interpose an appeal therefrom.

Now to the primary issue at bar: was respondent validly dismissed? The Court rules in the affirmative.

Respondent held a position of trust and confidence and committed an act that justified petitioner's loss of trust and confidence.

A perusal of the notice of dismissal issued by petitioner to respondent shows that the ground relied upon by the former was the latter's breach of the trust and confidence reposed in him by the company, contrary to the ruling of the CA, which

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[13] *Aliling v. Feliciano*, 686 Phil. 889, 903-904 (2012).

based its decision on gross and habitual neglect, a separate ground under Article 297[14] of the Labor Code.

The willful breach by the employee of the trust reposed in him by his employer or the latter's duly authorized representative is a just cause for dismissal. However, the validity of a dismissal based on this ground is premised upon the concurrence of these conditions: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be a willful act that would justify the loss of trust and confidence.[15]

The first requisite is certainly present. In a number of cases, this Court has held that rank-and-file employees who are routinely charged with the care and custody of the employer's money or property are classified as occupying positions of trust and confidence.[16] In *Philippine Plaza Holdings, Inc. v. Episcope*,[17] the Court held that a service attendant tasked to attend to dining guests, handle their bills, and receive their payments for transmittal to the cashier is an employee occupying a position of trust and confidence and is thus expected to act with utmost honesty and fidelity.[18]

It is not disputed that respondent was tasked to solicit subscribers for petitioner's FEX line and, in the course thereof, collect money for subscriptions and issue official receipts therefor, as was the case in the transaction subject of this controversy. Being involved in the handling of the company's funds, respondent undeniably occupies a position of trust and confidence.

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[14] This is based on the Labor Code of the Philippines, Presidential Decree No. 442, as Amended & Renumbered on 21 July 2015.

[15] *Martinez v. Central Pangasinan Electric Cooperative, Inc.*, 714 Phil. 70, 75 (2013).

[16] *Id.*; *Bluer than Blue Joint Ventures Co. v. Esteban*, 731 Phil. 502, 511 (2014).

[17] 705 Phil. 210 (2013).

[18] *Id.* at 218.

The records likewise reveal that the second requisite is present. It must be emphasized that a finding that an employer's trust and confidence has been breached by the employee must be supported by substantial evidence,[19] or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. It must not be based on the employer's whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer.[20]

The totality of the circumstances in the case at bar supports a conclusion that respondent's dismissal was based on substantial evidence that he had willfully breached the trust reposed upon him by petitioner, and that petitioner was not actuated by mere whim or capriciousness.

It is uncontroverted that respondent took part in a series of irregularities relative to his transaction with Lim, to wit:

First, he offered an inexistent FEX line to Lim, for which he received a subscription payment of ₱7,000.00. Even granting he did not know that the Atimonan line was unavailable at the time he offered the same to Lim, he was remiss in not ascertaining its availability before he concluded his transaction with Lim and received from her the subscription payment. As an employee admittedly tasked with soliciting subscribers for the Company's FEX line, it was an integral part of his functions to ensure that the lines he offered to potential subscribers were valid and subsisting.

Second, it is not disputed that respondent was required and expected to immediately remit the proceeds acquired in the course of his sales transactions; which he failed to do in Lim's case, without sufficient explanation for such lapse.

Third, respondent readily admits that when he came to know of the Atimonan line's unavailability, he did not immediately effect a refund nor inform management of his decision to retain

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[19] *Id.* at 219.

[20] *Lopez v. Alturas Group of Companies*, 663 Phil. 121, 128 (2011), citing *Cruz v. Court of Appeals*, 527 Phil. 230, 243 (2006).

the money supposedly pending Lim's decision to acquire another line. Instead, he retrieved the official receipts from Lim and issued an acknowledgment receipt.

Respondent contends that he could not be imputed with any reckless, willful, or deliberate act of breaching petitioner's trust and confidence because he was of the honest belief that the Atimonan line was existent when he offered it to Lim; that he retained the money pursuant to an oral agreement between him and Lim, wherein he gave her time to contemplate the option of obtaining a refund or availing of another FEX line pending the availability of the Atimonan line; and that he issued the acknowledgment receipt as evidence that the sum collected was in his possession.

Respondent's arguments are misplaced. Even if this Court were to concede that he was merely negligent in offering an FEX line whose existence he did not ascertain first, his acts subsequent to being aware of the Atimonan line's unavailability indubitably manifests willfulness and deliberateness. In his response to petitioner's notice to explain, respondent admitted he came to know of the Atimonan line's unavailability during their team's 7 September 2006 meeting when he was informed by his superior, Rene Rico (*Rico*). When respondent inquired from Rico if it was possible that the Atimonan line would be available in the near future, the latter answered in the negative.[21] It therefore reeked of underhandedness that petitioner still gave Lim the option to avail of a different FEX line until such time that the Atimonan line would become available, when he already

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[21] The following is taken verbatim from respondent's response to the Company's Notice to Explain: "By that time, I was not aware that Manila Line is not available in ATM. The next day Sept. 7, 2006 our monthly meeting was held here in Lucena. If S'Rene remembered I even asked him if Manila Line is available in Atimonan. **When he said that it's not available, I asked him if it is possible in the near future that it would be offered in Atimonan. S'Rene said "NO."** I immediately informed the owner thru phone that Atimonan is not included in '02' areas. **I told her for the meantime to avail our FEX Line in Lucena and Laguna until such time that FEX Line is offered in Atimonan.**" (emphasis supplied); *rollo*, p. 58.

knew at the time that the Company was not even contemplating such service. There is also no showing that he disclosed the full extent of Rico's response to Lim.

Respondent's act of retrieving and cancelling the official receipts without petitioner's knowledge or conformity was also highly irregular and prejudicial to the company, as its cancellation has tax and reportorial implications that may result in liability.

Moreover, respondent admitted that the reason he cancelled the official receipts was to conceal from the treasury department the fact of late remittance.[22] Notably, petitioner also failed to explain why he did not at least inform management about his oral agreement with Lim, considering that the company could incur liability arising from his continued retention of the subscription money. Lim's consent to such retention is immaterial, because the duty to remit the proceeds or at least disclose any action relative to funds acquired for the availment of the company's services was mandatory to the company.

Third, respondent retained the subject amount from 6 September 2006 to 28 November 2006, offering no sufficient explanation for this prolonged period of retention, other than to insist that he was allowed to do so by Lim. However, as discussed earlier, this does not explain why respondent would withhold from the company information regarding company funds or a potentially contentious transaction, if he had truly acted in good faith. As borne by the records, it was only on 23 November 2006 that the petitioner, through its customer representative Santiago, became aware of such retention. Moreover, while respondent claims that he issued an acknowledgment receipt as proof that he possessed the money and would return it as soon as Lim signified her desire for a refund, it is curious that he was only able to return the subject amount on 28 November 2006, or five (5) days after being told by Santiago to refund it on 23 November 2006.

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[22] *Id*.

All the above circumstances militated against respondent's claim of good faith and clearly established an act that justified the Company's loss of trust and confidence in him. In *Bristol Myers Squibb (Phils.), Inc. v. Baban*,[23] the Court held that "as a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt."[24]

Furthermore, no bad faith or ill will could be imputed to the company in dismissing respondent because the latter was apprised of the charges against him and was given an opportunity to submit a written explanation, which he complied with. A hearing was also conducted.

It must be remembered that the discipline, dismissal, and recall of employees are management prerogatives, limited only by those imposed by labor laws and dictated by the principles of equity and social justice.[25] This Court finds that petitioner exercised its management prerogatives consistent with these principles.

Even with a finding that respondent was validly dismissed, separation pay may be granted as a measure of social justice.

Generally, an employee dismissed for any of the just causes under Article 297 is not entitled to separation pay. By way of exception, the Court has allowed the grant of separation pay based on equity and as a measure of social justice, as long as

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[23] 594 Phil. 620 (2008).

[24] *Id*. at 631-632, citing *Atlas Fertilizer Corporation v. NLRC*, 340 Phil. 85, 94 (1997).

[25] *Peckson v. Robinsons Supermarket Corporation*, 713 Phil. 471, 480-481 (2013).

the dismissal was for causes other than serious conduct or those manifesting moral depravity.[26]

This Court is mindful of the new rule it established in *Toyota v. NLRC*,[27] where the Court held that "in addition to serious misconduct, in dismissals based on other grounds under Art. 282[28] like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee."[29] However, the Court also recognizes that some cases merit a relaxation of this rule, taking into consideration their peculiar circumstances.

Here, while it is clear that respondent's act constitutes a willful breach of trust and confidence that justified his dismissal, it also appears that he was primarily actuated by zealousness in acquiring and retaining subscribers rather than any intent to misappropriate company funds; as he admitted in his response to the notice to explain that offering an alternative FEX line to Lim was part of his strategy to ensure her subscription.

The lack of moral depravity on respondent's part is also shown by the following circumstances: (1) he was the recipient of certificates of commendation[30] from petitioner in the years 2001 and 2002, for being an outstanding account manager, as well as of a service award in 2006 for continuous service to the company; (2) he was granted promotional increases[31] in 2002, 2004, and 2005, as well as a merit increase[32] in 2003; (3) he has served the company from 16 February 2001 to 19 January

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[26] *Philippine Commercial International Bank v. Abad*, 492 Phil. 657, 663-664 (2005).

[27] 562 Phil. 759, 812 (2007).

[28] Now Article 297 of the Labor Code.

[29] *Toyota v. NLRC*, *supra* note 27 at 812.

[30] *Rollo*, pp. 100-101.

[31] *Id*. at 122-123 and 125-126.

[32] *Id*. at 124.

2007 with only one other known infraction embodied in a notice of final warning that petitioner failed to expound on; and (4) based on Cielo's *Salaysay*,[33] Lim did allow respondent to retain the subject amount for a time, even though, as discussed earlier, this is immaterial to determining whether his act justified his dismissal, since he had an independent duty to disclose material agreements or transactions to petitioner.

To be sure, his zealousness was manifested through acts that showed an inordinate lapse of judgment warranting his dismissal in accordance with management prerogative, but this Court considers in his favor the above circumstances in granting him separation pay in the amount of one (1) month pay for every year of service.[34]

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed 7 October 2010 Decision and 4 February 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 112160, are **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dismissing respondent Neilson M. Ayapana's complaint for illegal dismissal and other monetary claims is **REINSTATED** with **MODIFICATION** that respondent should be paid separation pay equivalent to one month of his latest salary for every year of service.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.*, concur.

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[33] *Id.* at 121.

[34] *Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, 247 Phil. 641, 650 (1988), where the Court ruled that "separation pay, if found due under the circumstances of each case, should be computed **at the rate of one month salary for every year of service, assuming the length of such service is deemed material**."

THIRD DIVISION

[G.R. No. 195878. January 10, 2018]

MAGSAYSAY MITSUI OSK MARINE, INC., KOYO MARINE, CO. LTD., and CONRADO DELA CRUZ, *petitioners, vs.* **OLIVER G. BUENAVENTURA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); EMPLOYEES' COMPENSATION; SEAFARERS HAVE THE OPTION TO SEEK ANOTHER OPINION FROM A PHYSICIAN OF THEIR CHOICE, AND THE PRESENCE OF BAD FAITH OR MALICE ON THE PART OF COMPANY-DESIGNATED PHYSICIANS IS NOT REQUIRED BEFORE A SEAFARER MAY SEEK THE OPINION OF ANOTHER DOCTOR.— It is true that the company-designated physician will have the first opportunity to examine the seafarer and thereafter issue a certification as to the seafarer's medical status. On the basis of the said certification, seafarers then would be initially informed if they are entitled to disability benefits or not. Seafarers, however, are not precluded from challenging the diagnosis of the company-designated physicians should they disagree. In fact, such mechanism is categorically provided for under the Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC),* as revised. Section 20(A) thereof states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding between the parties. Undoubtedly, seafarers have the option to seek another opinion from a physician of their choice and, in case the latter's findings differ from that of the company-designated physician, the conflicting findings shall be submitted to a third-party doctor, as mutually agreed upon by the parties. Thus, if the reasoning of the labor tribunals were to be adopted, the options available to seafarers would be restricted as they

could only challenge the findings of the company-designated physician if there was malice or bad faith. Under the POEA-SEC, the presence of bad faith or malice on the part of company-designated physicians is not required before a seafarer may seek the opinion of another doctor.

2. ID.; ID.; ID.; ID.; THE FAILURE OF THE SEAFARER TO REFER THE CONFLICTING FINDINGS BETWEEN THE COMPANY-DESIGNATED PHYSICIAN AND THE SEAFARER'S PHYSICIAN OF CHOICE GRANTS THE FORMER'S MEDICAL OPINION MORE WEIGHT AND PROBATIVE VALUE OVER THE LATTER, BUT THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN ARE NOT CONCLUSIVE AND BINDING ON THE COURTS AS THE SAME COULD BE SET ASIDE IF ATTENDED WITH CLEAR BIAS, ARE SHOWN TO HAVE NO SCIENTIFIC BASIS OR ARE NOT SUPPORTED BY THE MEDICAL RECORDS OF THE SEAFARER.— In *Magsaysay Maritime Corporation v. Simbajon,* the Court reiterated the effects of failing to comply with the requirement of referral to third-party physicians: x x x In *Philippine Hammonia,* we have ruled that **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.** x x x. On the other hand, in *C.F. Sharp Crew Management, Inc. v. Castillo,* the Court clarified that the failure to refer conflicting findings to a third doctor does not *ipso facto* render the conclusions of the company-designated physician conclusive and binding on the courts x x x. Thus, as it stands, failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice grants the former's medical opinion more weight and probative value over the latter. Nevertheless, it does not mean that the courts should adopt it hook, line and sinker as it may be set aside if it is shown that the findings of the company-designated physician have no scientific basis or are not supported by the medical records of the seafarer. The diagnosis of the company-designated physician may be set aside if it is attended with clear bias, manifested by the lack of scientific relation between the diagnosis and the symptom or where the opinion is not supported by the medical records. In the case at bar, Buenaventura did not initiate the process of referring the conflicting findings of his physicians of choice to a third doctor. Consequently, the findings of the company-designated physicians

deserve greater weight and could be set aside only with a showing of a clear bias against Buenaventura. Here, the seafarer was assessed by an orthopedic surgeon and was subjected to a lengthy evaluation and treatment before a certification of fitness to work was issued. A review of the records also shows that there is insufficient evidence to hold that the company-designated physicians acted with clear bias against Buenaventura.

3. ID.; ID.; ID.; ID.; 120-DAY PERIOD *VIS-A-VIS* 240-DAY PERIOD FOR THE ISSUANCE OF MEDICAL ASSESSMENT BY THE COMPANY-DESIGNATED PHYSICIANS, RULES; THE MERE LAPSE OF THE 120-DAY PERIOD DOES NOT AUTOMATICALLY RENDER THE DISABILITY OF THE SEAFARER PERMANENT AND TOTAL, AS THE PERIOD MAY BE EXTENDED TO 240 DAYS SHOULD THE CIRCUMSTANCES JUSTIFY THE SAME.— In *Elburg Shipmanagment Phils., Inc. v. Quiogue,* the Court harmonized the perceived conflicting decisions on the period when the company-designated physician must issue a certification of fitness or disability rating as the case may be: x x x. In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules *(rules)* shall govern: 1.The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. x x x As such, the mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same. In this case, the extension of the initial 120-day period to issue an

assessment was justified considering that during the interim, Buenaventura underwent therapy and rehabilitation and was continuously observed. The company-designated physicians did not sit idly by and wait for the lapse of the said period. Buenaventura's further need of treatment necessitated the extension for the issuance of the medical assessment. It is noteworthy that the seafarer was declared fit to work after six months from the time he was medically repatriated or within the allowable extended period of 240 days.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Linsangan & Linsangan Linsangan 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 18 March 2010 Decision[1] and the 28 February 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 109150 which reversed and set aside the 19 January 2009 Resolution[3] of the National Labor Relations Commission *(NLRC).* The NLRC affirmed the 30 May 2008 Decision[4] of the Labor Arbiter *(LA).*

THE FACTS

Petitioner Magsaysay Mitsui OSK Marine, Inc. *(Magsaysay),* on behalf of its principal Koyo Marine Co. Ltd., hired respondent Oliver G. Buenaventura *(Buenaventura)* as an ordinary seaman

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[1] *Rollo,* pp. 14-36.

[2] *Id*. at 53-56.

[3] *Id*. at 172-175; penned by Commissioner Pablo C. Espiritu, Jr., and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III.

[4] *Id*. at 178-186; penned by LA Romelita N. Rioflorido.

on board the vessel Meridian. The contract was for nine months, with a basic monthly salary of $403.00 and subject to the JSU collective bargaining agreement *(CBA).*[5]

On 25 January 2007, Buenaventura met an accident wherein a mooring winch crushed his right hand. As a result, he suffered a fracture of the right first metacarpal bone and open fracture of the right second metacarpal bone, which required emergency surgical procedures both done in Japan.[6]

On 21 February 2007, Buenaventura was medically repatriated. He was referred to the Maritime Medical Service, the company-designated clinic, and was attended to by Dr. Stephen Hebron *(Dr. Hebron).* Dr. Hebron then referred Buenaventura to Dr. Celso Fernandez *(Dr. Fernandez),* an orthopedic surgeon. On 3 August 2007, Dr. Hebron declared Beunaventura fit to work after undergoing conservative management, continuous rehabilitation physiotheraphy, and occupational therapy. Nevertheless, Buenaventura still felt pain in his hand especially during cold weather.[7]

In a medical certificate dated 12 September 2007, Dr. Hebron stated that according to Dr. Fernandez, the MC plates in Buenaventura's right hand might be contributing to the pain. According to him, the removal of the MC plates would cost around ₱70,000.00, which would not be shouldered by Magsaysay. This prompted Buenaventura to consult Dr. Rodolfo Rosales *(Dr. Rosales)* who found him unfit to work and recommended a ten-week physical therapy. He also consulted Dr. Venancio Garduce, Jr. *(Dr. Garduce),* an orthopedic surgeon, who diagnosed him with: (a) inability to extend the right hand; (b) weak grip, grasp and pinch; (c) healed flap, dorsum of hand; (d) deformity of the thumb right hand atrophy; and (e) traumatic arthritis, carpo-metacarpal joints in his right hand. Dr. Garduce

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[5] *Id*. at 15.

[6] *Id*.

[7] *Id*. at 15-16.

opined that it would be difficult for Buenaventura to continue to work as a seaman.[8]

Based on the differing opinions of his physicians of choice, Buenaventura filed a complaint for disability compensation under the CBA, recovery of medical expenses; moral, exemplary, and nominal damages; and attorney's fees.

The LA Ruling

In its 30 May 2008 decision, the LA dismissed Buenaventura's complaint. It ruled that Buenaventura was not suffering from total and permanent disability because he was already declared fit to work by the company-designated physician on 3 August 2007. The LA explained that the company-designated physician's declaration of fitness, absent any showing of bad faith or bias, should be considered as the only basis in awarding disability benefits. It highlighted that before Buenaventura was declared fit to work, he had been subjected to appropriate medical attention and that his condition was improving to normal. The LA disregarded the findings of Buenaventura's physicians of choice because they had examined him only for a short period of time. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the Complaint for lack of merit.
>
> All other claims are likewise denied for want of any basis.[9]

Aggrieved, Buenaventura appealed before the NLRC.

The NLRC Ruling

In its 19 January 2009 resolution, the NLRC affirmed the LA decision. It opined that Buenaventura was not entitled to disability benefits because he was found fit to work by the company-designated physician. The NLRC highlighted that the company-designated physician was in the best position to determine Buenaventura's fitness to work considering the extensive examination and treatment conducted on him. It agreed

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[8] *Id*. at 16.

[9] *Id*. at 186.

that the findings of Buenaventura's own doctors held little weight because there was insufficient evidence to show that they had conducted a thorough examination and treatment of Buenaventura. The NLRC noted that the lone medical report was issued only after a single consultation. The dispositive portion reads:

> **WHEREFORE,** the foregoing considered, the instant appeal is **DISMISSED** for lack of merit. The Decision appealed from is **AFFIRMED** in its entirety.[10]

Buenaventura moved for reconsideration but it was denied by the NLRC in its 23 March 2009 Resolution.[11] Undeterred, he appealed before the CA.

The CA Ruling

In its assailed 18 March 2010 decision, the CA reversed the NLRC decision. The appellate court explained that the seafarer is not precluded from getting a second opinion as to his condition for claiming disability benefits. As such, it disagreed that the only basis for awarding disability benefits are the findings of the company-designated physician and that it is not conclusive upon the seafarer or the court.

Further, the CA elucidated that Buenaventura was entitled to total and permanent disability benefits because he was declared fit to work only after six months from the time he was medically repatriated. It pointed out that under present jurisprudence, a seafarer is entitled to permanent disability benefits when he is unable to perform his job for more than 120 days from the time of his repatriation. Thus, it ruled:

> **WHEREFORE,** premises considered, the Resolutions dated January 19, 2009 and March 23, 2009 rendered by the NLRC are **SET ASIDE**. Private respondents are **ORDERED** to pay petitioner the following amounts:
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> 1) Seventy-Eight Thousand Seven Hundred Fifty US Dollars (US$78,750.00) as permanent and total disability benefits;

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[10] *Id*. at 175.

[11] *Id*. at 176-177.

2) Thirty Thousand Pesos (Php30,000.00) as nominal damages; and

3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.[12]

Magsaysay moved for reconsideration but it was denied by the CA in its assailed 28 February 2011 resolution.

Hence, this appeal raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW IN AWARDING FULL AND PERMANENT DISABILITY BENEFITS TO THE RESPONDENT DESPITE THE FACT THAT RESPONDENT WAS DECLARED FIT TO WORK BY THE COMPANY-DESIGNATED PHYSICIAN. THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN SHOULD BE GIVEN WEIGHT IN ACCORDANCE WITH THE RULINGS OF THIS HONORABLE COURT IN THE CASES OF MAGSAYSAY MARITIME CORP. ET AL. V. VELASQUEZ, (G.R. No. 179802, 14 NOVEMBER 2008) AND MARCIANO L. MASANGCAY V. TRANS-GLOBAL MARITIMIE AGENCY, INC. AND VENTONOR NAVIGATION, INC., (G.R. No. 172800, 17 OCTOBER 2008);[13]

II

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW IN CONSIDERING THAT MR. OLIVER BUENAVENTURA IS TOTALLY AND PERMANENTLY DISABLED BECAUSE HE WAS ALLEGEDLY SICK OR UNABLE TO WORK FOR MORE THAN 240 DAYS DESPITE THE FACT THAT (1) POEA CONTRACT MEASURES DISABILITY BENEFITS IN TERMS

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[12] *Id.* at 35-36.

[13] *Rollo,* p. 68.

OF GRADING AND NOT BY DAYS; AND (2) RESPONDENT WAS DECLARED FIT TO WORK WITHIN 240 DAYS;[14] **AND**

III

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW WHEN IT AWARDED NOMINAL DAMAGES AND ATTORNEY'S FEES DESPITE ABSENCE OF BAD FAITH ON THE PART OF PETITIONERS IN DENYING RESPONDENT'S MONEY CLAIMS.[15]

OUR RULING

The petition is meritorious.

Notice and opportunity to explain satisfies administrative due process

The Labor Tribunals opined that the findings of the company-designated physicians should be the sole basis for disability benefits and could be set aside only when medical conclusions were tainted with bad faith and malice. On the other hand, the CA explained that the findings of the company-designated physician are not conclusive upon the seafarer or the courts.

The Court agrees with the appellate court.

It is true that the company-designated physician will have the first opportunity to examine the seafarer and thereafter issue a certification as to the seafarer's medical status. On the basis of the said certification, seafarers then would be initially informed if they are entitled to disability benefits or not. Seafarers, however, are not precluded from challenging the diagnosis of the company-designated physicians should they disagree.

In fact, such mechanism is categorically provided for under the Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC),* as revised. Section 20(A)

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[14] *Id*. at 82.

[15] *Id*. at 88.

thereof states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding between the parties. Undoubtedly, seafarers have the option to seek another opinion from a physician of their choice and, in case the latter's findings differ from that of the company-designated physician, the conflicting findings shall be submitted to a third-party doctor, as mutually agreed upon by the parties.

Thus, if the reasoning of the labor tribunals were to be adopted, the options available to seafarers would be restricted as they could only challenge the findings of the company-designated physician if there was malice or bad faith. Under the POEA-SEC, the presence of bad faith or malice on the part of company-designated physicians is not required before a seafarer may seek the opinion of another doctor.

Failure to refer conflicting findings to a third doctor

Unsatisfied with the findings of the company-designated physician, Buenaventura consulted with Dr. Rosales and Dr. Garduce, both of whom found him unfit to continue work as a seafarer. Considering the conflicting findings of his physician of choice, Buenaventura was bound to initiate the process of referring the findings to a third-party physician by informing his employer of the same,[16] which is mandatory considering that the POEA-SEC is part and parcel of the employment contract between seafarers and their employers.[17] Instead of following the procedure set forth under Section 20 of the POEA-SEC, Buenaventura initiated the present complaint for disability benefits without informing Magsaysay of the differing medical opinions of Dr. Rosales and Dr. Garduce.

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[16] *INC Navigation Co. Philippines Incorporated v. Rosales,* 744 Phil. 774, 786-787 (2014) citing *Philippine Hammonia Ship Agency, Inc. v. Dumadag,* 712 Phil. 507, 520 (2013) further citing Section 20(B)(3) of the POEA-SEC.

[17] *Philippine Hammonia Ship Agency, Inc. v. Dorchester Marine Ltd.,* 712 Phil. 507, 520 (2014).

In *Magsaysay Maritime Corporation v. Simbajon,*[18] the Court reiterated the effects of failing to comply with the requirement of referral to third-party physicians:

The glaring disparity between the findings of the petitioners' designated physicians and Dr. Vicaldo calls for the intervention of a third independent doctor, agreed upon by petitioners and Simbajon. In this case, no such third-party physician was ever consulted to settle the conflicting findings of the first two sets of doctors. After being informed of Dr. Vicaldo's unfit-to-work findings, Simbajon proceeded to file his complaint for disability benefits with the LA. This move totally disregarded the mandated procedure under the POEA-SEC requiring the referral of the conflicting medical opinions to a third independent doctor for final determination. Dr. Vicaldo, too, is a medical practitioner not unknown to this Court, as he has issued certifications in several disability claims that proved unsuccessful.

In *Philippine Hammonia,* we have ruled that **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.** We explained:

> The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. **The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag secured separate independent opinions regarding his disability.**

Similarly, we note that Simbajon was the only one who knew of the conflicting results between Dr. Vicaldo's findings with that of the petitioners' designated physicians. The petitioners had no reason to consider a third doctor because they were not aware that Simbajon secured a separate independent opinion regarding his disability. Thus, the obligation to comply with the requirement of securing the opinion of a neutral, third-party physician rested on Simbajon's shoulders. By failing to observe the required procedure under the POEA-SEC, he clearly violated its terms, i.e., the law between the parties. And without a binding third-party opinion, the fit-to-work certification of petitioners' designated physicians prevails over that of Dr. Vicaldo's unfit-to-return-to-work finding.

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[18] 738 Phil. 824 (2014).

Lastly, we have observed that Dr. Vicaldo only examined Simbajon once. We take this is in comparison with the series of tests and treatments made by Magsaysay's designated physicians to Simbajon. Between the two, the latter's medical opinion deserves more credence for being more thorough and exhaustive.[19]

On the other hand, in *C.F. Sharp Crew Management, Inc. v. Castillo,*[20] the Court clarified that the failure to refer conflicting findings to a third doctor does not *ipso facto* render the conclusions of the company-designated physician conclusive and binding on the courts, viz:

> In the instant case, respondent did not seek the opinion of a third doctor. Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA-SEC. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.[21]

Thus, as it stands, failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice grants the former's medical opinion more weight and probative value over the latter. Nevertheless, it does not mean that the courts should adopt it hook, line and sinker as it may be set aside if it is shown that the findings of the company-designated physician have no scientific basis or are not supported by the medical records of the seafarer. The diagnosis of the company-designated physician may be set aside if it is attended with clear bias, manifested by the lack of scientific

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[19] *Id.* at 842-844.

[20] G.R. No. 208215, 19 April 2017.

[21] *Id*.

relation between the diagnosis and the symptom or where the opinion is not supported by the medical records.[22]

In the case at bar, Buenaventura did not initiate the process of referring the conflicting findings of his physicians of choice to a third doctor. Consequently, the findings of the company-designated physicians deserve greater weight and could be set aside only with a showing of a clear bias against Buenaventura. Here, the seafarer was assessed by an orthopedic surgeon and was subjected to a lengthy evaluation and treatment before a certification of fitness to work was issued. A review of the records also shows that there is insufficient evidence to hold that the company-designated physicians acted with clear bias against Buenaventura.

120-day period vis-à-vis 240-day period

The CA further found that Buenaventura should be entitled to permanent and total disability benefits because the fit-to-work certification was issued only after six months from his repatriation, or after the lapse of the 120-day period.

In *Elburg Shipmanagment Phils., Inc. v. Quiogue,*[23] the Court harmonized the perceived conflicting decisions on the period when the company-designated physician must issue a certification of fitness or disability rating as the case may be:

> An analysis of the cited jurisprudence reveals that the first set of cases did not award permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because (1) the company-designated physician opined that the seafarer required further medical treatment or (2) the seafarer was uncooperative with the treatment. Hence, in those cases, despite exceeding 120 days, the seafarer was still not entitled to permanent and total disability benefits. In such instance, Rule X, Section 2 of the IRR gave the company-designated physician additional

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[22] *Nonay v. Bahia Shipping Services, Inc.,* G.R. No. 206758, 17 February 2016, 784 SCRA 292, 323.

[23] 765 Phil. 341 (2015).

time, up to 240 days, to continue treatment and make an assessment on the disability of the seafarer.

The second set of cases, on the other hand, awarded permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because the company-designated physician did not give a justification for extending the period of diagnosis and treatment. Necessarily, there was no need anymore to extend the period because the disability suffered by the seafarer was permanent. In other words, there was no indication that further medical treatment, up to 240 days, would address his total disability.

If the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.

The above-stated analysis indubitably gives life to the provisions of the law as enunciated by *Vergara.* **Under this interpretation, both the 120-day period under Article 192 (2) of the Labor Code and the extended 240-day period under Rule X, Section 2 of its IRR are given full force and effect.** This interpretation is also supported by the case of *C.F. Sharp Crew Management, Inc. v. Taok,* 37 where the Court enumerated a seafarer's cause of action for total and permanent disability, to wit:

(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and **there is no indication that further medical treatment would address his temporary total disability,** hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification being issued by the company-designated physician;

x x x x x x x x x

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-

day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.

Summation

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules *(rules)* shall govern:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

The Court is not unmindful of the declaration in *INC Shipmanagement* that "[t]he extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages." Indeed, the disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days. The treatment period can be extended to 240 days if the company-designated physician provided

some sufficient justification. Equally eminent, however, is the Court's pronouncement in the more recent case of ***Carcedo*** that *"[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician,* ***subject to the periods prescribed by law.***"[24] (emphases and italics in the original)

As such, the mere lapse of the 120-day period does not automatically render the disability of the seafarer permanent and total. The period may be extended to 240 days should the circumstances justify the same. In this case, the extension of the initial 120-day period to issue an assessment was justified considering that during the interim, Buenaventura underwent therapy and rehabilitation and was continuously observed. The company-designated physicians did not sit idly by and wait for the lapse of the said period. Buenaventura's further need of treatment necessitated the extension for the issuance of the medical assessment. It is noteworthy that the seafarer was declared fit to work after six months from the time he was medically repatriated or within the allowable extended period of 240 days.

WHEREFORE, the 18 March 2010 Decision and the 28 February 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 109150 are **REVERSED and SET ASIDE.** The complaint for total and permanent disability benefits is **DISMISSED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

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[24] *Id.* at 361-363.

THIRD DIVISION

[G.R. No. 195887. January 10, 2018]

BEN LINE AGENCIES PHILIPPINES, INC., rep. by RICARDO J. JAMANDRE, *petitioner, vs.* **CHARLES M.C. MADSON and ALFREDO P. AMORADO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; PROCEDURAL RULES ARE SET IN PLACE TO ENSURE THAT THE PROCEEDINGS ARE IN ORDER AND TO AVOID UNNECESSARY DELAYS, BUT ARE NEVER INTENDED TO PREVENT TRIBUNALS OR ADMINISTRATIVE AGENCIES FROM RESOLVING THE SUBSTANTIVE ISSUES AT HAND.— It must be remembered, x x x that rules of procedure are designed to facilitate the attainment of justice and that their rigid application resulting in technicalities tending to delay or frustrate rather than promote substantial justice must be avoided. In other words, procedural rules are set in place to ensure that the proceedings are in order and to avoid unnecessary delays, but are never intended to prevent tribunals or administrative agencies from resolving the substantive issues at hand.

2. ID.; CIVIL PROCEDURE; APPEALS; A PETITION LACKING AN ESSENTIAL PLEADING OR PART OF THE CASE RECORD MAY STILL BE GIVEN DUE COURSE OR REINSTATED, IF EARLIER DISMISSED, UPON SHOWING THAT PETITIONER LATER SUBMITTED THE DOCUMENTS REQUIRED, OR THAT IT WILL SERVE THE HIGHER INTERESTS OF JUSTICE THAT THE CASE BE DECIDED ON THE MERITS.— [I]t is undisputed that Ben Line initially failed to submit clear and legible copies of the resolutions of the OCP when it filed its petition for review before the DOJ. Under Section 6 of the 2000 NPS rules, failure to comply with the requirements of Section 5 constitutes sufficient ground to dismiss the petition. Thus, the DOJ decided to dismiss Ben Line's complaint for failure to comply with Section 5. x x x. In *Air Philippines*

Corporation v. Zamora (Air Philippines), the Court elucidated that mere failure to attach legible copies does not *ipso facto* warrant the dismissal of a complaint or a petititon, to wit: **As a general rule, a petition lacking copies of essential pleadings and portions of the case record may be dismissed. This rule, however, is not petrified.** As the exact nature of the pleadings and parts of the case record which must accompany a petition is not specified, much discretion is left to the appellate court to determine the necessity for copies of pleading and other documents. There are, however, guideposts it must follow. x x x **Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interests of justice that the case be decided on the merits.**

3. ID.; 2000 NPS RULE ON APPEAL; PETITION FOR REVIEW BEFORE THE DEPARTMENT OF JUSTICE; DISMISSAL OF PETITIONER'S APPEAL ON PROCEDURAL GROUNDS CONSTITUTES GRAVE ABUSE OF DISCRETION AS CASES SHOULD BE RESOLVED ON ITS MERITS.— Lest it be misunderstood, the Court does not belittle the compliance with the rules of procedure. It recognizes that zealous observance of the rules is still the general course of action as it serves to guarantee the orderly, just, and speedy dispensation of cases. Nevertheless, the Court finds that the CA erred when it did not find the DOJ to have acted with grave abuse of discretion in dismissing Ben Line's petition for review. Initially, the DOJ correctly acted when it dismissed Ben Line's petition for failure to attach clear and legible copies of the appealed resolution of the OCP. However, it was remiss in its duty to ensure that cases before it should be resolved on its merits when it denied Ben Line's motion for reconsideration. In accordance with the pronouncements of the Court in *Air Philippines* and in order that the [substantial] issues of the case be fully ventilated, the DOJ should have reinstated Ben Line's petition for review. It is noteworthy that in its motion, Ben Line had already attached clear and legible copies of the resolutions appealed from. Further, it pointed out that the copies it initially attached in its petition for review before the DOJ were provided by the OCP. x x x. In finding for herein petitioner, the Court does not necessarily rule on whether its version of events or legal arguments deserve more

consideration than that of the respondents. It simply corrects the DOJ's inordinate dismissal of Ben Line's petition for review where precisely these issues could have been adequately and appropriately resolved.

APPEARANCES OF COUNSEL

Ortega Bacorro Odulio Calma & Carbonell for petitioner.
Rojas & Uy 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 14 December 2010 Decision[1] and 25 February 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 115492 which affirmed the 15 February 2010[3] and 11 June 2010[4] Resolution of the Department of Justice *(DOJ)* in I.S. No. 08B-02516.

THE FACTS

Petitioner Ben Line Agencies Philippines, Inc. *(Ben Line)* is a domestic corporation engaged in maritime business. On 19 September 2006, the vessel M/V Ho Feng 7, owned and operated by Ben Line's foreign principal, had to discharge shipment consigned to La Farge Cement Services Philippines, Inc. *(La Farge)*. As such, it needed to hire a crane capable of lifting heavy shipment of approximately 70 metric tons.[5]

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[1] *Rollo*, pp. 43-48; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Sesinando E. Villon and Normandie B. Pizarro.

[2] *Id*. at 50.

[3] CA *rollo*, pp. 42-44; issued by Assistant Chief State Prosecutor Severino H. Gaña, Jr. for the Secretary of Justice.

[4] *Id*. at 45; issued by Acting Secretary Alberto C. Agra.

[5] *Rollo*, pp. 12-14.

Ben Line inquired with AALTAFIL Incorporated whether the latter had the necessary machinery to handle the unloading of the former's shipment. Through its president, respondent Charles M.C. Madson *(Madson)*, AALTAFIL offered its 300-ton crane and stated that it was capable of lifting the shipment from M/V Ho Feng 7. The equipment was initially offered for ₱1,150,000.00.[6]

On 25 September 2006, Ben Line confirmed with AALTAFIL its intention to hire the crane. Madson, however, informed that the equipment had been leased to ACE Logistics, Inc. Due to the urgency of the situation, Ben Line contacted respondent Aflredo Amorado *(Amorado)*, president of ACE Logistics, who said that the crane was available for sub-leasing for the amount of ₱1,995,000.00 with an additional ₱400,000.00 to be paid directly to AALTAFIL should the radius be more than 16 meters. Thus, a crane rental contract was executed between Ben Line and ACE Logistics, and the former paid the full amount of ₱2,395,000.00 in consonance with the payment terms agreed upon.[7]

When Ben Line informed Madson that it had another small piece of cargo to be lifted, the latter demanded an additional ₱200,000.00 because the previously agreed amount covered only the lifting of a single heavy cargo. Thus, the total consideration for the use of the crane amounted to ₱2,595,000.00: ₱1,995,000.00 was paid to ACE Logistics and ₱600,000.00 was paid directly to AALTAFIL.[8]

On 1 October 2006, the vessel was ready to discharge the cargo. Due to problems with the crane operator and the crane itself, however, Ben Line was constrained to look for their substitutes. It hired Renato Escarpe of Asian Terminals, Inc. *(ATI)* as a crane operator and it leased ATI's floating crane barge.[9]

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

[7] *Id*. at 15.

[8] *Id*. at 16.

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

Thereafter, Ben Line repeatedly made demands for a refund from AALTAFIL and ACE Logistics but respondents refused to do so. Believing it was deceived into renting a less worthy crane, Ben Line filed a complaint-affidavit against respondents before the National Bureau of Investigation *(NBI)*. On 11 January 2008, the NBI issued a resolution recommending the prosecution of respondents for estafa under Article 315(2) of the Revised Penal Code.[10] The case was forwarded to the Office of the Prosecutor *(OCP)* of Manila.

Proceedings before the OCP and the DOJ

In its 23 May 2008 Resolution,[11] the OCP issued a resolution recommending the dismissal of the complaint for insufficiency of evidence. It opined that there was no misrepresentation in Madson's claim that AALTAFIL owned the required crane. In addition, the OCP found that respondents neither conspired nor employed machinations against Ben Line in increasing the amount the latter would have to pay to lease its desired equipment. The resolution reads:

> Wherefore, from the foregoing the undersigned respectfully recommends the dismissal of the instant case due to insufficiency of evidence.[12]

Aggrieved, Ben Line filed a petition for review before the DOJ.

In its 25 February 2010 resolution, the DOJ denied Ben Line's petition for review. It noted that the petition for review failed to attach clear copies of the assailed resolution. It opined that Ben Line lost its right to appeal because of its failure to comply with the prevailing rules. The resolution reads:

> WHEREFORE, the petition for review is hereby DISMISSED.[13]

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

[11] CA *rollo*, pp. 47-55.

[12] *Id.* at 55.

[13] *Id.* at 43.

Ben Line moved for reconsideration but it was denied by the DOJ in its 11 June 2010 resolution. Undeterred, it filed a petition for certiorari before the CA.

The CA Ruling

In its 14 December 2015 decision, the CA dismissed Ben Line's petition for certiorari. The appellate court explained that the DOJ did not act with grave abuse of discretion because it merely applied the rules when it dismissed Ben Line's petition. It noted that Ben Line failed to comply with Sections 5 and 6 of the 2000 NPS Rules on Appeal after failing to attach clear and legible copies of the resolutions sought to be reviewed. The CA posited that the circumstances did not warrant the relaxation of the rules of procedure. It ruled:

> ACCORDINGLY, the petition is DISMISSED for lack of merit.[14]

Ben Line moved for reconsideration, but the same was denied by the CA in its assailed 25 February 2011 resolution.

Hence, this present petition raising the following:

ISSUES

I

WHETHER THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE PETITION FOR CERTIORARI DATED 20 AUGUST 2010 AND IN DENYING THE MOTION FOR RECONSIDERATION DATED 6 JANUARY 2011 OF PETITIONER BEN LINE AGENCIES PHILIPPINES, INC.; AND

II

WHETHER THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT THE PETITION FOR REVIEW DATED 26 MARCH 2009 IS NOT MERITORIOUS ON ITS FACE.[15]

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[14] *Rollo*, p. 47.

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

OUR RULING

The petition is meritorious.

Principally, the issues under the present petition for review before the Court are whether the DOJ acted with grave abuse of discretion in dismissing Ben Line's appeal only on procedural grounds.

Relevant to the issue is Section 5 of the 2000 NPS Rule on Appeal, which reads:

> Section 5. Contents of the petition. — The petition shall contain or state: (a) the names and addresses of the parties; (b) the investigation Slip Number (I.S. No.) and criminal case number, if any, and title of the case, including the offense charged in the complaint; (c) the venue of the preliminary investigation; (d) the specific material dates showing that it was filed on time; (e) a clear and concise statement of the facts, the assignment of errors, and the reasons or arguments relied upon for the allowance of the appeal; and (f) proof of service of a copy of the petition to the adverse party and the Prosecution Office concerned.
>
> The petition shall be accompanied by legible duplicate original or certified true copies of the complaint, affidavit/sworn statements and other evidence submitted by the parties during the preliminary investigation/reinvestigation.

In the case at bar, it is undisputed that Ben Line initially failed to submit clear and legible copies of the resolutions of the OCP when it filed its petition for review before the DOJ. Under Section 6 of the 2000 NPS rules, failure to comply with the requirements of Section 5 constitutes sufficient ground to dismiss the petition. Thus, the DOJ decided to dismiss Ben Line's complaint for failure to comply with Section 5.

It must be remembered, however, that rules of procedure are designed to facilitate the attainment of justice and that their rigid application resulting in technicalities tending to delay or frustrate rather than promote substantial justice must be avoided.[16] In other words, procedural rules are set in place to ensure that

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[16] *Peñoso v. Dona*, 549 Phil. 39, 46 (2007).

the proceedings are in order and to avoid unnecessary delays, but are never intended to prevent tribunals or administrative agencies from resolving the substantive issues at hand.

In *Air Philippines Corporation v. Zamora (Air Philippines)*,[17] the Court elucidated that mere failure to attach legible copies does not *ipso facto* warrant the dismissal of a complaint or a petition, to wit:

> **As a general rule, a petition lacking copies of essential pleadings and portions of the case record may be dismissed. This rule, however, is not petrified.** As the exact nature of the pleadings and parts of the case record which must accompany a petition is not specified, much discretion is left to the appellate court to determine the necessity for copies of pleading and other documents. There are, however, guideposts it must follow.
>
> First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.
>
> Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.
>
> **Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interests of justice that the case be decided on the merits**. [emphases and underscoring supplied]

Lest it be misunderstood, the Court does not belittle the compliance with the rules of procedure. It recognizes that zealous

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[17] 529 Phil. 718 (2006), cited in *Wenceslao, et al. v. Makati Development Corporation*, G.R. No. 230696, August 30, 2017.

observance of the rules is still the general course of action as it serves to guarantee the orderly, just, and speedy dispensation of cases.[18] Nevertheless, the Court finds that the CA erred when it did not find the DOJ to have acted with grave abuse of discretion in dismissing Ben Line's petition for review.

Initially, the DOJ correctly acted when it dismissed Ben Line's petition for failure to attach clear and legible copies of the appealed resolution of the OCP. However, it was remiss in its duty to ensure that cases before it should be resolved on its merits when it denied Ben Line's motion for reconsideration. In accordance with the pronouncements of the Court in *Air Philippines* and in order that the subtantial issues of the case be fully ventilated, the DOJ should have reinstated Ben Line's petition for review. It is noteworthy that in its motion, Ben Line had already attached clear and legible copies of the resolutions appealed from. Further, it pointed out that the copies it initially attached in its petition for review before the DOJ were provided by the OCP.

The present case is comparable with *Manila Electric Company v. Atilano (MERALCO)*[19] where the Court ruled:

> In dismissing MERALCO's petition for review of the resolution of the Office of the City Prosecutor of Pasig City, the Secretary of Justice ruled that after carefully examining the petition and its attachments, no error on the part of the handling prosecutor was found to have been committed which would warrant a reversal of the challenged resolution. **Thus, the December 17, 2002 DOJ resolution concluded that the challenged resolution was in accord with the evidence and the law on the matter.**
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> x x x x x x x x x
>
> We rule, therefore, that the DOJ resolution satisfactorily complied with constitutional and legal requirements when it stated its legal basis for denying MERALCO's petition for review which is Section 7 of

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[18] *Asia United Bank v. Goodland Company, Inc.*, 650 Phil. 174, 183 (2010).

[19] 689 Phil. 394 (2012).

Department Circular No. 70, which authorizes the Secretary of Justice to dismiss a petition outright if he finds it to be patently without merit or manifestly intended for delay, or when the issues raised therein are too insubstantial to require consideration.

The DOJ resolution noted that MERALCO failed to submit a legible true copy of the confirmation of sale dated May 30, 2000 and considered the omission in violation of Section 5 of Department Circular No. 70. **MERALCO assails the dismissal on this ground as an overly technical application of the rules and claims that it frustrated the ends of substantial justice. We note, however, that the failure to attach the document was not the sole reason of the DOJ's denial of MERALCO's petition for review. As mentioned, the DOJ resolution dismissed the petition primarily because the prosecutor's resolution is in accord with the evidence and the law on the matter.** [Emphases and underscoring supplied]

In *MERALCO*, the DOJ did not only dismiss the petition for review on purely technical grounds but also found that the resolution of the prosecution were in accord with the evidence and the law. As such, the issues in the said case were fully ventilated at the DOJ level because not only did it rule on procedural grounds, but it likewsie adressed subtantive matters. In the case at bar, however, the DOJ imprudently dismissed Ben Line's petition for review merely on procedural or technical grounds. It did not resolve the substantive or factual matters even after Ben Line had substantially complied with the rule on appeal when it filed its motion for reconsideration.

Nonetheless, respondents assail that the ruling of the Court in *Lao v. Co, et al. (Lao)*[20] should be applied in this case. They highlight that the circumstances are similar in *Lao* where the Court upheld the dismissal by the CA of the petition for certiorari filed therein for failure of the petitioner to attach clear and legible duplicate original or certified true copy of the judgment, order, resolution or ruling subject thereof.

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[20] 585 Phil. 134 (2008).

A closer scrutiny of *Lao*, however, reveals that its factual circumstances are not at par with the present controversy. In the case relied upon by respondents, there was no showing that petitioner attempted to remedy its failure to attach clear and legible copies of the required documents. In contrast, Ben Line attached clear and legible copies of the assailed OCP resolution after its petition for review was initially dismissed by the DOJ. Thus, the guidelines outlined in *Air Philippines* are more applicable in that a petition dismissed earlier, due to lack of an essential pleading or part of the case record, may still be given due course or reinstated upon showing that petitioner had later submitted the documents required, i.e., when such documents required are part of a subsequent motion for reconsideration.

In finding for herein petitioner, the Court does not necessarily rule on whether its version of events or legal arguments deserve more consideration than that of the respondents. It simply corrects the DOJ's inordinate dismissal of Ben Line's petition for review where precisely these issues could have been adequately and appropriately resolved.

WHEREFORE, the petition is GRANTED. The 14 December 2010 Decision and 25 February 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 115492 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Department of Justice for further review.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 199527. January 10, 2018]

PEOPLE OF THE PHILIPPINES, thru Private Complainant BRIAN VICTOR BRITCHFORD, *petitioner, vs.* **SALVADOR ALAPAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; REVISED ADMINISTRATIVE CODE; OFFICE OF THE SOLICITOR GENERAL; IN THE APPEAL OF CRIMINAL CASES BEFORE THE COURT OF APPEALS OR THE SUPREME COURT, THE AUTHORITY TO REPRESENT THE PEOPLE IS VESTED SOLELY IN THE SOLICITOR GENERAL, WHILE THE INTEREST OF THE PRIVATE COMPLAINANT IS LIMITED ONLY TO THE CIVIL LIABILITY ARISING FROM THE CRIME.— In the appeal of criminal cases before the Court of Appeals or the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. This power is expressly provided in Section 35, Book IV, Title III, Chapter 12 of the Revised Administrative Code. Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases. Jurisprudence has already settled that the interest of the private complainant is limited only to the civil liability arising from the crime. Thus, in *Bautista v. Cuneta-Pangilinan*, the Court ruled: Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.

2. ID.; ID.; ID.; ID.; WHILE A PRIVATE PROSECUTOR MAY BE ALLOWED TO INTERVENE IN CRIMINAL PROCEEDINGS ON APPEAL IN THE COURT OF APPEALS OR THE SUPREME COURT, HIS

PARTICIPATION IS SUBORDINATE TO THE INTEREST OF THE PEOPLE, HENCE, HE CANNOT BE PERMITTED TO ADOPT A POSITION CONTRARY TO THAT OF THE SOLICITOR GENERAL, FOR TO DO SO WOULD BE TANTAMOUNT TO GIVING THE PRIVATE PROSECUTOR THE DIRECTION AND CONTROL OF THE CRIMINAL PROCEEDING, CONTRARY TO THE PROVISIONS OF LAW.— [R]espondent was convicted of eight (8) counts of violation of B.P. Blg. 22 for which he was imposed the penalty of fine instead of imprisonment pursuant to Administrative Circulars No. 12-2000 and 13-2001. Thus, the penalty of fine and the imposition of subsidiary imprisonment in case of nonpayment thereof pertain to the criminal aspect of the case. On the other hand, the indemnification for the face value of the dishonored checks refers to the civil aspect of the case. Consequently, petitioner could not appeal the imposition of fine as penalty which was not even questioned by the People through the OSG. "While a private prosecutor may be allowed to intervene in criminal proceedings on appeal in the Court of Appeals or the Supreme Court, his participation is subordinate to the interest of the People, hence, he cannot be permitted to adopt a position contrary to that of the Solicitor General. To do so would be tantamount to giving the private prosecutor the direction and control of the criminal proceeding, contrary to the provisions of law." Hence, the CA properly dismissed the petition for review.

3. **CRIMINAL LAW; REVISED PENAL CODE; PENALTIES; SUBSIDIARY IMPRISONMENT MAY NOT BE IMPOSED WHERE THE JUDGMENT OF CONVICTION DID NOT EXPRESSLY PROVIDE SUBSIDIARY IMPRISONMENT IN CASE OF FAILURE TO PAY THE PENALTY OF FINE; RATIONALE.—** Another reason which militates against petitioner's position is the lack of provision pertaining to subsidiary imprisonment in the judgment of conviction. *People v. Fajardo*, in relation to Republic Act. No. 5465 which amended Article 39 of the RPC, discusses the rationale behind the necessity for expressly imposing subsidiary imprisonment in the judgment of conviction, viz: x x x It is a fundamental principle consecration in Section 3 of the Jones Law, the Act of Congress of the United States of America approved on August 29, 1916, which was still in force when the order appealed from was made, that **no**

person may be deprived of liberty without due process of law. This constitutional provision was in a sense incorporated in Article 78 of the Revised Penal Code prescribing that no penalty shall be executed except by virtue of a final judgment. As the fact show that there is no judgment sentencing the accused to suffer subsidiary imprisonment in case of insolvent to pay the fine imposed upon him, **because the said subsidiary imprisonment is not stated in the judgment finding him guilty, it is clear that the court could not legally compel him to serve said subsidiary imprisonment. A contrary holding would be a violation of the laws aforementioned.** x x x. Indeed, Administrative Circular No. 13-2001 provides that "should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment." However, the Circular does not sanction indiscriminate imposition of subsidiary imprisonment for the same must still comply with the law. Here, the judgment of conviction did not provide subsidiary imprisonment in case of failure to pay the penalty of fine. Thus, subsidiary imprisonment may not be imposed without violating the RPC and the constitutional provision on due process.

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; THE DOCTRINE OF IMMUTABILITY OF JUDGMENT PRECLUDES MODIFICATION OF A FINAL AND EXECUTORY JUDGMENT, EVEN IF THE MODIFICATION IS MEANT TO CORRECT ERRONEOUS CONCLUSIONS OF FACT AND LAW, AND WHETHER THE MODIFICATION IS MADE BY THE COURT THAT RENDERED IT OR BY THE HIGHEST COURT IN THE LAND; EXCEPTIONS; NOT PRESENT.—** [T]he time-honored doctrine of immutability of judgment precludes modification of a final and executory judgment: A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice

system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred. The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments. There is no doubt that the MTC decision has long attained finality and that none of the aforementioned exceptions finds application in this case. Hence, the MTC decision stands and any other question involving the said decision must now be put to rest.

APPEARANCES OF COUNSEL

Romero Law Office for petitioner.
Renato H. Collado for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari assailing the Resolution, dated 22 November 2011, of the Court of Appeals *(CA)* in CA-G.R. SP No. 118333, which dismissed the petition seeking the imposition of subsidiary imprisonment for nonpayment of fine in eight (8) cases of violation of Batas Pambansa Bilang 22 *(B.P. Blg. 22)*.

THE FACTS

In an Information, dated 26 May 2006, respondent Salvador Alapan *(respondent)* and his wife Myrna Alapan *(Myrna)* were charged with eight (8) counts of violation of B.P. Blg. 22. Upon arraignment on 1 September 2006, they pleaded not guilty to the charges.

In August 2005, the Spouses Alapan borrowed ₱400,000.00 from petitioner Brian Victor Britchford *(petitioner)* with a promise that they would pay the said amount within three (3) months. To secure the indebtedness, respondent issued eight (8) postdated checks.

When the checks matured, petitioner deposited then at the Philippine National Bank *(PNB)*, Olongapo City branch. One week thereafter, PNB informed petitioner that the checks were dishonored for the reason that the account against which the checks were drawn was closed. Petitioner immediately informed respondent of the dishonor of the checks.

On their part, the Spouses Alapan averred that their account was closed only on the last week of October 2005 because they suffered business reverses. They nonetheless stated that they were willing to settle their monetary obligation.

The MTC Ruling

In a decision,[1] dated 4 February 2009, the Municipal Trial Court, San Felipe, Zambales *(MTC),* convicted respondent of eight (8) counts of violation of B.P. Blg. 22. It imposed a penalty of fine instead of imprisonment considering that respondent's act of issuing the bounced checks was not tainted with bad faith and that he was a first-time offender. On the other hand, the MTC acquitted Myrna because she did not participate in the issuance of the dishonored checks. The *fallo* reads:

> WHEREFORE, the Court finds the evidence of the prosecution to have established the guilt of Accused Salvador Alapan of the eight (8) counts of Violation of B.P. Blg. 22 and imposes upon the aforenamed accused to pay a fine of ₱30,000.00 for each case or total of ₱240,000.00 and to indemnify the offended party, Mr. Brian Victor Britchford the sum of FOUR HUNDRED ELEVEN THOUSAND (₱411,000.00) Philippine Currency, representing the face value of the dishonored checks, with legal interest per annum commencing from March 8, 2006, when demand was made, until fully paid, and to pay attorney's fees of ₱15,000.00 and to pay the costs.[2]

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[1] CA *rollo*, pp. 22-27.

[2] CA *rollo*, p. 27.

After the MTC judgment became final and executory, a writ of execution was issued. The writ, however, was returned unsatisfied. Petitioner thus filed a Motion to Impose Subsidiary Penalty[3] for respondent's failure to pay the fine imposed by the MTC.

In its Order,[4] dated 24 September 2010, the MTC denied the motion on the ground that subsidiary imprisonment in case of insolvency was not imposed in the judgment of conviction.

Aggrieved, petitioner filed an appeal before the Regional Trial Court, Branch 69, Iba, Zambales *(RTC)*.

The RTC Ruling

In a decision,[5] dated 25 January 2011, the RTC dismissed the appeal for lack of jurisdiction. It held that respondent could not be made to undergo subsidiary imprisonment because the judgment of conviction did not provide for such penalty in case of non-payment of fine. The RTC further opined that the MTC decision which already attained finality could no longer be altered or modified. It disposed the case in this wise:

> IN VIEW THEREOF, the appeal is DISMISSED for lack of jurisdiction.[6]

Undeterred, petitioner filed a petition for review before the CA.

The CA Ruling

In a Resolution, dated 22 November 2011, the CA dismissed the petition. It ruled that the petition was filed without the intervention of the Office of the Solicitor General *(OSG)* which was contrary to Section 35, Chapter 12, Title III, Book IV of the Administrative Code. The dispositive portion reads:

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[3] CA *rollo*, pp. 28-29.

[4] CA *rollo*, p. 31.

[5] CA *rollo*, pp. 41-42.

[6] CA *rollo*, p. 42.

In view of the foregoing and finding the Manifestation (in lieu of Comment) filed by the OSG to be well-founded, the petition is hereby DISMISSED pursuant to Section 3, Rule 43 of the 1997 Rules of Court.[7]

Hence, this petition.

ISSUES

I. WHETHER PETITIONER MAY ASSAIL THE PENALTY IMPOSED IN THE JUDGMENT OF CONVICTION;

II. WHETHER RESPONDENT MAY UNDERGO SUBSIDIARY IMPRISONMENT FOR FAILURE TO PAY THE FINE.

Petitioner argues that Section 35, Chapter 12, Title III, Book IV of the Administrative Code is applicable only in cases wherein the government or any of its branches or instrumentalities is directly involved; that the said law does not cover matters wherein it is the interest of the private complainant that is directly affected; and that Administrative Circular No. 13-2001 expressly states that there is no legal obstacle to the application of the Revised Penal Code *(RPC)* provisions on subsidiary imprisonment should only a fine be imposed and the accused be unable to pay the fine.[8]

In his comment, respondent counters, citing *Gonzales v. Chavez,*[9] that it is mandatory upon the OSG to represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer; that it is only the State, through its appellate counsel, the OSG, which has the sole right and authority to institute criminal proceedings before the Court of Appeals or the Supreme Court;[10]

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[7] *Rollo*, p. 21.

[8] *Rollo*, pp. 11-16.

[9] 282 Phil. 858 (1992).

[10] 612 Phil. 817, 841 (2009).

that the imposition or the non-imposition of subsidiary penalty is a matter that involves the interest of the State, thus, the private offended party is without legal personality to bring an appeal on the criminal aspect of the case; and that the imposition of subsidiary imprisonment must be clearly stated in the judgment.[11]

In his reply, petitioner avers that Administrative Circular No. 13-2001 categorically implies that subsidiary imprisonment could be resorted to even if the penalty provided by the trial court is limited only to fine; and that the imposition of subsidiary imprisonment would emphasize the gravity of the offense committed by respondent and would serve as a deterrent to others not to emulate this malicious act.[12]

OUR RULING

Petitioner lacks legal standing to question the trial court's order.

In the appeal of criminal cases before the Court of Appeals or the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. This power is expressly provided in Section 35, Book IV, Title III, Chapter 12 of the Revised Administrative Code.[13] Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.[14]

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[11] *Rollo*, pp. 33-36.

[12] *Rollo*, pp. 55-58.

[13] **SECTION 35.** Powers and Functions.— The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; x x x

[14] *Macasaet v. People*, 492 Phil. 355, 375 (2005).

Jurisprudence has already settled that the interest of the private complainant is limited only to the civil liability arising from the crime. Thus, in *Bautista v. Cuneta-Pangilinan*,[15] the Court ruled:

> Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.[16]

In this case, respondent was convicted of eight (8) counts of violation of B.P. Blg. 22 for which he was imposed the penalty of fine instead of imprisonment pursuant to Administrative Circulars No. 12-2000 and 13-2001. Thus, the penalty of fine and the imposition of subsidiary imprisonment in case of nonpayment thereof pertain to the criminal aspect of the case. On the other hand, the indemnification for the face value of the dishonored checks refers to the civil aspect of the case. Consequently, petitioner could not appeal the imposition of fine as penalty which was not even questioned by the People through the OSG. "While a private prosecutor may be allowed to intervene in criminal proceedings on appeal in the Court of Appeals or the Supreme Court, his participation is subordinate to the interest of the People, hence, he cannot be permitted to adopt a position contrary to that of the Solicitor General. To do so would be tantamount to giving the private prosecutor the direction and control of the criminal proceeding, contrary to the provisions of law."[17] Hence, the CA properly dismissed the petition for review.

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[15] 698 Phil. 111 (2012).

[16] *Id*. at 124.

[17] *Cariño v. De Castro*, 576 Phil. 634, 640 (2008).

Subsidiary imprisonment in case of insolvency must be expressly stated in the judgment of conviction.

Another reason which militates against petitioner's position is the lack of provision pertaining to subsidiary imprisonment in the judgment of conviction. *People v. Fajardo,*[18] in relation to Republic Act. No. 5465 which amended Article 39 of the RPC, discusses the rationale behind the necessity for expressly imposing subsidiary imprisonment in the judgment of conviction, viz:

> The first paragraph of Article 39 of the Revised Penal Code reads as follows:
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> ART. 39. *Subsidiary penalty*. — If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules: . . .
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> Article 78 of Chapter V of the same Code, in its pertinent part, which deals with the execution and service of penalties, provides:
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> ART. 78. *When and how a penalty is to be executed*. — No penalty shall executed except by virtue of a final judgment.
>
> A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.
>
> It is a fundamental principle consecration in Section 3 of the Jones Law, the Act of Congress of the United States of America approved on August 29, 1916, which was still in force when the order appealed from was made, that **no person may be deprived of liberty without due process of law. This constitutional provision was in a sense incorporated in Article 78 of the Revised Penal Code prescribing that no penalty shall be executed except by virtue of a final judgment**. As the fact show that there is no judgment sentencing the accused to suffer subsidiary imprisonment in case of insolvent

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[18] 65 Phil. 539 (1938).

to pay the fine imposed upon him, **because the said subsidiary imprisonment is not stated in the judgment finding him guilty, it is clear that the court could not legally compel him to serve said subsidiary imprisonment. A contrary holding would be a violation of the laws aforementioned.** That subsidiary imprisonment is a penalty, there can be no doubt, for, according to Article 39 of the Revised Penal Code, it is imposed upon the accused and served by him in lieu of the fine which he fails to pay on account of insolvency. There is not a single provision in the Code from which it may be logically inferred that an accused may automatically be made to serve subsidiary imprisonment in a case where he has been sentenced merely to pay a fine and has been found to be insolvent. Such would be contrary to the legal provisions above-cited and to the doctrine laid down in United States vs. Miranda (2 Phil., 606, 610), in which it was said: "That judgment of the lower court fails to impose subsidiary imprisonment in case of insolvency for indemnification to the owner of the banca, but only imposes subsidiary punishment as to the costs. In this respect the judgment is erroneous and should be modified."

We, therefore, conclude that an accused who has been sentenced by final judgment to pay a fine only and is found to be insolvent and could not pay the fine for this reason, cannot be compelled to serve the subsidiary imprisonment provided for in Article 39 of the Revised Penal Code. [emphasis supplied][19]

Indeed, Administrative Circular No. 13-2001 provides that "should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment." However, the Circular does not sanction indiscriminate imposition of subsidiary imprisonment for the same must still comply with the law.

Here, the judgment of conviction did not provide subsidiary imprisonment in case of failure to pay the penalty of fine. Thus, subsidiary imprisonment may not be imposed without violating the RPC and the constitutional provision on due process.

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[19] *Id.* at 541-542.

The final and executory decision of the MTC can no longer be modified.

Finally, the time-honored doctrine of immutability of judgment precludes modification of a final and executory judgment:

> A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.
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> The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called nunc pro tunc entries which cause no prejudice to any party, and (3) void judgments.[20]

There is no doubt that the MTC decision has long attained finality and that none of the aforementioned exceptions finds application in this case. Hence, the MTC decision stands and any other question involving the said decision must now be put to rest.

WHEREFORE, the petition is **DENIED**. The 22 November 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 118333 is **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

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[20] 751 Phil. 204, 211 (2015).

THIRD DIVISION

[G.R. No. 204039. January 10, 2018]

UNITED COCONUT PLANTERS BANK, *petitioner, vs.* **SPOUSES WALTER UY and LILY UY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE APPELLATE COURT HAS THE POWER TO REVIEW THE CASE IN ITS ENTIRETY, AND WITHHOLDING FROM IT THE POWER TO RENDER AN ENTIRELY NEW DECISION WOULD VIOLATE ITS POWER OF REVIEW AND WOULD, IN EFFECT, RENDER IT INCAPABLE OF CORRECTING PATENT ERRORS COMMITTED BY THE LOWER COURTS.— It must be remembered that when a case is appealed, the appellate court has the power to review the case in its entirety. In *Heirs of Alcaraz v. Republic of the Phils*., the Court explained that an appellate court is empowered to make its own judgment as it deems to be a just determination of the case, to wit: In any event, when petitioners interposed an appeal to the Court of Appeals, the appealed case was thereby thrown wide open for review by that court, which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy. Given this power, the appellate court has the authority to either affirm, reverse or modify the appealed decision of the trial court. To withhold from the appellate court its power to render an entirely new decision would violate its power of review and would, in effect, render it incapable of correcting patent errors committed by the lower courts. Thus, when UCPB appealed the present controversy before the Court, it was not merely limited to determine whether the CA accurately set UCPB's liability against respondents. It is also empowered to determine whether the appellate court's determination of liability was correct in the first place. This is especially true considering that the issue of the nature of UCPB's liability is closely intertwined and inseparable from the determination of the amount of its actual liability.

2. ID.; ID.; JUDGMENTS; THE DOCTRINE OF *STARE DECISIS*

BECOMES OPERATIVE ONLY WHEN JUDICIAL PRECEDENTS ARE SET BY PRONOUNCEMENTS OF THE SUPREME COURT TO THE EXCLUSION OF LOWER COURTS, REGARDLESS OF WHETHER THE DECISIONS OF THE LOWER COURTS ARE LOGICALLY OR LEGALLY SOUND AS ONLY DECISIONS ISSUED BY THE SUPREME COURT BECOME PART OF THE LEGAL SYSTEM.— [R]espondents bewail the reliance of the CA on *O'Halloran* arguing that it was not a binding precedent since it was not issued by this Court. In *De Mesa v. Pepsi-Cola Products Phils. Inc.*, the Court explained that the doctrine of *stare decisis* deems decisions of this Court binding on the lower courts, to wit: The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit: x x x It enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. In other words, the doctrine of *stare decisis* becomes operative only when judicial precedents are set by pronouncements of this Court to the exclusion of lower courts. It is true regardless whether the decisions of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect. Thus, respondents are correct in contesting the application of the doctrine of *stare decisis* when the CA relied on decisions it had issued.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; ASSIGNMENT OF CREDIT; PETITIONER IS ONLY JOINTLY LIABLE WITH THE CONDOMINIUM DEVELOPER FOR THE REFUND OF THE AMOUNTS IT HAD ACTUALLY RECEIVED FROM THE UNIT OWNERS, AS IT WAS NOT SUBROGATED INTO THE PLACE OF THE CONDOMINIUM DEVELOPER BUT IS A MERE ASSIGNEEE OF THE RIGHTS AND RECEIVABLES THEREOF.—** [T]he Court still finds that the CA did not err in ruling that UCPB was only jointly, and not solidarily liable to PPGI against respondents. In *Spouses Choi v. UCPB (Spouses Choi)*, the Court had definitely ruled

on UCPB's liability to the purchasers of Kiener Hills, viz: xxx. The Agreement conveys the straightforward intention of Primetown to "sell, assign, transfer, convey and set over" to UCPB the receivables, rights, titles, interests and participation over the units covered by the contracts to sell. **It explicitly excluded any and all liabilities and obligations, which Primetown assumed under the contracts to sell.** xxx. **Contrary to Spouses Choi's argument that UCPB was estopped, we find that estoppel would not lie since UCPB's letters to the buyers only assured them of the completion of their units by the developer.** UCPB did not represent to be the new owner of Kiener or that UCPB itself would complete Kiener. In *Liam v. UCPB (Liam)*, the Court maintained its position that the transaction between PPGI and UCPB was merely an assignment of credit. Hence, what was transferred to UCPB was only the right to collect PPGI's receivables from the purchases of Kiener Hills and not the obligation to complete the said condominium project. xxx. It is noteworthy that the circumstances and issues in *Choi* and *Liam* fall squarely with the case at bar. *First*, PPGI and UCPB were prominent parties in the cited cases. *Second*, it involved the same documents and agreement between PPGI and UCPB whereby the right to collect the receivables were assigned to the latter. *Third*, the controversy arose from the complaints of disgruntled unit owners to recover the amount they had paid from PPGI or UCPB after Kiener Hills was not completed. In addition, the issue on estoppel was addressed in *Spouses Choi*. There, the Court ruled that the demand letters UCPB sent to the buyers, including herein respondents, only assured the completion of the condominium project. Nevertheless, there was no representation on the part of the UCPB that it would continue the construction of Kiener Hills or that it was the new owner thereof. Guided by the previous pronouncements of this Court, it is settled that UCPB is only jointly liable with PPGI to the disgruntled purchasers of Kiener Hills, including respondents. Thus, UCPB is only bound to refund the amount it had unquestionably received from respondents.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED UNDER A PETITION FOR REVIEW BECAUSE THE COURT IS NOT A TRIER OF FACTS AND THE FACTUAL FINDINGS OF LOWER COURTS ARE FINAL, BINDING OR CONCLUSIVE ON THE PARTIES AND TO THE COURT

EXCEPT WHEN THE CONCLUSION OF THE LOWER COURT IS ONE GROUNDED ENTIRELY ON SPECULATION, SURMISES OR CONJECTURES OR WHEN THE JUDGMENT IS BASED ON A MISAPPREHENSION OF FACTS.— [U]CPB does not contest the CA's conclusion that it is jointly liable with PPGI to the unit owners of Kiener Hills. It, however, assails that the CA erred in computing its actual liability because it was only bound to refund the amount it had actually received. Meanwhile, respondents contest that the resolution of the correct amount of UCPB's liability is a question of fact, which is beyond the ambit of a petition for review under Rule 45. It is axiomatic that, as a rule, only questions of law may be raised under a petition for review under Rule 45 because the Court is not a trier of facts and the factual findings of lower courts are final, binding or conclusive on the parties and to the Court. As with every rule, however, it admits certain exceptions. Among the recognized exceptions are when the conclusion of the lower court is one grounded entirely on speculation, surmises or conjectures or when the judgment is based on a misapprehension of facts. The Court finds that the exceptions are present to warrant a review of the factual matters.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; PAYMENT; ONE WHO PLEADS PAYMENT HAS THE BURDEN OF PROVING THE FACT OF PAYMENT; PETITIONER'S LIABILITY AGAINST RESPONDENTS, MODIFIED.— Jurisprudence has settled UCPB's liability to unit owners to refund the amount it indubitably received from the purchasers of Kiener Hills. In this case, the CA determined UCPB's actual liability of ₱552,152.34 by subtracting the amounts already paid to PPGI from the total purchase price of ₱1,151,718.75. Such computation of the appellate court, however, merely assumes that the said balance was actually paid by respondents and received by UCPB. A closer scrutiny of the records, nonetheless, shows that the said amount is not supported by the evidence at hand. The only document that identifies the amount respondents had paid to UCPB is the demand letter it sent to the former. It is noteworthy that the said demand letter was materially reproduced in respondents' complaint before the HLURB Regional Office. In the said letter, the amount UCPB received from respondents is only ₱157,757.82. While

respondents alleged that they had paid in full the purchase price of the condominium units, only ₱157,757.82 was sufficiently substantiated to have been actually received by UCPB. Thus, UCPB should only be held liable for ₱157,757.82 because it was the only amount which was unequivocally shown it had received. This is especially true considering that one who pleads payment has the burden of proving the fact of payment.

APPEARANCES OF COUNSEL

UCPB Legal Services Group for petitioner.
Nelson C. Oberas 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 23 May 2012 Decision[1] and the 18 October 2012 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 118534 which affirmed with modification the 24 March 2010 Decision[3] of the Office of the President *(OP)*.

THE FACTS

Prime Town Property Group, Inc. *(PPGI)* and E. Ganzon Inc. were the joint developers of the Kiener Hills Mactan Condominium Project *(Kiener Hills)*. In 1997, spouses Walter and Lily Uy *(respondents)* entered into a Contract to Sell with PPGI for a unit in Kiener Hills. The total contract price amounted to ₱1,151,718.75 payable according to the following terms: (a) ₱100,000.00 as down payment; and (b) the balance paid in

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[1] *Rollo*, Vol. I, pp. 40-57; penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla.

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

[3] *Id*. at 116-117; issued by Deputy Executive Secretary for Legal Affairs Natividad G. Dizon.

40 monthly installments at ₱26,297.97 from 16 January 1997 to 16 April 2000.[4]

On 23 April 1998, PPGI and petitioner United Coconut Planters Bank *(UCPB)* executed the following: Memorandum of Agreement *(MOA)*,[5] and Sale of Receivables and Assignment of Rights and Interests.[6] By virtue of the said agreements, PPGI transferred the right to collect the receivables of the buyers, which included respondents, of units in Kiener Hills. The parties entered into the said agreement as PPGI's partial settlement of its ₱1,814,500,000.00 loan with UCPB.[7]

On 17 April 2006, the Housing and Land Use Regulatory Board Regional Office *(HLURB Regional Office)* received respondents' complaint for sum of money and damages against PPGI and UCPB. They claimed that in spite of their full payment of the purchase price, PPGI failed to complete the construction of their units in Kiener Hills.[8]

The HLURB Regional Office Decision

In its 29 November 2006 decision,[9] the HLURB Regional Office found that respondents were entitled to a refund in view of PPGI's failure to complete the construction of their units. Nonetheless, it found that UCPB cannot be solidarily liable with PPGI because only the accounts receivables were conveyed to UCPB and not the entire condominium project. The HLURB Regional Office suspended the proceedings as to PPGI on account of its being in corporate rehabilitation. The dispositive portion reads:

WHEREFORE, premises considered, decision is hereby rendered suspending the proceedings of the present case. The complainants

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[4] *Id*. at 14.

[5] *Id*. at 118-128.

[6] *Id*. at 129-133.

[7] *Id*. at 15.

[8] *Id*. at 182-183.

[9] *Id*. at 182-190; penned by Arbiter Atty. Melchor M. Calopiz.

are therefore directed to file their claim before the Rehabilitation Receiver.

No judgment as to cost.[10]

Unsatisfied, respondents appealed before the HLURB–Board of Commissioners *(HLURB Board)*.

The HLURB Board Decision

In its 17 September 2007 decision,[11] the HLURB Board reversed and set aside the HLURB Regional Office decision. It agreed that the proceedings against PPGI should be suspended on account of its corporate rehabilitation. Nevertheless, the HLURB Board found UCPB solidarily liable with PPGI because it stepped into the latter's shoes insofar as Kiener Hills is concerned pursuant to the MOA between them. It noted that UCPB was PPGI's successor-in-interest, such that the delay in the completion of the condominium project could be attributable to it and subject it to liability. The HLURB Board ruled that as PPGI's assignee, UCPB was bound to refund the payments made, without prejudice to its right of action against PPGI. Thus, it pronounced:

WHEREFORE, premises considered, the appeal is **GRANTED** and the decision of the Regional Office is **SET ASIDE** and a new one is entered as follows:

1. Respondent UCPB is hereby ordered to refund to the complainant the amount of ₱1,151,718.75 with interest at the legal rate of 6% per annum reckoned from the date of extrajudicial demand on May 24, 2005 until fully paid without prejudice to whatever claims UCPB may have against PPGI; and

2. Respondent UCPB and PPGI, jointly and severally, <u>are declared</u> liable to the complainant for payment of exemplary

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[10] *Id*. at 190.

[11] *Id*. at 110-115; issued by Commissioners Austere A. Panadero, Pamela B. Felizarta and Arturo M. Dublado.

damages in the amount of ₱30,000.00; and attorney's fees in the amount of ₱30,000.00.[12]

Aggrieved, UCPB appealed before the OP.

The OP Decision

In its 24 March 2010 decision, the OP affirmed the decision of the HLURB Board. It explained that the agreement between PPGI and UCPB clearly transferred all rights, titles, interests, and participations over Kiener Hills to the latter. It concluded that as successor-in-interest, UCPB now had the obligations relating to Kiener Hills, including the reimbursement of payments to respondents. The OP added that benefit of suspension of actions only attached to PPGI and not to UCPB. Thus:

WHEREFORE, based on the foregoing, the decision appealed from is hereby **AFFIRMED**.[13]

Undeterred, UCPB appealed before the CA.

The CA Ruling

In its assailed 23 May 2012 decision, the CA affirmed with modification the OP decision. While the appellate court agreed that respondents are entitled to a full refund of the payments they may have made, it ruled that UCPB is not solidarily liable with PPGI, and as such cannot be held liable for the full satisfaction of respondents' payments. It limited UCPB's liability to the amount respondents have paid upon the former's assumption as the party entitled to receive payments or on 23 April 1998 when the MOA and A/R Agreement were made between UCPB and PPGI.

In addition, the appellate court noted the pronouncements of the CA in *United Coconut Planters Bank v. O'Halloran (O'Halloran)*.[14] It explained that it involved similar facts and

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

[13] *Id*. at. 117.

[14] CA *rollo*, pp. 349-362.

issues where the CA ruled that the assignment of the receivables did not make UCPB the developer of Kiener Hills it being merely the assignee of the receivables under the contract to sell and, as such, UCPB cannot be deemed as the debtor with respect to the construction, development, and delivery of the subject condominium units. Thus, the CA ruled:

> **WHEREFORE**, in view of all the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. The promulgated Decision dated 24 March 2010 and Resolution dated 16 February 2011 are hereby **AFFIRMED with MODIFICATION**, as follows:
>
> 1) UCPB is ordered to pay Spouses Uy the amount of ₱552,152.34, with legal interest at 6% per annum from the filing of the complaint until fully paid without prejudice to whatever claims UCPB may have against Primetown; and
>
> 2) Without prejudice to a separate action Spouses Uy may file against Primetown, Primetown is liable to pay Spouses Uy the amount of ₱599,566.41 with legal interest at 6% per annum from the filing of the complaint until fully paid.[15]

UCPB moved for reconsideration but it was denied by the CA in its assailed 18 October 2012 resolution.

Hence, this appeal raising the following:

ISSUES

I

[WHETHER] THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT MISCONSTRUED THE APPLICABILITY TO THE INSTANT CASE OF THE FINAL AND EXECUTORY DECISION IN UNITED COCONUT PLANTERS BANK V. JOHN P. O'HALLORAN AND JOSEFINA O'HALLORAN (CA-G.R. SP NO. 101699, 23 JULY 1999) UNDER THE PRINCIPLE OF STARE DECISIS; AND

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[15] *Rollo*, Vol. I, p. 56.

II

[WHETHER] THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN RULING THAT UCPB IS LIABLE TO THE RESPONDENTS FOR THE AMOUNT THE RESPONDENTS DID NOT PAY THE BANK AND WHICH UCPB DID NOT RECEIVE.[16]

OUR RULING

The petition is meritorious.

Issues that may be raised on appeal

Respondents assailed that the CA erred in applying *O'Halloran* because the circumstances were different, notably the issue that estoppel did not arise in the said case. In addition, they argued that *O'Halloran* and the other cases cited by UCPB are not binding pursuant to the doctrine of *stare decisis* because they were decided by the CA and not by this Court. As such, respondents posited that only decisions of the Court, excluding all other courts such as the CA, form part of the legal system.

On the other hand, UCPB countered that the only issue to be resolved in the present petition is the actual amount of its liability. It explained that the assailed CA decision had become final and executory after respondents failed to appeal the same. UCPB pointed out that the issues respondents raised were already ventilated before the appellate court. It believed that respondents should have filed their own appeal to assail the issues they found questionable.

It must be remembered that when a case is appealed, the appellate court has the power to review the case in its entirety.[17] In *Heirs of Alcaraz v. Republic of the Phils.*,[18] the Court explained that an appellate court is empowered to make its own judgment as it deems to be a just determination of the case, to wit:

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[16] *Id.* at 22.

[17] *Sazon v. Vasquez-Menancio*, 682 Phil. 669, 679 (2012).

[18] 502 Phil. 521 (2005).

In any event, when petitioners interposed an appeal to the Court of Appeals, the appealed case was thereby thrown wide open for review by that court, which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy. Given this power, the appellate court has the authority to either affirm, reverse or modify the appealed decision of the trial court. To withhold from the appellate court its power to render an entirely new decision would violate its power of review and would, in effect, render it incapable of correcting patent errors committed by the lower courts.[19]

Thus, when UCPB appealed the present controversy before the Court, it was not merely limited to determine whether the CA accurately set UCPB's liability against respondents. It is also empowered to determine whether the appellate court's determination of liability was correct in the first place. This is especially true considering that the issue of the nature of UCPB's liability is closely intertwined and inseparable from the determination of the amount of its actual liability.

Stare Decisis applies only to cases decided by the Supreme Court

As above-mentioned, respondents bewail the reliance of the CA on *O'Halloran* arguing that it was not a binding precedent since it was not issued by this Court. In *De Mesa v. Pepsi-Cola Products Phils. Inc.*,[20] the Court explained that the doctrine of *stare decisis* deems decisions of this Court binding on the lower courts, to wit:

> The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
>
> x x x x x x x x x
>
> It enjoins adherence to judicial precedents**. It requires our courts to follow a rule already established in a final decision of the Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine

[19] *Id*. at 536.

[20] 504 Phil. 685 (2005).

of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[21] (emphasis and underscoring supplied)

In other words, the doctrine of *stare decisis* becomes operative only when judicial precedents are set by pronouncements of this Court to the exclusion of lower courts. It is true regardless whether the decisions of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect. Thus, respondents are correct in contesting the application of the doctrine of *stare decisis* when the CA relied on decisions it had issued.

UCPB only jointly liable to PPGI in reimbursing unit-owners of Kiener Hills

With that said, the Court still finds that the CA did not err in ruling that UCPB was only jointly, and not solidarily liable to PPGI against respondents. In *Spouses Choi v. UCPB (Spouses Choi)*,[22] the Court had definitely ruled on UCPB's liability to the purchasers of Kiener Hills, viz:

> The primordial issue to be resolved is whether, under the Agreement between Primetown and UCPB, UCPB assumed the liabilities and obligations of Primetown under its contract to sell with Spouses Choi.
>
> An assignment of credit has been defined as an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause — such as sale, *dation* in payment or exchange or donation — and without need of the debtor's consent, transfers that credit and its accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could have enforced it against the debtor. In every case, the obligations between assignor and assignee will depend upon the judicial relation which is the basis of the assignment. An assignment will be construed in accordance with the rules of construction governing contracts generally, the primary object being always to ascertain and carry out the intention

[21] *Id.* at 691.

[22] 755 Phil. 849 (2015).

of the parties. This intention is to be derived from a consideration of the whole instrument, all parts of which should be given effect, and is to be sought in the words and language employed.

In the present case, the Agreement between Primetown and UCPB provided that Primetown, in consideration of ₱748,000,000.00, "assigned, transferred, conveyed and set over unto [UCPB] all Accounts Receivables accruing from [Primetown's Kiener] . . . together with the assignment of all its rights, titles, interests and participation over the units covered by or arising from the Contracts to Sell from which the Accounts Receivables have arisen."

The Agreement further stipulated that "x x x this sale/assignment is limited to the Receivables accruing to [Primetown] from the [b]uyers of the condominium units in x x x [Kiener] and the corresponding Assignment of Rights and Interests arising from the pertinent Contract to Sell and does not include except for the amount not exceeding ₱30,000,000.00, Philippine currency, either singly or cumulatively any and all liabilities which [Primetown] may have assumed under the individual Contract to Sell." (emphasis omitted)

The Agreement conveys the straightforward intention of Primetown to "sell, assign, transfer, convey and set over" to UCPB the receivables, rights, titles, interests and participation over the units covered by the contracts to sell. **It explicitly excluded any and all liabilities and obligations, which Primetown assumed under the contracts to sell. The intention to exclude Primetown's liabilities and obligations is further shown by Primetown's subsequent letters to the buyers, which stated that "this payment arrangement shall in no way cause any amendment of the other terms and conditions, nor the cancellation of the Contract to Sell you have executed with [Primetown]."** x x x (emphasis and underlining supplied)

x x x x x x x x x

The intention to merely assign the receivables and rights of Primetown to UCPB is even bolstered by the CA decisions in the cases of *UCPB v. O'Halloran* and *UCPB v. Ho*.

In *UCPB v. O'Halloran*, docketed as CA-G.R. SP No. 101699, respondent O'Halloran's accounts with Primetown were also assigned by Primetown to UCPB, under the same Agreement as in this case. Since Primetown failed to deliver the condominium units upon full payment of the purchase price, O'Halloran likewise sued both Primetown and UCPB for cancellation of the contracts to sell, and

the case eventually reached the CA. The CA held UCPB liable to refund the amount it actually received from O'Halloran. The CA held that there is no legal, statutory or contractual basis to hold UCPB solidarily liable with Primetown for the full reimbursement of the payments made by O'Halloran. The CA found that based on the Agreement, UCPB is merely the assignee of the receivables under the contracts to sell to the extent that the assignment is a manner adopted by which Primetown can pay its loan to the bank. The CA held that the assignment of receivables did not make UCPB the owner or developer of the unfinished project to make it solidarily liable with Primetown. The CA decision dated 23 July 2009 in CA-G.R. SP No. 101699 became final and executory upon Entry of Judgment on 17 August 2009 for O'Halloran and 18 August 2009 for UCPB.

In *UCPB v. Ho*, docketed as CA-G.R. SP No. 113446, respondent Ho was similarly situated with O'Halloran and Spouses Choi. Upon reaching the CA, the CA considered the Agreement between UCPB and Primetown as an assignment of credit, because: 1) the parties entered into the Agreement without the consent of the debtor; 2) UCPB's obligation "to deliver to the buyer the title over the condominium unit upon their full payment" signifies that the title to the condominium unit remained with Primetown; 3) UCPB's prerogative "to rescind the contract to sell and transfer the title of condominium unit to its name upon failure of the buyer to pay the full purchase price" indicates that UCPB was merely given the right to transfer title in its name to apply the property as partial payment of Primetown's obligation; and 4) the Agreement clearly states that the assignment is limited to the receivables and does not include "any and all liabilities which [Primetown] may have assumed under the individual contract to sell." Thus, the CA ruled that UCPB was a mere assignee of the right of Primetown to collect on its contract to sell with Ho. The CA, then, applied the ruling in *UCPB v. O'Halloran* in finding UCPB jointly liable with Primetown only for the payments UCPB had actually received from Ho.

On 4 December 2013, this Court issued a Resolution denying Ho's petition for review for failure to show any reversible error on the part of the CA. On 2 April 2014, this Court likewise denied the motion for reconsideration with finality. Thus, the 9 May 2013 Decision of the Special Fifteenth Division of the CA in CA-G.R. SP No. 113446 became final and executory. (emphasis omitted)

Considering that UCPB is a mere assignee of the rights and receivables under the Agreement, UCPB did not assume the

obligations and liabilities of Primetown under its contract to sell with Spouses Choi.

x x x x x x x x x

Contrary to Spouses Choi's argument that UCPB was estopped, we find that estoppel would not lie since UCPB's letters to the buyers only assured them of the completion of their units by the developer. UCPB did not represent to be the new owner of Kiener or that UCPB itself would complete Kiener.[23] (emphases and underlining supplied)

In *Liam v. UCPB (Liam)*,[24] the Court maintained its position that the transaction between PPGI and UCPB was merely an assignment of credit. Hence, what was transferred to UCPB was only the right to collect PPGI's receivables from the purchases of Kiener Hills and not the obligation to complete the said condominium project. Thus:

The terms of the MOA and Deed of Sale/Assignment between PPGI and UCPB unequivocally show that the parties intended an assignment of PPGI's credit in favor of UCPB.

x x x x x x x x x

The provisions of the foregoing agreements between PPGI and UCPB are clear, explicit and unambiguous as to leave no doubt about their objective of executing an assignment of credit instead of subrogation. The MOA and the Deed of Sale/Assignment clearly state that UCPB became an assignee of PPGI's outstanding receivables of its condominium buyers. The Court perceives no *proviso* or any extraneous factor that incites a contrary interpretation. Even the simultaneous and subsequent acts of the parties accentuate their intention to treat their agreements as assignment of credit.

x x x x x x x x x

The last paragraph of the letter also confirms that UCPB's acquisition of PPGI's receivables did not involve any changes in the Contract to Sell between PPGI and Liam; neither did it vary

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[23] *Id.* at 856-861.

[24] G.R. No. 194664, 15 June 2016, 793 SCRA 383.

the rights and the obligations of the parties therein. Thus, no novation by subrogation could have taken place.

The CA was therefore correct in ruling that the agreement between PPGI and UCPB was an assignment of credit. **UCPB acquired PPGI's right to demand, collect and receive Liam's outstanding balance; UCPB was not subrogated into PPGI's place as developer under the Contract to Sell.**[25] (emphases and underlining supplied)

It is noteworthy that the circumstances and issues in *Choi* and *Liam* fall squarely with the case at bar. *First*, PPGI and UCPB were prominent parties in the cited cases. *Second*, it involved the same documents and agreement between PPGI and UCPB whereby the right to collect the receivables were assigned to the latter. *Third*, the controversy arose from the complaints of disgruntled unit owners to recover the amount they had paid from PPGI or UCPB after Kiener Hills was not completed.

In addition, the issue on estoppel was addressed in *Spouses Choi*. There, the Court ruled that the demand letters UCPB sent to the buyers, including herein respondents, only assured the completion of the condominium project. Nevertheless, there was no representation on the part of the UCPB that it would continue the construction of Kiener Hills or that it was the new owner thereof. Guided by the previous pronouncements of this Court, it is settled that UCPB is only jointly liable with PPGI to the disgruntled purchasers of Kiener Hills, including respondents. Thus, UCPB is only bound to refund the amount it had unquestionably received from respondents.

Only questions of law may be raised in a petition for review under Rule 45; exceptions

In the present petition, UCPB does not contest the CA's conclusion that it is jointly liable with PPGI to the unit owners of Kiener Hills. It, however, assails that the CA erred in computing its actual liability because it was only bound to refund

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[25] *Id.* at 396-400.

the amount it had actually received. Meanwhile, respondents contest that the resolution of the correct amount of UCPB's liability is a question of fact, which is beyond the ambit of a petition for review under Rule 45.

It is axiomatic that, as a rule, only questions of law may be raised under a petition for review under Rule 45 because the Court is not a trier of facts and the factual findings of lower courts are final, binding or conclusive on the parties and to the Court.[26] As with every rule, however, it admits certain exceptions. Among the recognized exceptions are when the conclusion of the lower court is one grounded entirely on speculation, surmises or conjectures or when the judgment is based on a misapprehension of facts.[27]

The Court finds that the exceptions are present to warrant a review of the factual matters.

Jurisprudence has settled UCPB's liability to unit owners to refund the amount it indubitably received from the purchasers of Kiener Hills. In this case, the CA determined UCPB's actual liability of ₱552,152.34 by subtracting the amounts already paid to PPGI from the total purchase price of ₱1,151,718.75.[28]

Such computation of the appellate court, however, merely assumes that the said balance was actually paid by respondents and received by UCPB. A closer scrutiny of the records, nonetheless, shows that the said amount is not supported by the evidence at hand. The only document that identifies the amount respondents had paid to UCPB is the demand letter it sent to the former. It is noteworthy that the said demand letter was materially reproduced in respondents' complaint[29] before

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[26] *Pascual v. Burgos*, G.R. No. 171722, 11 January 2016, 778 SCRA 189, 204-205.

[27] *Swire Realty Development Corporation v. Specialty Contracts General and Construction Services, Inc. and Jose Javellana*, G.R. No. 188027, 9 August 2017, citing *Medina v. Asistio, Jr.*, 269 Phil. 225, 232 (1990).

[28] *Rollo*, Vol. I, p. 50.

[29] CA *rollo*, pp. 58-64.

the HLURB Regional Office. In the said letter, the amount UCPB received from respondents is only ₱157,757.82.

While respondents alleged that they had paid in full the purchase price of the condominium units, only ₱157,757.82 was sufficiently substantiated to have been actually received by UCPB. Thus, UCPB should only be held liable for ₱157,757.82 because it was the only amount which was unequivocally shown it had received. This is especially true considering that one who pleads payment has the burden of proving the fact of payment.[30] Thus, it was incumbent upon respondents to prove the actual amount UCPB had unquestionably received.

WHEREFORE, the 23 May 2012 Decision of the Court of Appeals in CA-G.R. SP No. 118534 is **AFFIRMED with MODIFICATION**. Petitioner United Coconut Planters Bank shall pay the amount of ₱157,757.82 to Spouses Walter and Lily Uy, with legal interest at six percent (6%) per annum, without prejudice to any action which the parties may have against Prime Town Property Group, Inc.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

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[30] *Bognot v. RRI Lending Corporation*, 744 Phil. 59, 69 (2014).

EN BANC

[G.R. No. 205813. January 10, 2018]

ALFREDO F. LAYA, JR., *petitioner, vs.* **PHILIPPINE VETERANS BANK and RICARDO A. BALBIDO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; SECOND AND SUBSEQUENT MOTIONS FOR RECONSIDERATION ARE FORBIDDEN, BUT THE COURT MAY ENTERTAIN THE SAME WHEN THE ASSAILED DECISION IS LEGALLY ERRONEOUS, PATENTLY UNJUST AND POTENTIALLY CAPABLE OF CAUSING UNWARRANTED AND IRREMEDIABLE INJURY OR DAMAGE TO THE PARTIES; ACCEPTANCE OF THE PETITIONER'S SECOND MOTION FOR RECONSIDERATION PROPER IN CASE AT BAR. — As a general rule, second and subsequent motions for reconsideration are forbidden. Nevertheless, there are situations in which exceptional circumstances warrant allowing such motions for reconsideration, and for that reason the Court has recognized several exceptions to the general rule. We have extensively expounded on the exceptions in *McBurnie v. Ganzon*, where we observed: x x x. The general rule, however, against second and subsequent motions for reconsideration admits of settled exceptions. x x x. **In a line of cases, the Court has then entertained and granted second motions for reconsideration "in the higher interest of substantial justice,"** as allowed under the Internal Rules when the assailed decision is "legally erroneous," "patently unjust" and "potentially capable of causing unwarranted and irremediable injury or damage to the parties." x x x. **It is also recognized that in some instances, the prudent action towards a just resolution of a case is for the Court to suspend rules of procedure, for "the power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned."** x x x. In short, the Court may entertain second and subsequent motions for reconsideration when the assailed decision is legally erroneous, patently unjust and

potentially capable of causing unwarranted and irremediable injury or damage to the parties. Under these circumstances, even final and executory judgments may be set aside because of the existence of compelling reasons. It is notable that the retirement program in question herein was established solely by PVB as the employer. Although PVB could validly impose a retirement age lower than 65 years for as long as it did so with the employees' consent, the consent must be explicit, voluntary, free, and uncompelled. In dismissing the petition for review on *certiorari*, the Court's First Division inadvertently overlooked that the law required the employees' consent to be express and voluntary in order for them to be bound by the retirement program providing for a retirement age earlier than the age of 65 years. Hence, the Court deems it proper to render a fair adjudication on the merits of the appeal upon the petitioner's second motion for reconsideration. Furthermore, allowing this case to be reviewed on its merits furnishes the Court with the opportunity to re-examine the case in order to ascertain whether or not the dismissal produced results patently unjust to the petitioner. These reasons do justify treating this case as an exception to the general rule on immutability of judgments.

2. COMMERCIAL LAW; CORPORATIONS; THE COURT'S PRONOUNCEMENT IN THE CASE OF *PHILIPPINE VETERANS BANK EMPLOYEES UNION-NUBE V. THE PHILIPPINE VETERANS BANK* (G.R. NOS. 67125, 82337, AUGUST 24, 1990) DECLARING THAT THE PHILIPPINE VETERANS BANK IS A PRIVATE, NOT A GOVERNMENT ENTITY, SHOULD BE DOCTRINAL AND CONTROLLING.— In *Philippine Veterans Bank Employees Union-NUBE v. The Philippine Veterans Bank*, we pertinently pronounced: Coming now to the ownership of the Bank, we find it is not a government bank, as claimed by the petitioners. x x x. Significantly, Sec. 28 also provides as follows: Sec. 28. *Articles of incorporation.* — This Act, upon its approval, shall be deemed and accepted to all legal intents and purposes as the statutory articles of incorporation or Charter of the Philippine Veterans' Bank; and that, notwithstanding the provisions of any existing law to the contrary, said Bank shall be deemed registered and duly authorized to do business and operate as a commercial bank as of the date of the approval of this Act. **This point is important because the Constitution**

provides in its Article IX-B, Section 2(1) that "the Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." As the Bank is not owned or controlled by the Government although it does have an original charter in the form of R.A. No. 3518, it clearly does not fall under the Civil Service and should be regarded as an ordinary commercial corporation. Section 28 of the said law so provides. The consequence is that the relations of the Bank with its employees should be governed by the labor laws, under which in fact they have already been paid some of their claims. Anent whether PVB was a government or a private entity, therefore, we declare that it is the latter. The foregoing jurisprudential pronouncement remains to be good law, and should be doctrinal and controlling.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS; THE COURT OF APPEALS, IN THE EXERCISE OF ITS *CERTIORARI* JURISDICTION, IS NOT LIMITED TO THE DETERMINATION OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION, BUT IT CAN ALSO MAKE A DETERMINATION WHETHER THE FACTUAL FINDINGS BY THE NLRC OR THE LABOR ARBITER WERE BASED ON THE EVIDENCE AND IN ACCORD WITH PERTINENT LAWS AND JURISPRUDENCE.— [W]e clarify that the CA, in the exercise of its *certiorari* jurisdiction, is limited to determining whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction. The remedy is the special civil action for *certiorari* under Rule 65 of the *Rules of Court* brought in the CA, and once the CA decides the case the party thereby aggrieved may appeal the decision of the CA by petition for review on *certiorari* under Rule 45 of the *Rules of Court*. However, rigidly limiting the authority of the CA to the determination of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC does not fully conform with prevailing case law, particularly *St. Martin Funeral Home v. NLRC*, where we firmly observed that because of the "growing number of labor cases being elevated to this Court which, not being a trier of

fact, has at times been constrained to remand the case to the NLRC for resolution of unclear or ambiguous factual findings" the CA could more properly address petitions for *certiorari* brought against the NLRC. Conformably with such observation made in *St. Martin Funeral Homes*, we have then later on clarified that the CA, in its exercise of its *certiorari* jurisdiction, can review the factual findings or even the legal conclusions of the NLRC x x x. There is now no dispute that the CA can make a determination whether the factual findings by the NLRC or the Labor Arbiter were based on the evidence and in accord with pertinent laws and jurisprudence.

4. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE NOT INFALLIBLE AND WILL BE SET ASIDE WHEN THEY FAIL THE TEST OF ARBITRARINESS.— The significance of [the] clarification is that whenever the decision of the CA in a labor case is appealed by petition for review on *certiorari*, the Court can competently delve into the propriety of the factual review not only by the CA but also by the NLRC. Such ability is still in pursuance to the exercise of our review jurisdiction over administrative findings of fact that we have discoursed on in several rulings, including *Aklan Electric Coooperative, Inc. v. National Labor Relations Commission*, where we have pointed out: While administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court had not hesitated to reverse their factual findings. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. The review of the findings of the CA becomes more compelling herein, inasmuch as it appears that the CA did not appreciate the fact that the retirement plan was not the sole prerogative of the employer, and that the petitioner was automatically made a member of the plan.

5. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; RETIREMENT; RETIREMENT PLANS ALLOWING EMPLOYERS TO RETIRE EMPLOYEES WHO HAVE NOT YET REACHED THE COMPULSORY RETIREMENT AGE OF 65 YEARS ARE NOT *PER SE* REPUGNANT TO THE CONSTITUTIONAL GUARANTY OF SECURITY OF

TENURE, PROVIDED THAT THE RETIREMENT BENEFITS ARE NOT LOWER THAN THOSE PRESCRIBED BY LAW.— The retirement of employees in the private sector is governed by Article 287 of the *Labor Code*: x x x . Under the provision, the employers and employees may agree to fix the retirement age for the latter, and to embody their agreement in either their collective bargaining agreements (CBAs) or their employment contracts. Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure, provided that the retirement benefits are not lower than those prescribed by law.

6. ID.; ID.; ID.; RETIREMENT SHOULD BE THE RESULT OF THE BILATERAL ACT OF BOTH THE EMPLOYER AND THE EMPLOYEE BASED ON THEIR VOLUNTARY AGREEMENT THAT THE EMPLOYEE AGREES TO SEVER HIS EMPLOYMENT UPON REACHING A CERTAIN AGE.— The CA concluded that the petitioner had agreed to be bound by the retirement plan of PVB when he accepted the letter of appointment as its Chief Legal Counsel. We disagree with the conclusion. We declare that based on the clear circumstances herein the CA erred in so concluding. x x x. The petitioner's letter of appointment pertinently stated: x x x. **Membership in the Provident Fund Program/Retirement Program.** x x x. Obviously, the mere mention of the retirement plan in the letter of appointment did not sufficiently inform the petitioner of the contents or details of the retirement program. To construe from the petitioner's acceptance of his appointment that he had acquiesced to be retired earlier than the compulsory age of 65 years would, therefore, not be warranted. This is because retirement should be the result of the bilateral act of both the employer and the employee based on their voluntary agreement that the employee agrees to sever his employment upon reaching a certain age.

7. ID.; ID.; ID.; THE EMPLOYEE'S IMPLIED KNOWLEDGE OF THE EXISTENCE OF THE RETIREMENT PROGRAM REGARDLESS OF DURATION, WILL NOT EQUATE TO THE VOLUNTARY ACCEPTANCE REQUIRED BY LAW IN GRANTING AN EARLY RETIREMENT AGE OPTION TO THE EMPLOYEE, AS THE LAW DEMANDS THAT ACCEPTANCE BY THE EMPLOYEES OF AN EARLY

RETIREMENT AGE OPTION BE EXPLICIT, VOLUNTARY, FREE, AND UNCOMPELLED.— That the petitioner might be well aware of the existence of the retirement program at the time of his engagement did not suffice. His implied knowledge, regardless of duration, did not equate to the voluntary acceptance required by law in granting an early retirement age option to the employee. The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure. In *Cercado v. Uniprom, Inc.*, we have underscored the character of the employee's consent in agreeing to the early retirement policy of the employer, *viz.*: 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.

8. ID.; ID.; ID.; THE EMPLOYEE'S ACQUIESCENCE OR CONSENT TO THE TERMS OF THE RETIREMENT PLAN, THAT CAME INTO BEING PRIOR TO THE EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER, CANNOT BE LIGHTLY INFERRED FROM HIS SIGNING OF THE LETTER OF APPOINTMENT WHICH ONLY LISTED THE MINIMUM BENEFITS THAT HE WOULD ENJOY DURING HIS EMPLOYMENT.— [T]he petitioner's membership in the retirement plan could not be justifiably attributed to his signing of the letter of appointment that only listed the minimum benefits provided to PVB's employees. x x x. A perusal of PVB's retirement plan shows that under its Article III all the regular employees of PVB were automatically admitted into membership x x x. Having thus automatically become a member of the retirement plan through his acceptance of employment as Chief Legal Officer of PVB, the petitioner could not withdraw from the plan except upon his termination from employment. It is also notable that the retirement plan

had been in existence since January 1, 1996, or more than five years prior to the petitioner's employment by PVB. The plan was established solely by the PVB, and approved by its president. As such, the plan was in the nature of a contract of adhesion, in respect to which the petitioner was reduced to mere submission by accepting his employment, and automatically became a member of the plan. With the plan being a contract of adhesion, to consider him to have voluntarily and freely given his consent to the terms thereof as to warrant his being compulsorily retired at the age of 60 years is factually unwarranted. x x x In view of the foregoing, the Court disagrees with the view x x x to the effect that the petitioner, because of his legal expertise and educational attainment, could not now validly claim that he was not informed of the provisions of the retirement program. The pertinent rule on retirement plans does not presume consent or acquiescence from the high educational attainment or legal knowledge of the employee. In fact, the rule provides that the acquiescence by the employee cannot be lightly inferred from his acceptance of employment.

9. ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE EMPLOYEE HAD BEEN FULLY APPRISED OF THE TERMS OF THE RETIREMENT PROGRAM AT THE TIME OF HIS ACCEPTANCE OF THE OFFER OF EMPLOYMENT.— [I]t was incumbent upon PVB to prove that the petitioner had been fully apprised of the terms of the retirement program at the time of his acceptance of the offer of employment. PVB did not discharge its burden, for the petitioner's appointment letter apparently enumerated only the minimum benefits that he would enjoy during his employment by PVB, and contained no indication of PVB having given him a copy of the program itself in order to fully apprise him of the contents and details thereof. Nonetheless, even assuming that he subsequently obtained information about the program in the course of his employment, he still could not opt to simply withdraw from the program due to his membership therein being automatic for the regular employees of PVB.

10. ID.; ID.; ID.; ALTHOUGH THE EMPLOYER COULD BE FREE TO IMPOSE A RETIREMENT AGE LOWER THAN 65 YEARS FOR AS LONG ITS EMPLOYEES CONSENTED, THE RETIREMENT OF THE EMPLOYEE WHOSE INTENT TO RETIRE WAS NOT CLEARLY

ESTABLISHED, OR WHOSE RETIREMENT WAS INVOLUNTARY, IS TO BE TREATED AS A DISCHARGE. — [C]ompany retirement plans must not only comply with the standards set by the prevailing labor laws but must also be accepted by the employees as commensurate to their faithful services to the employer within the requisite period. Although the employer could be free to impose a retirement age lower than 65 years for as long its employees consented, the retirement of the employee whose intent to retire was not clearly established, or whose retirement was involuntary is to be treated as a discharge.

11. ID.; ID.; TERMINATION OF EMPLOYMENT; AN EMPLOYER SHALL BE LIABLE FOR ILLEGAL DISMISSAL WHERE IT DISMISSED AN EMPLOYEE PURSUANT TO THE RETIREMENT PROVISION THAT THE LATTER HAD NOT KNOWINGLY AND VOLUNTARILY AGREED TO; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO BACKWAGES, AND SEPARATION PAY, IN LIEU OF REINSTATEMENT, WHERE REINSTAMENT IS NO LONGER FEASIBLE; COMPUTATION THEREOF.— With the petitioner having been thus dismissed pursuant to the retirement provision that he had not knowingly and voluntarily agreed to, PVB was guilty of illegal dismissal as to him. Being an illegally dismissed employee, he was entitled to the reliefs provided under Article 279 of the *Labor Code* x x x. Considering that the petitioner's reinstatement is no longer feasible because of his having meanwhile reached the compulsory retirement age of 65 years by June 11, 2012, he should be granted separation pay. In this regard, retirement benefits and separation pay are not mutually exclusive. The basis for computing the separation pay should accord with Section 4, Article III of PVB's retirement plan. Hence, his full backwages should be computed from July 18, 2007 — the date when he was illegally dismissed — until his compulsory retirement age of 65 years on June 11, 2012. Such backwages shall all be subject to legal interest of 12% *per annum* from July 18, 2007 until June 30, 2013, and then to legal interest of 6% interest *per annum* from July 1, 2013 until full satisfaction, conformably with *Nacar v. Gallery Frames*.

CARPIO, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; LABOR; THE RIGHT TO SECURITY OF TENURE IS A CONSTITUTIONAL RIGHT OF AN EMPLOYEE; THUS, ANY WAIVER THEREOF MUST BE CLEAR, CATEGORICAL, KNOWING, AND INTELLIGENT.— Section 3, Article XIII of the 1987 Constitution provides that an employee "**shall be entitled to security of tenure**." Thus, the right to security of tenure is a **constitutional right** of an employee. This Court has explained that "[s]ecurity of tenure is a right of paramount value. Precisely, it is given specific recognition and guarantee by the Constitution no less. The State shall afford protection to labor and 'shall assure the rights of workers to x x x security of tenure.'" This Court has explained further: "It stands to reason that a right so highly ranked as security of tenure should not lightly be denied on so nebulous a basis as mere speculation." The well-recognized rule is that any waiver of a **constitutional right** must be **clear, categorical, knowing, and intelligent**. Thus, in a long line of cases, this Court has ruled: "The relinquishment of a constitutional right has to be laid out convincingly. **Such waiver must be clear, categorical, knowing, and intelligent**."

2. ID.; ID.; ID.; ID.; ID.; THE INTENTION TO WAIVE THE CONSTITUTIONAL RIGHT TO SECURITY OF TENURE CANNOT BE PRESUMED BUT MUST BE ACTUALLY SHOWN AND ESTABLISHED; ACTUAL INTENTION TO WAIVE THE COMPULSORY RETIREMENT AGE OF 65 YEARS NOT SHOWN IN CASE AT BAR. — Under Article 287 of the Labor Code, the "compulsory retirement age" is 65 years, "in the absence of a retirement plan or agreement providing for retirement benefits of employees." While Philippine Veterans Bank (PVB) has a retirement plan making 60 years the compulsory retirement age, **this specific fact was not made known to petitioner at the time PVB handed him his appointment letter on 1 June 2001.** The appointment letter mentioned in one line a retirement plan but the retirement plan itself was not attached to the appointment letter or given to petitioner. **Nothing in the appointment letter indicated, expressly or impliedly, that the compulsory retirement age was 60 years. Anyone who received and read the appointment**

letter would not have known that the compulsory retirement age was 60 years. In short, petitioner could not have waived **knowingly** the compulsory retirement age of 65 years because **this fact was not made known to him** at the time of his appointment. Any such waiver was **not made knowingly**. x x x. There is no showing here that petitioner has an actual intention to waive his constitutional right to security of tenure. **Such intention to waive a fundamental constitutional right cannot be presumed but must be actually shown and established.** The bar against any implied waiver is very high because this Court "indulges [in] every reasonable presumption against any waiver of fundamental constitutional rights." PVB has failed to surmount that high bar.

3. **ID.; ID.; ID.; ID.; ID.; WAIVER OF A CONSTITUTIONAL RIGHT, REQUISITES TO BE VALID.—** The fact that petitioner is a lawyer cannot give rise to the presumption that he impliedly waived his constitutional right to security of tenure when he accepted the appointment letter. This Court has ruled: But a waiver by implication cannot be presumed. There must be clear and convincing evidence of an **actual intention to relinquish the right to constitute a waiver of a constitutional right**. There must be proof of the following: (a) that the right exists; (b) that the person involved had knowledge, either actual or constructive, of the existence of such right; and, (c) **that the said person had an actual intention to relinquish the right**. The waiver must be made voluntarily, knowingly and intelligently. The Court indulges every reasonable presumption against any waiver of fundamental constitutional rights.

4. **ID.; ID.; ID.; ID.; ID.; "FULL PROTECTION TO LABOR" MEANS IMPLIED WAIVERS IN DEROGATION OF AN EMPLOYEE'S CONSTITUTIONAL OR STATUTORY RIGHT CANNOT BE PRESUMED.—** Even in determining whether the appointment of an employee is permanent or probationary, actual disclosure of the performance standards **at the time of the employment** is required and cannot be presumed. This Court has explained that a probationary employee shall be deemed a regular employee **where no standards are made known to him at the time of his engagement,** unless the job is self-descriptive, like maid, cook, driver, or messenger. Thus, to comply with the constitutional mandate that the "**State shall afford full protection to labor**," disclosure to the employee

at the time of appointment is necessary to bind the employee. "**Full protection**" means implied waivers in derogation of an employee's constitutional or statutory right cannot be presumed.

LEONEN, *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; RULE 15, SECTION 3 OF THE INTERNAL RULES OF THE SUPREME COURT; THE COURT SHALL NOT ENTERTAIN A SECOND MOTION FOR RECONSIDERATION, EXCEPT IF THERE IS SHOWING THAT THE ASSAILED DECISION IS NOT ONLY LEGALLY ERRONEOUS, BUT IS LIKEWISE PATENTLY UNJUST AND POTENTIALLY CAPABLE OF CAUSING UNWARRANTED AND IRREMEDIABLE INJURY OR DAMAGE TO THE PARTIES, AND BEFORE THE FINALITY OF THE DECISION BEING ASSAILED.— Petitioner Alfredo F. Laya, Jr.'s (Laya) second motion for reconsideration should not have been entertained by the Court. Under Rule 15, Section 3 of the Internal Rules of the Supreme Court, the Court shall not entertain a second motion for reconsideration, except in the higher interest of justice, and before the finality of the decision being assailed. Higher interest of justice will prevail if there is showing that the "assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties." For Petitioner Laya's second motion for reconsideration to prosper, there must be showing that the contested decision is not sound in law, and is also manifestly unfair and has the possibility of giving irreparable damage to Petitioner Laya. Furthermore, the second motion for reconsideration must have been filed before the case has attained finality. The Petition for Review on Certiorari under Rule 45 filed by Petitioner Laya was initially denied by the Court's First Division. Petitioner Laya filed his first motion for reconsideration, and prayed that the case be referred to the Court *En Banc*. However, his prayer was denied with finality, such that on December 6, 2013, the Entry of Judgment was recorded in the "Book of Entries of Judgment." Thus, at the time Petitioner Laya filed his second motion for reconsideration on December 18, 2013, Petitioner Laya's Petition for Review on *Certiorari* had already been denied with finality.

2. ID.; ID.; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; ERRONEOUS DECISION, BY ITSELF, IS NOT ENOUGH TO SET ASIDE DEFINED RULES OF PROCEDURE, FOR ONCE A JUDGMENT HAS BECOME FINAL, IT BECOMES IMMUTABLE AND UNALTERABLE, AND CANNOT BE CHANGED IN ANY WAY, EVEN IF THE MODIFICATION IS FOR THE CORRECTION OF A PERCEIVED ERROR, BY THE COURT WHICH PROMULGATED IT OR BY A HIGHER COURT.— There is also no showing of compelling reasons that would allow the Court to relax the rule on immutability of judgments. x x x. Petitioner Laya mainly anchors his request on the alleged erroneous decision of the National Labor Relations Commission. However, an erroneous decision, by itself, is not enough to set aside defined rules of procedure. Once a judgment has become final, it becomes immutable and unalterable. It cannot be changed in any way, even if the modification is for the correction of a perceived error, by the court which promulgated it or by a higher court. Judgments and orders should be final at some definite time based on law, as there would be no end to litigation. While the losing party has a right to appeal his or her case, the winning party has an attendant right to enjoy the finality of the decision issued in his or her favor, through the execution process to satisfy the award given to him or her.

3. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*, DOES NOT OPEN THE ENTIRE CASE FOR THE REVIEW OF THE COURT, BUT ONLY QUESTIONS OF LAW, WHICH ARISE WHEN THERE IS DOUBT ON THE APPLICATION OF LAWS TO A CERTAIN SET OF FACTS, AND WHICH DO NOT REQUIRE THE EVALUATION OF THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED, ARE TO BE EXAMINED BY THE COURT, WHICH IS NOT A TRIER OF FACTS. — In a Rule 45 Petition, only questions of law are at issue. The Court, in the exercise of its certiorari review, is limited to correcting errors of jurisdiction or abuse of discretion which is so grave as to remove the tribunal or court its jurisdiction. Meanwhile, the courts, in the exercise of its appellate jurisdiction, can correct errors of law or errors of fact, or both, depending on the mode of appeal. Petitioner Laya elevated this case to the Court via Rule 45 of the Rules of Court. The use of this mode of appeal does not open the entire case for the review of

the Court. Instead, only questions of law, which arise when there is doubt on the application of laws to a certain set of facts, and which do not require the evaluation of the probative value of the evidence presented, are to be examined by the Court, which is not a trier of facts. It is only upon certain exceptions can the Court look into factual issues.

4. **ID.; ID.; ID.; ID.; IN LABOR CASES, FACTUAL FINDINGS OF LABOR OFFICIALS ARE ACCORDED RESPECT AND EVEN FINALITY, ESPECIALLY WHEN BACKED BY SUBSTANTIAL EVIDENCE.—** In putting at issue the validity of Petitioner Laya's early retirement, the *Ponencia* ruled on a question of fact. This issue involves looking into the correctness of the findings of fact of the National Labor Relations Commissions, and is beyond the scope of a petition for review on certiorari under Rule 45 of the Rules of Court. In labor cases, factual findings of labor officials are accorded respect and even finality, especially when backed by substantial evidence. The Court's function does not involve reevaluating the evidence, particularly when the Labor Arbiter, National Labor Relations Commission and the Court of Appeals have the same findings of fact.

5. **ID.; ID.; ID.; ANY CONSTITUTIONAL ISSUE SHOULD BE RAISED AT THE EARLIEST OPPORTUNITY, OR IN PLEADINGS FILED BEFORE A COMPETENT COURT WHICH CAN RULE ON IT, FOR IF THE CONSTITUTIONAL ISSUE IS NOT RAISED IN THE PLEADINGS, IT CANNOT BE CONSIDERED AT THE TRIAL, AND, IF NOT CONSIDERED AT THE TRIAL, IT CANNOT BE CONSIDERED ON APPEAL.—** Even if there was a compelling reason to allow Petitioner Laya's second motion for reconsideration, and for the Court to look into the factual findings of the Labor Arbiter and the National Labor Relations Commission, the Petition for Review of Petitioner Laya still cannot prosper. Any constitutional issue should be raised at the earliest opportunity, or in pleadings filed before a competent court which can rule on it. If the constitutional issue is "not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal." The issue on constitutionality was belatedly raised in this case.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; RETIREMENT; RETIREMENT PLAN; PETITIONER IS BOUND BY THE EARLY RETIREMENT CLAUSE UNDER THE RETIREMENT PLAN RULES AND REGULATIONS OF THE RESPONDENT BANK.— Section 287 of the Labor Code declares the age of sixty-five (65) years old as the compulsory age of retirement. However, the employer may impose a lower retirement age, as long as this is indicated in a collective bargaining agreement, or in any other applicable contract or plan, and agreed to by the employee. Petitioner Laya was given notice of his early retirement by Respondent Philippine Veterans Bank pursuant to its Retirement Plan Rules and Regulations. Under the Retirement Plan Rules and Regulations, Respondent Philippine Veterans Bank set the retirement age of members of the Plan to sixty (60) years old, and on a case to case basis and on an annual renewal, a member may extend his or her service beyond the imposed retirement age under the Plan, but not beyond sixty-five (65) years old. Petitioner Laya became bound under the Retirement Plan Rules and Regulations when he agreed to the letter of employment issued by Respondent Philippine Veterans Bank, which indicated that he is entitled to particular executive benefits, including Membership in the Provident Fund Program/Retirement Program.

7. ID.; ID.; ID.; ID.; A CONTRACT OF ADHESION IS NOT INVALID *PER SE*; WHEN THERE IS SHOWING THAT THE OTHER PARTY IS KNOWLEDGEABLE ENOUGH TO HAVE UNDERSTOOD THE TERMS AND CONDITIONS OF THE CONTRACT, OR ONE WHOSE STATURE IS SUCH THAT HE IS EXPECTED TO BE MORE PRUDENT AND CAUTIOUS WITH RESPECT TO HIS OR HER TRANSACTIONS, SUCH PARTY CANNOT LATER ON BE HEARD TO COMPLAIN FOR BEING IGNORANT OR HAVING BEEN FORCED INTO MERELY CONSENTING TO THE CONTRACT. — The ponencia held that the Retirement Plan is a contract of adhesion, and that the inclusion in the letter of appointment of the provision indicating that Petitioner Laya is a member of Respondent Philippine Veterans Bank's retirement program is not sufficient to show that he was aware of the program's contents. A contract of adhesion is a ready-made contract imposed by one party, usually a company, and which the other party merely signs to signify his or her agreement. It is not invalid *per se*, as the other party

may completely reject it, and it will be struck down as void only if there is showing, based on the circumstances which led to its signing, that the weaker party had no other choice but to agree to it, and that the agreement is inequitable and basically one-sided. As such, when there is showing that the other party "is knowledgeable enough to have understood the terms and conditions of the contract, or one whose stature is such that he is expected to be more prudent and cautious with respect to his [or her] transactions, such party cannot later on be heard to complain for being ignorant or having been forced into merely consenting to the contract." x x x. As an employee with legal expertise, whose educational attainment and professional experience require that he be more prudent in the contracts and agreements he enters into. Petitioner Laya cannot simply allege that he was not informed of the provisions of the retirement program at the time he was employed. Part of the work of a lawyer is to exercise due diligence in the review of documents and contracts presented before him. His membership in the retirement program was clearly indicated in his employment contract, which he is presumed to have read and understood. It is his duty, as a lawyer and as the Chief Legal Counsel of Respondent Philippine Veterans Bank, to be aware of the provisions to which he has bound himself to follow.

8. ID.; ID.; ID.; ID.; AN EMPLOYEE IS DEEMED TO HAVE AGREED TO ALL THE RULES AND REGULATIONS OF THE COMPANY, INCLUDING THE PROVISIONS ON RETIREMENT, UPON AGREEING TO THE COMPANY'S LETTER OF APPOINTMENT.— Petitioner Laya agreed to his letter of appointment without any force from Respondent Philippine Veterans Bank. He was free to reject the offer of the Bank. Part of the provisions of the letter of appointment is his membership to the retirement program of Respondent Philippine Veterans Bank, which has been in effect since January 1, 1996, or even before Petitioner Laya's employment. As such, at the time he agreed to be employed by the Bank, he was aware that a retirement program is in existence and that he is a member of such program. By agreeing to the letter of appointment given by Respondent Philippine Veterans Bank, Petitioner Laya is deemed to have accepted all the rules and regulations of the company, which included the provisions on retirement. x x x.

> In *Banco De Oro Unibank, Inc. v. Guillermo C. Sagaysay*, the Court ruled that the employee was deemed to have agreed to all the rules and regulations of the company upon accepting the employment offer: x x x.

APPEARANCES OF COUNSEL

Gordon Dario Reyes Buted Hosson Viado and Blanco Law Offices for respondents.

Rowena B. Austria-Generoso for respondent Philippine Veterans Bank.

D E C I S I O N

BERSAMIN, *J.*:

An employee in the private sector who did not expressly agree to the terms of an early retirement plan cannot be separated from the service before he reaches the age of 65 years. The employer who retires the employee prematurely is guilty of illegal dismissal, and is liable to pay his backwages and to reinstate him without loss of seniority and other benefits, unless the employee has meanwhile reached the mandatory retirement age under the *Labor Code*, in which case he is entitled to separation pay pursuant to the terms of the plan, with legal interest on the backwages and separation pay reckoned from the finality of the decision.

The Case

The petitioner seeks the review and reversal of the adverse decision promulgated on August 31, 2012,[1] whereby the Court of Appeals (CA) upheld the ruling of the National Labor Relations Commission (NLRC) dated June 21, 2010 affirming the dismissal of his complaint for illegal dismissal by the Labor Arbiter.

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[1] *Rollo*, pp. 34-48; penned by Associate Justice Leoncia Real-Dimagiba, and concurred in by Associate Justice Rosmari D. Carandang and Associate Justice Ricardo R. Rosario.

Antecedents

The CA summarized the factual antecedents as follows:

On 1 June 2001, petitioner Alfredo F. Laya, Jr. was hired by respondent Philippine Veterans Bank as its Chief Legal Counsel with a rank of Vice President. Among others, the terms and conditions of his appointment are as follows; (sic)

> "3. As a Senior Officer of the Bank, you are entitled to the following executive ben[e]fits:
>
> • Car Plan limit of ₱700,000.00, without equity on your part; a gasoline subsidy of 300 liters per month and subject further to The Car Plan Policy of the Bank.
>
> • Membership in a professional organization in relation to your profession and/or assigned functions in the Bank.
>
> • Membership in the Provident Fund Program/Retirement Program.
>
> • Entitlement to any and all other basic and fringe benefits enjoyed by the officers; core of the Bank relative to Insurance covers, Healthcare Insurance, vacation and sick leaves, among others."

On the other hand, private respondent has its Retirement Plan Rules and Regulations which provides among others, as follows:

> ARTICLE IV
>
> RETIREMENT DATES
>
> Section 1. Normal Retirement. The normal retirement date of a Member shall be the first day of the month coincident with or next following his attainment of age 60.
>
> Section 2. Early Retirement. A Member may, with the approval of the Board of Directors, retire early on the first day of any month coincident with or following his attainment of age 50 and completion of at least 10 years of Credited Service.
>
> Section 3. Late Retirement. A Member may, with the approval of the Board of Directors, extend his service beyond his normal retirement date but not beyond age 65. Such deferred retirement shall be on a case by case and yearly extension basis.

On 14 June, 2007, petitioner was informed thru letter by the private respondent of his retirement effective on 1 July 2007.

On 21 June 2007 petitioner wrote Col. Emmanuel V. De Ocampo, Chairman of respondent bank, requesting for an extension of his tenure for two (2) more years pursuant to the Bank's Retirement Plan (Late Retirement).

On 26 June 2008, private respondent issued a memorandum directing the petitioner to continue to discharge his official duties and functions as chief legal counsel pending his request. However on 18 July 2007, petitioner was informed thru its president Ricardo A. Balbido Jr. that his request for an extension of tenure was denied.[2]

According to the petitioner, he was made aware of the retirement plan of respondent Philippine Veterans Bank (PVB) only after he had long been employed and was shown a photocopy of the Retirement Plan Rules and Regulations,[3] but PVB's President Ricardo A. Balbido, Jr. had told him then that his request for extension of his service would be denied "to avoid precedence."[4] He sought the reconsideration of the denial of the request for the extension of his retirement,[5] but PVB certified his retirement from the service as of July 1, 2007 on March 6, 2008.[6]

On December 24, 2008, the petitioner filed his complaint for illegal dismissal against PVB and Balbido, Jr. in the NLRC to protest his unexpected retirement.[7]

Ruling of the Labor Arbiter

On August 28, 2009, the Labor Arbiter rendered a decision dismissing the complaint for illegal dismissal,[8] to wit:

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[2] *Id*. at 35-37.

[3] *Id*. at 7.

[4] *Id*. at 8.

[5] *Id*.

[6] *Id*. at 10.

[7] *Id*.

[8] *Id*. at 37.

WHEREFORE, the charge of illegal dismissal and money claims raised by the complainant, together with the counterclaim raised by the respondents are DISMISSED for lack of merit but by reason of a flaw in the denial of complainant's application for term extension as discussed above, the respondent bank is hereby ordered to pay the complainant the amount of ₱200,000.00 by way of reasonble (sic) indemnity.

Ricardo Balbido, Jr., is hereby dropped as party respondent.

SO ORDERED.[9]

After his motion for reconsideration was denied,[10] the petitioner appealed to the NLRC.[11]

Ruling of the NLRC

On June 21, 2010, the NLRC affirmed the dismissal of the petitioner's complaint, and deleted the indemnity imposed by the Labor Arbiter,[12] *viz.*:

WHEREFORE, premises considered the appeal of the complainant is hereby DENIED for lack of merit. The appeal of respondents is GRANTED. The Decision below is hereby AFFIRMED with MODIFICATION, deleting the award of indemnity to complainant.

SO ORDERED.[13]

The petitioner assailed the ruling to the CA through *certiorari*.

Ruling of the CA

On August 31, 2012, the CA promulgated the now assailed decision,[14] holding that the petitioner's acceptance of his

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[9] *Id*. at 40.

[10] *Id*.

[11] *Id*.

[12] *Id*.

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

[14] *Supra* note 1.

appointment as Chief Legal Officer of PVB signified his conformity to the retirement program;[15] that he could not have been unaware of the retirement program which had been in effect since January 1, 1996;[16] that the lowering of the retirement age through the retirement plan was a recognized exception under the provisions of Article 287 of the *Labor Code*;[17] that considering his failure to adduce evidence showing that PVB had acted maliciously in applying the provisions of the retirement plan to him and in denying his request for the extension of his service, PVB's implementation of the retirement plan was a valid exercise of its management prerogative.[18]

The CA denied the petitioner's motion for reconsideration on February 8, 2013.[19]

On April 8, 2013, the Court (First Division) denied the petition for review on *certiorari*.[20] In his motion for reconsideration, the petitioner not only prayed for the reconsideration of the denial but also sought the referral of his petition to the Court *En Banc*,[21] arguing that the CA and the NLRC had erroneously applied laws and legal principles intended for corporations in the private sector to a public instrumentality like PVB;[22] and that to allow the adverse rulings to stand would be to condone the creation of a private corporation by Congress other than by a general law on incorporation.[23]

In its resolution promulgated on August 28, 2013, the Court (First Division) denied the petitioner's motion for reconsideration,

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[15] *Id*. at 45.

[16] *Id*. at 45-46.

[17] *Id*. at 46.

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

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

[20] *Id*. at 56.

[21] *Id*. at 57-66.

[22] *Id*. at 57.

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

as well as his prayer to refer the case to the Court *En Banc*.[24] The entry of judgment was issued on December 6, 2013.[25]

The petitioner filed a second motion for reconsideration on December 18, 2013,[26] whereby he expounded on the issues he was raising in his first motion for reconsideration. He urged that the Court should find and declare PVB as a public instrumentality; that the law applicable to his case was Presidential Decree No. 1146 (GSIS Law), which stipulated the compulsory retirement age of 65 years;[27] and that the compulsory retirement age for civil servants could not be "contracted out."[28]

On March 25, 2014, the Court *En Banc* accepted the referral of this case by the First Division.[29]

On April 22, 2014, the Court *En Banc* required PVB and the Office of the Solicitor General (OSG) to file their comments on the petitioner's second motion for reconsideration.[30]

The comment of PVB poses several challenges to the petition.

In support of its first challenge, PVB contends that the Court should not have accepted the referral of the case to the *Banc* because the First Division had already denied with finality the petitioner's first motion for reconsideration, as well as his motion to refer the case to the *Banc*;[31] that the Court *En Banc*'s acceptance of the case was in violation of the principle of immutability of final judgments as well as of Section 3, Rule 15 of the *Internal*

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[24] *Id*. at 106.

[25] *Id*. at 126.

[26] *Id*. at 108-124.

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

[28] *Id*. at 111.

[29] *Id*. at 152.

[30] *Id*. at 154-A.

[31] *Id*. at 233.

Rules of the Supreme Court[32] to the effect that a second motion for reconsideration could be allowed only "before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration;"[33] and that the First Division had correctly denied the petition for review because the issues raised therein were factual matters that this mode of appeal could not review and pass upon.[34]

As its second challenge, PVB demurs to the propriety of the petitioner's attack on its corporate existence. It submits that he should not be allowed to pose such attack for the first time in this appeal;[35] that his argument was also an impermissible collateral attack on the constitutionality of Republic Act No. 3518 and Republic Act No. 7169;[36] and that his seeking a declaration of PVB as a public institution "partakes the nature of a petition for declaratory relief which is an action beyond the original jurisdiction of the Honorable Court."[37]

Nevertheless, PVB maintains that it is not a public or government entity for several reasons, namely: (1) the Government does not own a single share in it;[38] (2) the Government has no appointee or representative in the Board

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[32] Section 3. *Second Motion for Reconsideration.* — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. x x x

[33] *Rollo*, pp. 232-233.

[34] *Id*. at 238-239.

[35] *Id*. at 242.

[36] *Id*. at 243.

[37] *Id*. at 245.

[38] *Id*. at 247-248.

of Directors, and is not involved in its management;[39] and (3) it does not administer government funds.[40]

PVB insists that its creation as a private bank with a special charter does not in any way violate Section 16, Article XII of the Constitution,[41] explaining:

> Firstly, the mischief which the constitutional provision seeks to prevent, i.e., *giving certain individuals, families or groups special privileges denied to other citizens,* will not be present insofar as the Bank is concerned. As this Honorable Court observed in *Philippine Veterans Bank Employees Union-NUBE vs. Philippine Veterans Bank* —
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> > *These stockholdings* (of the veterans, widows, orphans or compulsory heirs) *do not enjoy any special immunity over and above shares of stock in any other corporation, which are always subject to the vicissitudes of business. Their value may appreciate or decline or the stocks may become worthless altogether. Like any other property, they do not have a fixed but a fluctuating price. Certainly, the mere acceptance of these shares of stock by the petitioners did not create any legal assurance from the Government that their original value would be preserved and that the owners could not be deprived of such property under any circumstance no matter how justified.*
>
> Secondly, the obvious legislative intent is "*to give meaning and realization to the constitutional mandate to provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans"* Article XVI, Section 7 of the Constitution states:
>
> > *Section 7. The State shall provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans. Funds shall be provided therefor and due consideration shall be given them in the disposition of agricultural lands of the public domain and, in appropriate cases, in the utilization of natural resources.*

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[39] *Id.* at 248-249.

[40] *Id.* at 249.

[41] *Id.* at 250.

The creation of Veterans Bank through Republic Act Nos. 3518 and 7169 should therefore be taken in conjunction and harmonized with Section 16, Article XII of the Constitution. The predilection of the said Republic Acts towards the welfare of the veterans, their widows, orphans or compulsory heirs is supported by no less than a constitutional provision. That Republic Act Nos. 3518 and 7169 do not fall within the proscription against the creation of private corporations is readily apparent from the fact that in both laws, the intendment of the legislature is that Veterans Bank will eventually be operated, managed and exist under the general laws, i.e., Corporation Code and General Banking Act. The mere circumstance that the charter was granted directly by Congress does not signify that only Congress can modify or abrogate it by another enactment.

Thirdly, the following mandate of Section 3 of Republic Act No. 7169 had been accomplished:

> *"The operations and changes in the capital structure of the Veterans Bank, as well as other amendments to its articles of incorporation and by-laws as prescribed under Republic Act No. 3518, shall be in accordance with the Corporation Code, the General Banking Act, and other related laws."*

Pursuant hereto, the Bank had registered with the Securities and Exchange Commission under its certificate of incorporation/registration number 24681. It has its articles of incorporation and by-laws separate and distinct from the provisions of Republic Act Nos. 3518 and 7169. The manner by which the Bank's Board of Directors is to be organized and the Officers to be elected or appointed are stated in the by-laws. The latest Definitive Information Sheet of the Bank indicates that as of April 30, 2014, the total number of shareholders of record (common and preferred) is 383,852. There had been 25,303,869 common shares and 3,611,556 preferred shares issued, none of which belong to the government. It is thus operating under and by virtue of the Corporation Code and the General Banking Act.[42]

Through its comment, the OSG presents an opinion favorable to the position of the petitioner, opining upon the authority of *Boy Scouts of the Philippines v. Commission on Audit*[43] and

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[42] *Id.* at 251-252.

[43] G.R. No. 177131, June 7, 2011, 651 SCRA 146, 188.

Article 44 of the *Civil Code*[44] that PVB is a public corporation created in the public interest, and a government instrumentality with juridical personality;[45] hence, the law governing the petitioner's compulsory retirement age was Republic Act No. 8291, and the compulsory retirement age for him should be 65 years.[46]

Issues

The following procedural and substantive issues are to be considered and resolved, namely: (1) whether or not the Court could accept the petitioner's second motion for reconsideration; (2) whether PVB is a private entity or a public instrumentality; and (3) whether the petitioner was validly retired by PVB at age 60.

Ruling of the Court

In light of pertinent laws and relevant jurisprudence, the Court has ascertained, after going over the parties' arguments and the records of the case, that the reconsideration of the Court's resolutions promulgated on April 8, 2013 and August 28, 2013, and the lifting of the entry of judgment made herein are in order; and that the appeal by the petitioner should be given due course.

1.
The Court *En Banc* properly accepted the petitioner's second motion for reconsideration.

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[44] Article 44. The following are juridical persons:

(1) The State and its political subdivisions;

(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. (35a).

[45] *Rollo*, p. 276.

[46] *Id.* at 290-293.

As a general rule, second and subsequent motions for reconsideration are forbidden.[47] Nevertheless, there are situations in which exceptional circumstances warrant allowing such motions for reconsideration, and for that reason the Court has recognized several exceptions to the general rule. We have extensively expounded on the exceptions in *McBurnie v. Ganzon*,[48] where we observed:

> At the outset, the Court emphasizes that second and subsequent motions for reconsideration are, as a general rule, prohibited. Section 2, Rule 52 of the Rules of Court provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rule rests on the basic tenet of immutability of judgments. "At some point, a decision becomes final and executory and, consequently, all litigations must come to an end."
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> The general rule, however, against second and subsequent motions for reconsideration admits of settled exceptions. For one, the present Internal Rules of the Supreme Court, particularly Section 3, Rule 15 thereof, provides:
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> > **Sec. 3.** ***Second motion for reconsideration.*** — The Court shall not entertain a second motion for reconsideration, and **any exception to this rule can only be granted in the higher interest of justice** by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" **when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties.** A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> **In a line of cases, the Court has then entertained and granted second motions for reconsideration "in the higher interest of substantial justice,"** as allowed under the Internal Rules when the

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[47] Section 2, Rule 52 of the *Rules of Court*.

[48] G.R. Nos. 178034 & 178117 & G.R. Nos. 186984-85 (Resolution), October 17, 2013, 707 SCRA 646.

assailed decision is "legally erroneous," "patently unjust" and "potentially capable of causing unwarranted and irremediable injury or damage to the parties." In *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.),* we also explained that a second motion for reconsideration may be allowed in instances of "extraordinarily persuasive reasons and only after an express leave shall have been obtained." In *Apo Fruits Corporation v. Land Bank of the Philippines* we allowed a second motion for reconsideration as the issue involved therein was a matter of public interest, as it pertained to the proper application of a basic constitutionally-guaranteed right in the government's implementation of its agrarian reform program. In *San Miguel Corporation v. NLRC,* the Court set aside the decisions of the LA and the NLRC that favored claimants-security guards upon the Court's review of San Miguel Corporation's second motion for reconsideration. In *Vir-Jen Shipping and Marine Services, Inc. v. NLRC, et al.,* the Court *en banc* reversed on a third motion for reconsideration the ruling of the Court's Division on therein private respondents' claim for wages and monetary benefits.

It is also recognized that in some instances, the prudent action towards a just resolution of a case is for the Court to suspend rules of procedure, for "the power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned." In *De Guzman v. Sandiganbayan,* the Court, thus, explained:

> [T]he 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 avoided. Even the Rules of Court envision this liberality. This power to suspend or even disregard the rules can be so pervasive and encompassing so as to alter even that which this Court itself has already declared to be final, as we are now compelled to do in this case x x x.
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> x x x x x x x x x
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> The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously

> guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "*should give way to the realities of the situation.*" x x x.

Consistent with the foregoing precepts, the Court has then reconsidered even decisions that have attained finality, finding it more appropriate to lift entries of judgments already made in these cases. In *Navarro v. Executive Secretary,* we reiterated the pronouncement in *De Guzman* that the power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself has already declared final. The Court then recalled in *Navarro* an entry of judgment after it had determined the validity and constitutionality of Republic Act No. 9355, explaining that:

> Verily, the Court had, on several occasions, sanctioned the recall of entries of judgment in light of attendant extraordinary circumstances. The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final. In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the [Local Government Code (LGC)] with respect to the creation of local government units. x x x.

In *Muñoz v. CA,* the Court resolved to recall an entry of judgment to prevent a miscarriage of justice. This justification was likewise applied in *Tan Tiac Chiong v. Hon. Cosico,* wherein the Court held that:

> The recall of entries of judgments, albeit rare, is not a novelty. In *Muñoz v. CA,* where the case was elevated to this Court and a first and *second* motion for reconsideration had been denied with *finality,* the Court, in the interest of substantial justice, recalled the Entry of Judgment as well as the letter of transmittal of the records to the Court of Appeals.
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> In *Barnes v. Judge Padilla,* we ruled:
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> [A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.

> However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. (Citations omitted; underscoring supplied)[49]

In short, the Court may entertain second and subsequent motions for reconsideration when the assailed decision is legally erroneous, patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. Under these circumstances, even final and executory judgments may be set aside because of the existence of compelling reasons.

It is notable that the retirement program in question herein was established solely by PVB as the employer. Although PVB could validly impose a retirement age lower than 65 years for as long as it did so with the employees' consent,[50] the consent must be explicit, voluntary, free, and uncompelled.[51] In dismissing the petition for review on *certiorari*, the Court's First Division inadvertently overlooked that the law required the employees' consent to be express and voluntary in order for them to be bound by the retirement program providing for a retirement age earlier than the age of 65 years. Hence, the Court deems it proper to render a fair adjudication on the merits of the appeal upon the petitioner's second motion for reconsideration. Furthermore, allowing this case to be reviewed on its merits furnishes the Court with the opportunity to re-examine the case in order to ascertain whether or not the dismissal produced results patently unjust to the petitioner. These reasons

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[49] *Id.* at 664-668.

[50] *Jaculbe vs. Siliman University*, G.R. No. 156934, March 16, 2007, 518 SCRA 445, 452.

[51] *Cercado v. Uniprom, Inc.*, G.R. No. 188154, October 13, 2010, 633 SCRA 281, 290.

do justify treating this case as an exception to the general rule on immutability of judgments.

2.

The pronouncement of the Court in *Philippine Veterans Bank Employees Union-NUBE v. The Philippine Veterans Bank* is still doctrinal on the status of the Philippine Veterans Bank as a private, not a government, entity

In *Philippine Veterans Bank Employees Union-NUBE v. The Philippine Veterans Bank*,[52] we pertinently pronounced:

> Coming now to the ownership of the Bank, we find it is not a government bank, as claimed by the petitioners. The fact is that under Section 3(b) of its charter, while 51% of the capital stock of the Bank was initially fully subscribed by the Republic of the Philippines for and in behalf of the veterans, their widows, orphans or compulsory heirs, the corresponding shares of stock were to be turned over within 5 years from the organization by the Bank to the said beneficiaries who would thereafter have the right to vote such common shares. The balance of about 49% was to be divided into preferred shares which would be opened for subscription by any recognized veteran, widow, orphans or compulsory heirs of said veteran at the rate of one preferred share per veteran, on the condition that in case of failure of any particular veteran to subscribe for any preferred share of stock so offered to him within thirty (30) days from the date of receipt of notice, said share of stock shall be available for subscription to other veterans in accordance with such rules or regulations as may be promulgated by the Board of Directors. Moreover, under Sec. 6(a), the affairs of the Bank are managed by a board of directors composed of eleven members, three of whom are *ex officio* members, with the other eight being elected annually by the stockholders in the manner prescribed by the Corporation Law. Significantly, Sec. 28 also provides as follows:
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> > Sec. 28. *Articles of incorporation.* — This Act, upon its approval, shall be deemed and accepted to all legal intents and purposes as the statutory articles of incorporation or Charter of the Philippine Veterans' Bank; and that, notwithstanding

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[52] G.R. Nos. 67125, 82337, August 24, 1990, 189 SCRA 14.

> the provisions of any existing law to the contrary, said Bank shall be deemed registered and duly authorized to do business and operate as a commercial bank as of the date of approval of this Act.
>
> **This point is important because the Constitution provides in its Article IX-B, Section 2(1) that "the Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." As the Bank is not owned or controlled by the Government although it does have an original charter in the form of R.A. No. 3518, it clearly does not fall under the Civil Service and should be regarded as an ordinary commercial corporation. Section 28 of the said law so provides. The consequence is that the relations of the Bank with its employees should be governed by the labor laws, under which in fact they have already been paid some of their claims.**[53] (Bold underscoring supplied for emphasis)

Anent whether PVB was a government or a private entity, therefore, we declare that it is the latter. The foregoing jurisprudential pronouncement remains to be good law, and should be doctrinal and controlling.

We also note that Congress enacted Republic Act No. 7169,[54] whereby it acknowledged the Filipino veterans of World War II as the owners of PVB, but their ownership had not been fully realized despite the implementation of Republic Act No. 3518.[55] As one of the mechanisms to rehabilitate PVB, Congress saw fit to modify PVB's operations, capital structure, articles of incorporation and by-laws through the enactment of Republic Act No. 7169.[56] By restoring PVB *as envisioned* by Republic

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

[54] *An Act to Rehabilitate the Philippine Veterans Bank Created Under Republic Act No. 3518, Providing the Mechanisms Therefor, And For Other Purposes.*

[55] *An Act Creating the Philippine Veterans Bank, And For Other Purposes.*

[56] Section 3 of R.A. No. 7169 states:

Section 3. Operations and Changes in the Capital Structure of the Veterans Bank and other Amendments. — The operations and changes in the capital

Act No. 3518,[57] and by providing that the creation of the PVB would be in accord with the *Corporation Code*, the *General Banking Act*, and other related laws, Congress undeniably bestowed upon the PVB the personality of a *private commercial bank* through Republic Act No. 7169. In that regard, Section 8 of Republic Act No. 7169 directed the Filipino veterans to raise ₱750,000,000.00 in total unimpaired capital accounts, prior to PVB's reopening, but excused the Government from making any new capital infusion, *viz.*:

> Section 8. Transitory Provisions. – Without requiring new capital infusion either from the Government or from outside investigators, the Filipino veterans of World War II who are real owners-stockholders of the Veterans Bank shall cause the said bank to have at least Seven hundred fifty million pesos (₱750,000,000.00) in total unimpaired capital accounts prior to reopening pursuant to this Act as a commercial bank.
>
> It is hereby provided that the Board of Trustees of the Veterans of World War II (BTVWW II) created under Republic Act No. 3518 is hereby designated as trustee of all issued but undelivered shares of stock.

With the Government having no more stake in PVB, there is no justification for the insistence of the petitioner that PVB "is a public corporation masquerading as a private corporation."[58]

3.
Petitioner Alfredo Laya was not validly retired at age 60

Notwithstanding the rejection of the petitioner's insistence that PVB was a public corporation, we find and declare that the petitioner was not validly retired at age 60.

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structure of the Veterans Bank, as well as other amendments to its articles of incorporation and by-laws as prescribed under Republic Act No. 3518, shall be in accordance with the Corporation Code, the General Banking Act, and other related laws.

[57] Sec. 4, R.A. No. 7169.

[58] *Rollo*, p. 27.

Before going further, we clarify that the CA, in the exercise of its *certiorari* jurisdiction, is limited to determining whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction. The remedy is the special civil action for *certiorari* under Rule 65 of the *Rules of Court* brought in the CA, and once the CA decides the case the party thereby aggrieved may appeal the decision of the CA by petition for review on *certiorari* under Rule 45 of the *Rules of Court*.

However, rigidly limiting the authority of the CA to the determination of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC does not fully conform with prevailing case law, particularly *St. Martin Funeral Home v. NLRC*,[59] where we firmly observed that because of the "growing number of labor cases being elevated to this Court which, not being a trier of fact, has at times been constrained to remand the case to the NLRC for resolution of unclear or ambiguous factual findings"[60] the CA could more properly address petitions for *certiorari* brought against the NLRC. Conformably with such observation made in *St. Martin Funeral Homes*, we have then later on clarified that the CA, in its exercise of its *certiorari* jurisdiction, can review the factual findings or even the legal conclusions of the NLRC,[61] *viz.*:

> In *St. Martin Funeral Home[s] v. NLRC*, it was held that the special civil action of *certiorari* is the mode of judicial review of the decisions of the NLRC either by this Court and the Court of Appeals, although the latter court is the appropriate forum for seeking the relief desired "in strict observance of the doctrine on the hierarchy of courts" and that, in the exercise of its power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC. The contrary rule in *Jamer* was thus overruled.[62]

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[59] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[60] *Id*. at 509.

[61] *Agustilo v. Court of Appeals*, G.R. No. 142875, September 7, 2001, 364 SCRA 740.

[62] *Id*. at 747.

There is now no dispute that the CA can make a determination whether the factual findings by the NLRC or the Labor Arbiter were based on the evidence and in accord with pertinent laws and jurisprudence.

The significance of this clarification is that whenever the decision of the CA in a labor case is appealed by petition for review on *certiorari*, the Court can competently delve into the propriety of the factual review not only by the CA but also by the NLRC. Such ability is still in pursuance to the exercise of our review jurisdiction over administrative findings of fact that we have discoursed on in several rulings, including *Aklan Electric Coooperative, Inc. v. National Labor Relations Commission*,[63] where we have pointed out:

> While administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court had not hesitated to reverse their factual findings. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness.[64]

The review of the findings of the CA becomes more compelling herein, inasmuch as it appears that the CA did not appreciate the fact that the retirement plan was not the sole prerogative of the employer, and that the petitioner was automatically made a member of the plan. Upon reviewing the resolution by the NLRC, the CA simply concluded that the petitioner's acceptance of the employment offer had carried with it his acquiescence, which implied his knowledge of the plan, thus:

> This Court finds petitioner's argument to be misplaced. It must be stressed that when petitioner was appointed as Chief Legal Officer on 01 June 2001 among the terms and conditions of his employment is the membership in the Provident Fund Program/Retirement Program. Worthy to note that when petitioner accepted his appointment as Chief Legal Officer, he likewise signified his conformity with the provisions

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[63] G.R. No. 121439, January 25, 2000, 323 SCRA 258.

[64] *Id*. at 270.

of the Retirement Program considering that the same has already been in existence and effective since 1 January 1996, *i.e.* prior to his appointment. As such, this Court is not convinced that petitioner was not aware of the private respondent's retirement program.[65]

The retirement of employees in the private sector is governed by Article 287 of the *Labor Code*:[66]

Art. 287. Retirement. **Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.**

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided*, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay x x x.

Under the provision, the employers and employees may agree to fix the retirement age for the latter, and to embody their agreement in either their collective bargaining agreements (CBAs) or their employment contracts. Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure, provided that the retirement benefits are not lower than those prescribed by law.[67]

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[65] *Rollo*, pp. 45-46.

[66] Now Article 302, pursuant to Republic Act No. 10151 (See DOLE Department Advisory No. 01, series of 2015).

[67] *Obusan v. Philippine National Bank*, G.R. No. 181178, July 26, 2010, 625 SCRA 542, 553.

The CA concluded that the petitioner had agreed to be bound by the retirement plan of PVB when he accepted the letter of appointment as its Chief Legal Counsel.

We disagree with the conclusion. We declare that based on the clear circumstances herein the CA erred in so concluding.

The petitioner's letter of appointment pertinently stated:

> 3. As a Senior Officer of the Bank, you are entitled to the following executive benefits:
>
> • Car Plan limit of ₱700,000.00, without equity on your part; a gasoline subsidy of 300 liters per month and subject further to The Car Plan Policy of the Bank.
>
> • Membership in a professional organization in relation to your profession and/or assigned functions in the Bank.
>
> **• Membership in the Provident Fund Program/Retirement Program.**
>
> • Entitlement to any and all other basic and fringe benefits enjoyed by the officers; core of the Bank relative to Insurance covers, Healthcare Insurance, vacation and sick leaves, among others.[68]

Obviously, the mere mention of the retirement plan in the letter of appointment did not sufficiently inform the petitioner of the contents or details of the retirement program. To construe from the petitioner's acceptance of his appointment that he had acquiesced to be retired earlier than the compulsory age of 65 years would, therefore, not be warranted. This is because retirement should be the result of the bilateral act of both the employer and the employee based on their voluntary agreement that the employee agrees to sever his employment upon reaching a certain age.[69]

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[68] *Rollo,* p. 35.

[69] *Robina Farms Cebu v. Villa*, G.R. No. 175869, April 18, 2016; *Paz v. Northern Tobacco Redrying, Co., Inc*., G.R. No. 199554, February 18, 2015, 751 SCRA 99, 114.

That the petitioner might be well aware of the existence of the retirement program at the time of his engagement did not suffice. His implied knowledge, regardless of duration, did not equate to the voluntary acceptance required by law in granting an early retirement age option to the employee. The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure.[70]

In *Cercado v. Uniprom, Inc.*,[71] we have underscored the character of the employee's consent in agreeing to the early retirement policy of the employer, *viz.*:

> 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.[72] (Bold emphasis supplied)

Furthermore, the petitioner's membership in the retirement plan could not be justifiably attributed to his signing of the letter of appointment that only listed the minimum benefits provided to PVB's employees. Indeed, in *Cercado*, we have declared that the employee's consent to the retirement plan that came into being two years after the hiring could not be inferred from her signature on the personnel action forms accepting the terms of her job description, and compliance with the company policies, rules and regulations, to wit:

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[70] *Cercado v. Uniprom, Inc.*, G.R. No. 188154, October 13, 2010, 633 SCRA 281, 289.

[71] *Id.*

[72] *Id.* at 290.

We also cannot subscribe to respondent's submission that petitioner's consent to the retirement plan may be inferred from her signature in the personnel action forms containing the phrase: "*Employee hereby expressly acknowledges receipt of and undertakes to abide by the provisions of his/her Job Description, Company Code of Conduct and such other policies, guidelines, rules and regulations the company may prescribe*."

It should be noted that the personnel action forms relate to the increase in petitioner's salary at various periodic intervals. To conclude that her acceptance of the salary increases was also, simultaneously, a concurrence to the retirement plan would be tantamount to compelling her to agree to the latter. Moreover, voluntary and equivocal acceptance by an employee of an early retirement age option in a retirement plan necessarily connotes that her consent specifically refers to the plan or that she has at least read the same when she affixed her conformity thereto.[73]

A perusal of PVB's retirement plan shows that under its Article III all the regular employees of PVB were automatically admitted into membership, thus:

ARTICLE III
MEMBERSHIP IN THE PLAN

Section 1. **Eligibility at Effective Date**. Any Employee of the Bank as of January 1, 1996 shall automatically be a Member of the Plan as of such date.

Section 2. **Eligibility after Effective Date**. **Any person who becomes an Employee after January 1, 1996 shall automatically become a Member of the Plan on the date he becomes a regular permanent Employee, provided he is less than 55 years old as of such date.**

Section 3. **Continuation/Termination of Membership**. Membership in the Plan shall be concurrent with employment with the Bank, and shall cease automatically upon termination of the Member's service with the Bank for any reason whatsoever.[74] (Bold underscoring supplied for emphasis)

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[73] *Id* at 290-291.

[74] CA *rollo*, p. 122.

Having thus automatically become a member of the retirement plan through his acceptance of employment as Chief Legal Officer of PVB,[75] the petitioner could not withdraw from the plan except upon his termination from employment.

It is also notable that the retirement plan had been in existence since January 1, 1996,[76] or more than five years prior to the petitioner's employment by PVB. The plan was established solely by the PVB,[77] and approved by its president.[78] As such, the plan was in the nature of a contract of adhesion,[79] in respect to which the petitioner was reduced to mere submission by accepting his employment, and automatically became a member of the plan. With the plan being a contract of adhesion, to consider him to have voluntarily and freely given his consent to the terms thereof as to warrant his being compulsorily retired at the age of 60 years is factually unwarranted.

In view of the foregoing, the Court disagrees with the view tendered by Justice Leonen to the effect that the petitioner, because of his legal expertise and educational attainment, could not now validly claim that he was not informed of the provisions of the retirement program. The pertinent rule on retirement plans does not presume consent or acquiescence from the high educational attainment or legal knowledge of the employee. In fact, the rule provides that the acquiescence by the employee cannot be lightly inferred from his acceptance of employment.

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[75] The appointment letter pertinently reads:

Dear Atty. Laya,

This is to inform your appointment as Chief Legal Officer with a rank of Vice President effective 01 June 2001 under the following terms and conditions:

1. Your appointment is on a regular status x x x:

x x x x x x x x x

(CA *Rollo*, p. 160; bold emphasis supplied)

[76] Section 3, Article I.

[77] Section 1, Article I.

[78] CA *rollo*, p. 129.

[79] *Capili v. National Labor Relations Commission*, G.R. No. 120802, June 17, 1997, 273 SCRA 576, 588.

Moreover, it was incumbent upon PVB to prove that the petitioner had been fully apprised of the terms of the retirement program at the time of his acceptance of the offer of employment. PVB did not discharge its burden, for the petitioner's appointment letter apparently enumerated only the minimum benefits that he would enjoy during his employment by PVB, and contained no indication of PVB having given him a copy of the program itself in order to fully apprise him of the contents and details thereof. Nonetheless, even assuming that he subsequently obtained information about the program in the course of his employment, he still could not opt to simply withdraw from the program due to his membership therein being automatic for the regular employees of PVB.

To stress, company retirement plans must not only comply with the standards set by the prevailing labor laws but must also be accepted by the employees as commensurate to their faithful services to the employer within the requisite period.[80] Although the employer could be free to impose a retirement age lower than 65 years for as long its employees consented,[81] the retirement of the employee whose intent to retire was not clearly established, or whose retirement was involuntary is to be treated as a discharge.[82]

With the petitioner having been thus dismissed pursuant to the retirement provision that he had not knowingly and voluntarily agreed to, PVB was guilty of illegal dismissal as to him. Being an illegally dismissed employee, he was entitled to the reliefs provided under Article 279[83] of the *Labor Code*, to wit:

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[80] *Obusan v. Philippine National Bank,* G.R. No. 181178, July 26, 2010, 625 SCRA 542, 554.

[81] *Jaculbe v. Siliman University*, G.R. No. 156934, March 16, 2007, 518 SCRA 445, 450.

[82] *Paz v. Northern Tobacco Redrying, Co., Inc.*, G.R. No. 199554, February 18, 2015, 751 SCRA 99, 115.

[83] Now Article 294 pursuant to Republic Act No. 10151 (See DOLE Department Advisory No. 01, series of 2015).

Article 279. Security of tenure. —In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Considering that the petitioner's reinstatement is no longer feasible because of his having meanwhile reached the compulsory retirement age of 65 years by June 11, 2012, he should be granted separation pay. In this regard, retirement benefits and separation pay are not mutually exclusive.[84] The basis for computing the separation pay should accord with Section 4,[85] Article III of PVB's retirement plan. Hence, his full backwages should be computed from July 18, 2007 – the date when he was illegally dismissed – until his compulsory retirement age of 65 years on June 11, 2012. Such backwages shall all be subject to legal interest of 12% *per annum* from July 18, 2007 until June 30, 2013, and then to legal interest of 6% interest *per annum* from July 1, 2013 until full satisfaction, conformably with *Nacar v. Gallery Frames.*[86]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated by the Court of Appeals on August 31, 2012; **FINDS** and **DECLARES** respondent **PHILIPPINE VETERANS BANK** guilty of illegally dismissing the petitioner; and **ORDERS** respondent **PHILIPPINE VETERANS BANK** to pay to the

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[84] *Goodyear Philippines, Inc. v. Angus*, G.R. No. 185449, November 12, 2014, 740 SCRA 24, 38.

[85] Section 4. Involuntary Separation Benefit. Any Member who is involuntarily separated from service by the Bank for any cause not due to his own fault, misconduct, negligence, or fraud, shall be entitled to receive a separation benefit computed in accordance with the retirement benefit formula described in Section 1 of this Article or the applicable termination benefit under existing laws whichever is greater. (CA *Rollo*, p. 124)

[86] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-458.

petitioner, as follows: (*a*) backwages computed from July 18, 2007, the time of his illegal dismissal, until his compulsory age of retirement, plus legal interest of 12% *per annum* from July 18, 2007 until June 30, 2013, and legal interest of 6% *per annum* from July 1, 2013 until full satisfaction; (*b*) separation pay computed at the rate of 100% of the final monthly salary received by the petitioner pursuant to Section 4, Article V of the PVB Retirement Plan; and (*c*) the costs of suit.

The Court **DIRECTS** that any amount that the petitioner received from respondent **PHILIPPINE VETERANS BANK** by virtue of his illegal retirement shall be deducted from the amounts hereby awarded to him.

The Court **DIRECTS** the National Labor Relations Commission to facilitate the computation and payment of the total monetary benefits and awards due to the petitioner in accordance with this decision.

SO ORDERED.

Leonardo-de Castro, Peralta, del Castillo, Caguioa, Martires, Tijam, and *Gesmundo, JJ.,* concur.

Carpio, J., see concurring opinion.

Leonen, J., dissents, see dissenting opinion.

Sereno, C.J.,Velasco, Jr., Perlas-Bernabe, Reyes, Jr., JJ., join the dissent of *J.* Leonen.

Jardeleza, J., no part.

CONCURRING OPINION

CARPIO, *J.*:

I concur with the *ponencia* on the ground that **any waiver of a constitutional right must be clear, categorical, knowing, and intelligent**.

Section 3, Article XIII of the 1987 Constitution provides that an employee "**shall be entitled to security of tenure**." Thus, the right to security of tenure is a **constitutional right** of an employee.

This Court has explained that "[s]ecurity of tenure is a right of paramount value. Precisely, it is given specific recognition and guarantee by the Constitution no less. The State shall afford protection to labor and 'shall assure the rights of workers to x x x security of tenure.'"[1] This Court has explained further: "It stands to reason that a right so highly ranked as security of tenure should not lightly be denied on so nebulous a basis as mere speculation."[2]

The well-recognized rule is that any waiver of a **constitutional right** must be **clear, categorical, knowing, and intelligent**. Thus, in a long line of cases, this Court has ruled: "The relinquishment of a constitutional right has to be laid out convincingly. **Such waiver must be clear, categorical, knowing, and intelligent**."[3]

Under Article 287 of the Labor Code, the "compulsory retirement age" is 65 years, "in the absence of a retirement plan or agreement providing for retirement benefits of employees." While Philippine Veterans Bank (PVB) has a retirement plan making 60 years the compulsory retirement age, **this specific fact was not made known to petitioner at the time PVB handed him his appointment letter on 1 June 2001**. The appointment letter mentioned in one line a retirement plan but the retirement plan itself was not attached to the appointment letter or given to petitioner. **Nothing in the appointment letter indicated, expressly or impliedly, that the compulsory retirement age was 60 years. Anyone who received and read**

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[1] *City Service Corp. Workers Union v. City Service Corporation*, 220 Phil. 239, 242 (1985).

[2] *Id*.

[3] *People v. Espinosa*, 456 Phil. 507, 518 (2003), citing *People v. Nicandro*, 225 Phil. 248 (1986), further citing *People v. Caguioa*, 184 Phil. 1 (1980); *Chavez v. CA*, 133 Phil. 661 (1968); *Abriol v. Homeres*, 84 Phil. 525 (1949).

the appointment letter would not have known that the compulsory retirement age was 60 years. In short, petitioner could not have waived **knowingly** the compulsory retirement age of 65 years because **this fact was not made known to him** at the time of his appointment. Any such waiver was **not made knowingly**.

The fact that petitioner is a lawyer cannot give rise to the presumption that he impliedly waived his constitutional right to security of tenure when he accepted the appointment letter. This Court has ruled:

> But a waiver by implication cannot be presumed. There must be clear and convincing evidence of an **actual intention to relinquish the right to constitute a waiver of a constitutional right**. There must be proof of the following: (a) that the right exists; (b) that the person involved had knowledge, either actual or constructive, of the existence of such right; and, (c) **that the said person had an actual intention to relinquish the right**. The waiver must be made voluntarily, knowingly and intelligently. The Court indulges every reasonable presumption against any waiver of fundamental constitutional rights.[4] (Emphasis supplied)

There is no showing here that petitioner has an actual intention to waive his constitutional right to security of tenure. **Such intention to waive a fundamental constitutional right cannot be presumed but must be actually shown and established.** The bar against any implied waiver is very high because this Court "indulges [in] every reasonable presumption against any waiver of fundamental constitutional rights." PVB has failed to surmount that high bar.

Even in determining whether the appointment of an employee is permanent or probationary, actual disclosure of the performance standards **at the time of the employment** is required and cannot be presumed. This Court has explained that a probationary employee shall be deemed a regular employee

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[4] *Lui v. Spouses Matillano*, 413 Phil. 483, 512-513 (2004); *Pasion Vda. de Garcia v. Locsin*, 65 Phil. 689 (1938); *People v. Compacion*, 414 Phil. 68 (2001).

where no standards are made known to him at the time of his engagement, unless the job is self-descriptive, like maid, cook, driver, or messenger.[5] Thus, to comply with the constitutional mandate that the "**State shall afford full protection to labor**," disclosure to the employee **at the time of appointment** is necessary to bind the employee. "**Full protection**" means implied waivers in derogation of an employee's constitutional or statutory right cannot be presumed.

Accordingly, I vote to **GRANT** the petition.

DISSENTING OPINION

LEONEN, *J.*:

Petitioner was not only a lawyer, he was hired by the respondents as its Chief Legal Counsel. For years, he acted on all legal matters on behalf of respondent. As its legal counsel, petitioner was expected to do due diligence on all documents he signed, especially those involving his employment. Effectively, he now claims that he did not understand or was not fully aware of the Bank's Retirement Plan and its rules and regulations.

Furthermore, through a second motion for reconsideration of a decision, which was not only final but already the subject of an entry of judgment, he now wishes to overturn a precedent by belatedly raising an alleged constitutional issue, which was not fully litigated when he first filed his Petition.

To grant his second motion for reconsideration would cause an irregularity that can distort the stability of decisions of this Court. It would also reward the negligence of a lawyer when he signed his employment papers, when he was acting as Chief Legal Counsel and had every opportunity to correct any unconstitutional legal standing of the corporation he was serving,

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[5] *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 532-533, 534 (2013), citing *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, 655 Phil. 133, 142 (2011).

as well as his negligence in raising the issues before this very Court.

For these reasons, I regret that I have to register my dissent.

I

Petitioner Alfredo F. Laya, Jr.'s (Laya) second motion for reconsideration should not have been entertained by the Court. Under Rule 15, Section 3 of the Internal Rules of the Supreme Court, the Court shall not entertain a second motion for reconsideration, except in the higher interest of justice, and before the finality of the decision being assailed. Higher interest of justice will prevail if there is showing that the "assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties."[1]

For Petitioner Laya's second motion for reconsideration to prosper, there must be showing that the contested decision is not sound in law, and is also manifestly unfair and has the possibility of giving irreparable damage to Petitioner Laya. Furthermore, the second motion for reconsideration must have been filed before the case has attained finality.

The Petition for Review on Certiorari under Rule 45 filed by Petitioner Laya was initially denied by the Court's First Division. Petitioner Laya filed his first motion for reconsideration, and prayed that the case be referred to the Court *En Banc*. However, his prayer was denied with finality, such that on December 6, 2013, the Entry of Judgment was recorded in the "Book of Entries of Judgment."[2] Thus, at the time Petitioner Laya filed his second motion for reconsideration[3] on December 18, 2013, Petitioner Laya's Petition for Review on Certiorari had already been denied with finality.

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[1] Adm. Matter No. 10-4-20-SC, Rule 15, Sec. 3.

[2] *Rollo*, p. 126.

[3] *Id*. at 135-151.

There is also no showing of compelling reasons that would allow the Court to relax the rule on immutability of judgments. In justifying the allowance of Laya's second motion for reconsideration, the *Ponencia* simply stated that the First Division "inadvertently overlooked that the law required the employees' consent to be bound by the terms of the retirement program providing for a retirement age earlier than the age of 65 years to be express and voluntary,"[4] and that that the Court will be able to review the earlier dismissal if it "produced results patently unjust to the petitioner."[5] The *Ponencia* did riot expound on the First Division's alleged inadvertence, or how the dismissal result is patently unjust to Laya, as would warrant his case to be exempt from the doctrine on immutability of judgments.

In previous cases, the Court has recalled the finality of judgments only for the most compelling reasons. In *Lu v. Lu Ym, Sr.*,[6] the Court entertained a second motion for reconsideration since the assailed decision of the Third Decision modified or reversed an established legal doctrine, which can only be done by the Court *En Banc*. In *Apo Fruits Corporation v. Land Bank of the Philippines*,[7] the Court ruled on a second motion for reconsideration, as the issue on the correct application of a right guaranteed by the Philippine Constitution on the implementation of the agrarian reform program, involved substantial and paramount public interest. In *Navarro v. Executive Secretary*,[8] the Court recalled an Entry of Judgment since the issue is on the validity of Republic Act No. 9355, a law creating the Province of Dinagat; the issue involved the correct interpretation of Local Government Code provisions on the creation of Local Government Units. In *McBurnie v. Ganzon*,[9]

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[4] *Ponencia*, p. 12.

[5] *Id*.

[6] 658 Phil. 156 (2011) [Per *J*. Carpio Morales, *En Banc*].

[7] 662 Phil. 572 (2011) [Per *J*. Brion, *En Banc*].

[8] 663 Phil. 546 (2011) [Per *J*. Nachura, *En Banc*].

[9] 719 Phil. 680 (2013) [Per *J*. Reyes, *En Banc*].

the Court granted the second motion for reconsideration, and prescribed guidelines on filing and accepting of motions to reduce appeal bonds in the National Labor Relations Commission.

Petitioner Laya mainly anchors his request on the alleged erroneous decision of the National Labor Relations Commission. However, an erroneous decision, by itself, is not enough to set aside defined rules of procedure. Once a judgment has become final, it becomes immutable and unalterable. It cannot be changed in any way, even if the modification is for the correction of a perceived error, by the court which promulgated it or by a higher court.[10] Judgments and orders should be final at some definite time based on law, as there would be no end to litigation.[11] While the losing party has a right to appeal his or her case, the winning party has an attendant right to enjoy the finality of the decision issued in his or her favor, through the execution process to satisfy the award given to him or her.[12]

II

In a Rule 45 Petition, only questions of law are at issue.[13] The Court, in the exercise of its certiorari review, is limited to correcting errors of jurisdiction or abuse of discretion which is so grave as to remove the tribunal or court its jurisdiction. Meanwhile, the courts, in the exercise of its appellate jurisdiction,

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[10] *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2000) [Per *J*. Bellosillo, Second Division]; *Johnson & Johnson (Phils.) Inc. v. Court of Appeals*, 330 Phil. 856, 871-872 (1996) [Per *J*. Panganiban, Third Division]; *Nunal v. Court of Appeals*, 293 Phil. 28, 34-35 (1993) [Per *J.* Campos, Jr., Second Division]; *Manning International Corporation v. National Labor Relations Commission*, 272-A Phil. 114, 120 (1991) [Per *J*. Narvasa, First Division].

[11] *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2000) [Per *J*. Bellosillo, Second Division].

[12] *De Leon v. Public Estates Authority*, 640 Phil. 594, 611 (2010) [Per *J*. Peralta, Second Division]; *Bongcac v. Sandiganbayan*, 606 Phil. 48, 55-56 (2009) [Per *J*. Carpio, First Division].

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

can correct errors of law or errors of fact, or both, depending on the mode of appeal.[14]

Petitioner Laya elevated this case to the Court via Rule 45 of the Rules of Court. The use of this mode of appeal does not open the entire case for the review of the Court. Instead, only questions of law, which arise when there is doubt on the application of laws to a certain set of facts, and which do not require the evaluation of the probative value of the evidence presented, are to be examined by the Court, which is not a trier of facts.[15] It is only upon certain exceptions can the Court look into factual issues.[16]

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[14] *See* Rules of Court. Rule 42, Sec. 2:

Section 2. Form and Contents. — The petition shall . . . set forth concisely a statement of the matters involved, the issues raised, ***the specification of errors of fact or law, or both***, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal[.] (Emphasis supplied)

See RULES OF COURT, Rule 43, Sec. 3:

Section 3. Where to Appeal. — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, ***whether the appeal involves questions of fact, of law, or mixed questions of fact and law***. (Emphasis supplied)

[15] See *Reyes v. Court of Appeals*, 328 Phil. 171 (1996) [Per J. Romero, Second Division]. Adm. Matter No. Rule 3, Sec. 2.

[16] *Co v. Vargas*, 676 Phil. 463, 471 (2011) [Per J. Carpio, Second Division], citing *Development Bank of the Philippines v. Traders Royal Bank*, 642 Phil. 547 (2010) [Per J. Carpio, Second Division], enumerated the exceptions:

[T]he Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when

In putting at issue the validity of Petitioner Laya's early retirement, the *Ponencia* ruled on a question of fact. This issue involves looking into the correctness of the findings of fact of the National Labor Relations Commissions, and is beyond the scope of a petition for review on certiorari under Rule 45 of the Rules of Court. In labor cases, factual findings of labor officials are accorded respect and even finality, especially when backed by substantial evidence. The Court's function does not involve reevaluating the evidence, particularly when the Labor Arbiter, National Labor Relations Commission and the Court of Appeals have the same findings of fact.[17]

III

Even if there was a compelling reason to allow Petitioner Laya's second motion for reconsideration, and for the Court to look into the factual findings of the Labor Arbiter and the National Labor Relations Commission, the Petition for Review of Petitioner Laya still cannot prosper.

Any constitutional issue should be raised at the earliest opportunity,[18] or in pleadings filed before a competent court which can rule on it.[19] If the constitutional issue is "not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal."[20] The issue on constitutionality was belatedly raised in this case.

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the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[17] See *Stamford Marketing Corp., et al. v. Josephine Julian, et al.*, 468 Phil. 34 (2004) [Per *J.* Quisumbing, Second Division]; *Abalos v. Philex Mining Corporation*, 441 Phil. 386 (2002) [Per *J.* Quisumbing, Second Division].

[18] *Robb v. People*, 68 Phil. 320, 326 (1939) [Per *J.* Laurel, *En Banc*].

[19] *Matibag v. Benipayo*, 429 Phil. 554, 578 (2002) [Per *J.* Carpio, *En Banc*], *citing* JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*: *A COMMENTARY* 858 (1996), and *People v. Vera*, 65 Phil. 56 (1937) [Per *J.* Laurel, First Division].

[20] *Id.*

Thus, we assume for this case that Philippine Veterans Bank is a private institution. As a private institution, it can impose a separate retirement program as long as it is agreed with by the employee. In this case, the pronouncements of the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals' pronouncement that Laya did not consent to be bound by Philippine Veterans Bank's Retirement Plan is at issue.

I do not subscribe to the ponencia's determination that Petitioner Laya did not "knowingly and voluntarily [agree]"[21] to Respondent Philippine Veteran Bank's retirement program, which imposed sixty (60) years old as the retirement age of its members under the Retirement Plan Rules and Regulations, and that he was illegally dismissed when he was notified of his retirement, which was effected before the compulsory age of retirement under the Labor Code.

Section 287 of the Labor Code declares the age of sixty-five (65) years old as the compulsory age of retirement. However, the employer may impose a lower retirement age, as long as this is indicated in a collective bargaining agreement, or in any other applicable contract or plan, and agreed to by the employee.[22]

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[21] *Ponencia*, p. 20.

[22] LABOR CODE, Art. 287 provides:

Article 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 (½) month salary for every

Petitioner Laya was given notice of his early retirement by Respondent Philippine Veterans Bank pursuant to its Retirement Plan Rules and Regulations. Under the Retirement Plan Rules and Regulations, Respondent Philippine Veterans Bank set the retirement age of members of the Plan to sixty (60) years old,[23] and on a case to case basis and on an annual renewal, a member may extend his or her service beyond the imposed retirement age under the Plan, but not beyond sixty-five (65) years old.[24] Petitioner Laya became bound under the Retirement Plan Rules and Regulations when he agreed to the letter of employment issued by Respondent Philippine Veterans Bank, which indicated that he is entitled to particular executive benefits, including Membership in the Provident Fund Program/Retirement Program.

The ponencia held that the Retirement Plan is a contract of adhesion, and that the inclusion in the letter of appointment of the provision indicating that Petitioner Laya is a member of Respondent Philippine Veterans Bank's retirement program is not sufficient to show that he was aware of the program's contents.[25]

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year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (½) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

[23] Section 1 of the Retirement Plan Rules and Regulations provide that: "Section 1. Normal Retirement. The normal retirement date of a Member shall be the first day of the month coincident with or next following his attainment of age 60."

[24] Section 3 of the Retirement Plan Rules and Regulations provides that: "Section 3. Late Retirement. A Member may, with the approval of the Board of Directors, extend his service beyond his normal retirement date but not beyond age 65. Such deferred retirement shall be on a case by case and yearly extension basis."

[25] *Ponencia*, p. 19.

A contract of adhesion is a ready-made contract imposed by one party, usually a company, and which the other party merely signs to signify his or her agreement. It is not invalid *per se*, as the other party may completely reject it, and it will be struck down as void only if there is showing, based on the circumstances which led to its signing, that the weaker party had no other choice but to agree to it, and that the agreement is inequitable and basically one-sided.[26] As such, when there is showing that the other party "is knowledgeable enough to have understood the terms and conditions of the contract, or one whose stature is such that he is expected to be more prudent and cautious with respect to his [or her] transactions, such party cannot later on be heard to complain for being ignorant or having been forced into merely consenting to the contract."[27]

Petitioner Laya agreed to his letter of appointment without any force from Respondent Philippine Veterans Bank. He was free to reject the offer of the Bank. Part of the provisions of the letter of appointment is his membership to the retirement program of Respondent Philippine Veterans Bank, which has been in effect since January 1, 1996, or even before Petitioner Laya's employment. As such, at the time he agreed to be employed by the Bank, he was aware that a retirement program is in existence and that he is a member of such program. By agreeing to the letter of appointment given by Respondent Philippine Veterans Bank, Petitioner Laya is deemed to have accepted all the rules and regulations of the company,[28] which included the provisions on retirement.

The case of *Cercado v. Uniprom, Inc.*[29] is not applicable to this case. In that case, the Court ruled that the Cercado did not

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[26] See *Serra v. Court of Appeals*, 299 Phil. 63 (1994) [Per *J*. Nocon, Second Division].

[27] *Philippine Commercial International Bank v. Court of Appeals*, 325 Phil. 588, 598 (1996) [Per *J*. Francisco, Third Division].

[28] *Banco De Oro Unibank, Inc. v. Sagaysay*, 769 Phil. 897, 910-911 (2015) [Per *J*. Mendoza, Second Division].

[29] 647 Phil. 603 (2010) [Per *J*. Nachura, Second Division].

voluntarily agree to the retirement plan and so, was not bound by the early retirement clause. Moreover, in that case, the retirement plan was not in existence at the time Cercado was employed in 1978. Also, there was no Collective Bargaining Agreement, or any other contract, including one for employment, which indicated the compulsory retirement age for employees to be 60 years old. Instead, the retirement plan was codified in 1980, or two years after Cercado had already been employed, and without consultation with the employees.

In this case, the retirement program had long been in existence and in writing even before Petitioner Laya was employed by the Respondent Philippine Veterans Bank. Furthermore, he was informed of the existence of the retirement program when he signed his employment contract — his contract specified that he would automatically become a member of the retirement program upon being hired.

In *Banco De Oro Unibank, Inc. v. Guillermo C. Sagaysay*,[30] the Court ruled that the employee was deemed to have agreed to all the rules and regulations of the company upon accepting the employment offer:

> **[B]y accepting the employment offer of BDO, Sagaysay was deemed to have assented to all existing rules, regulations and policy of the bank, including the retirement plan.** Likewise, he consented to the CBA between BDO and the National Union of Bank Employees Banco De Oro Chapter. Section 2 of Article XVII of the CBA provides that "[t]he Bank shall continue to grant retirement/gratuity pay . . . ." Notably, both the retirement plan and the CBA **recognize that the bank has a continued and existing practice of granting the retirement pay to its employees**.

Third, on June 1, 2009, BDO issued a memorandum regarding the implementation of its retirement program, reiterating that the normal retirement date was the first day of the month following the employee's sixtieth (60^{th}) birthday. Similar to the case of *Obusan*, the memorandum was addressed to **all employees and officers**. By

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[30] 769 Phil. 897 (2015) [Per *J.* Mendoza, Second Division].

that time, Sagaysay was already an employee and he did not deny being informed of such memorandum.

For four years, from the time he was employed until his retirement, and having actual knowledge of the BDO retirement plan, Sagaysay had every opportunity to question the same, if indeed he knew it would not be beneficial to him. Yet, he did not express his dissent. As observed in *Obusan*, "[t]his deafening silence eloquently speaks of [his] lack of disagreement with its provisions."

Lastly, perhaps the most telling detail indicative of Sagaysay's assent to the retirement plan was his e-mails to the bank, dated July 27, 2010 and August 19, 2010. In these communications, *albeit* having been informed of his upcoming retirement, Sagaysay never opposed the company's compulsory age of retirement. In fact, he recognized that "the time has come that BDO Retirement Program will be implemented to those reaching the age of sixty (60)."

Glaringly, he even requested that his services be extended, at least until May 16, 2011, so that he could render five (5) years of service. Sagaysay's request reflects the late retirement option where an employee may be allowed by the bank to continue to work on a yearly extension basis beyond his normal retirement date. **The late retirement option is embodied in the same retirement plan, of which, ironically, he claimed to be unaware.** With such inconsistent stance, the Court can only conclude that Sagaysay was indeed notified and had accepted the provisions of the retirement plan. **It was only when his request for late retirement was denied that he suddenly became oblivious to the said plan.**[31] (Emphasis supplied, citations omitted)

Petitioner Laya is not a weaker party that can claim ignorance of the implications of — what he is signing or agreeing to. As a lawyer, he is considered to be knowledgeable of the legal effects and ramifications of what he is signing or agreeing to.[32] This is further emphasized by the position he was employed for: as Chief Legal Counsel. He was hired based on his legal prowess. In addition, as Chief Legal Counsel with a Vice

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[31] *Id.* at 910-911.

[32] See *Saludo v. Security Bank Corporation*, 647 Phil. 569 (2010) [Per *J.* Perez, First Division].

President rank, the information regarding the retirement of employees was at his disposal; he cannot claim that the Retirement Plan Rules and Regulations were belatedly shown to him, and that its provisions should not apply to him. In all his years as an employee of Respondent Philippine Veterans Bank, he did not contest the provisions of the Retirement Plan Rules and Regulations, despite his knowledge that he was a member the Bank's retirement program.

It must be noted that when he was notified by Respondent Philippine Veterans Bank of his retirement, he requested for an extension of his service for another two (2) years based on the Retirement Plan Rules and Regulations. This shows that he not only was aware of the provisions of the retirement program, but that his retirement was governed by it. It was only upon the rejection of his request for extension did he allege that he was illegally dismissed.

As an employee with legal expertise, whose educational attainment and professional experience require that he be more prudent in the contracts and agreements he enters into, Petitioner Laya cannot simply allege that he was not informed of the provisions of the retirement program at the time he was employed. Part of the work of a lawyer is to exercise due diligence in the review of documents and contracts presented before him. His membership in the retirement program was clearly indicated in his employment contract, which he is presumed to have read and understood. It is his duty, as a lawyer and as the Chief Legal Counsel of Respondent Philippine Veterans Bank, to be aware of the provisions to which he has bound himself to follow.

ACCORDINGLY, I vote to **DENY** the petition for review on certiorari filed by Petitioner Alfredo F. Laya, Jr., and to **AFFIRM** the Decision dated August 31, 2012 of the Court of Appeals, which upheld the National Labor Relations Commission's ruling that Petitioner Laya was not illegally dismissed.

THIRD DIVISION

[G.R. No. 207354. January 10, 2018]

CHARLIE HUBILLA, JOEL NAYRE, NENITA A. TAN, PEDRO MAGALLANES, JR., ARNEL YUSON, JANICE CABATBAT, JUDY PAPINA, VANESSA ESPIRITU, NOEMI YALUNG, GENALYN RESCOBILLO, FIDEL ZAQUITA, NYL B. CALINGASAN, JANICE MIRADORA, EVANGELINE CHUA, ROSCHELLE MISSION, MELANIE BALLESTEROS, MARILYN BACALSO, RENALYN ALCANTARA, FEDERICO B. VIERNES, CHRISTOPHER B. YARES, ANA MARY R. AGUILAR, MELANIE SAN MARCOS, EMERLOVE MONTE, CHONALYN LUCAS, THERESA MALICOSIO, MA. FE CERCARES, RUBELYN R. CLARO, JONALYN M. YALUNG, MARY ANN V. MACANAG, RESLYN L. FLORES, CRISTEL C. ROQUE, TERESA G. MUNAR, SUSAN A. DELA CRUZ, SHEENA KAY P. DE VERA, ARLENE R. ANES, GINA B. BINIBINI, CHERINE V. ZORILLA, MA. CRISTINE MAGTOTO, FRANCIS MARIE O. DE CASTRO, VANESSA R. ESPIRITU, RACHELLE V. QUISTORIA, JULIE ANN ILAN, ANGELIE F. PANOTES, ANABEL PAYOS, MELISSA M. PERLAS, MELANIE B. BERSES, BARVI ROSE PERALTA, RESIE AQUE, ROWENA RIVERA, MELANIE M. DY, CHERYLYN CORO, RANELYN SUBONG, ANGELA SUBILLAGA, THELMA BARTOLABAC, MICHELLE C. ILAGAN, PRECIOUS MAE DE GUZMAN, MARY CAROLINE COLINA, FRELYN HIPOLITO, MYLINE A. CALLOS, JANETH B. SEMBILLO, LEA LYN F. FERRANCO, MAY C. SANTOS, ROSELLE A. NOBLE, JENNIFER D. SUYOM, WARREN PETCHIE C. CAJES, ROWELYN F. CATALAN, RIEZEL ANN A. ALEGRE, DEMETRIA B. PEREZ, GENALYN OSOC, JUVILYN N. NERI, JOY B. PIMENTEL, AIRENE LAYON, MARY JOY TURQUEZA, MARY

ANN VALENTIN, ROSIE L. NIEBRES, MELCA MALLORCA, JOY CAGATCAGAT, DIANA CAMARO, MARIVEL DIJUMO, SHEILA DELA CRUZ, ELIZABETH ARINGO, JENALYN G. DISMAYA, MELANIE G. TRIA, GRETCHEN D. MEJOS, AND JANELIE R. JIMENEZ, *petitioners, vs.* **HSY MARKETING LTD., CO., WANTOFREE ORIENTAL TRADING, INC., COEN FASHION HOUSE and GENERAL MERCHANDISE, ASIA CONSUMER VALUE TRADING, INC., FABULOUS JEANS & SHIRT & GENERAL MERCHANDISE, LSG MANUFACTURING CORPORATION, UNITE GENERAL MERCHANDISE, ROSARIO Q. CO, LUCIA PUN LING YEUNG, and ALEXANDER ARQUEZA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; PETITIONS FOR *CERTIORARI* BEFORE THE COURT OF APPEALS; IN LABOR CASES, THE ISSUES ARE LIMITED ONLY TO WHETHER THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION, BUT THE COURT OF APPEALS IS NOT CONCLUSIVELY BOUND BY THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION, FOR IT MAY REVIEW FACTUAL FINDINGS IF QUASI- JUDICIAL AGENCIES' FINDINGS ARE CONTRADICTORY TO ITS OWN FINDINGS.—** Factual findings of labor officials exercising quasi-judicial functions are accorded great respect and even finality by the courts when the findings are supported by substantial evidence. Substantial evidence is "the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion." Thus, in labor cases, the issues in petitions for *certiorari* before the Court of Appeals are limited only to whether the National Labor Relations Commission committed grave abuse of discretion. However, this does not mean that the Court of Appeals is conclusively bound by the findings of the National Labor Relations Commission. If the findings are arrived at arbitrarily, without resort to any substantial evidence, the

National Labor Relations Commission is deemed to have gravely abused its discretion x x x. The Court of Appeals may also review factual findings if quasi- judicial agencies' findings are contradictory to its own findings. Thus, it must re-examine the records to determine which tribunal's findings were supported by the evidence. In this instance, the Labor Arbiter and the National Labor Relations Commission made contradictory factual findings. Thus, it was incumbent on the Court of Appeals to re-examine their findings to resolve the issues before it. The Court of Appeals also found that the findings of the National Labor Relations Commission were not supported by substantial evidence, and therefore, were rendered in grave abuse of discretion. Thus, in the determination of whether the National Labor Relations Commission committed grave abuse of discretion, the Court of Appeals may re-examine facts and re-assess the evidence. However, its findings may still be subject to review by this Court.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE CONTRADICTORY FACTUAL FINDINGS BETWEEN THE NATIONAL LABOR RELATIONS COMMISSION AND THE COURT OF APPEALS DO NOT AUTOMATICALLY JUSTIFY THE SUPREME COURT'S REVIEW OF THE FACTUAL FINDINGS, AS THE NEED TO REVIEW THE COURT OF APPEALS' FACTUAL FINDINGS MUST STILL BE PLEADED, PROVED, AND SUBSTANTIATED BY THE PARTY ALLEGING THEIR INACCURACY.— This Court notes that in cases when the Court of Appeals acts as an appellate court, it is still a trier of facts. Questions of fact may still be raised by the parties. If the parties raise pure questions of law, they may directly file with this Court. Moreover, contradictory factual findings between the National Labor Relations Commission and the Court of Appeals do not automatically justify this Court's review of the factual findings. They merely present a *prima facie* basis to pursue the action before this Court. The need to review the Court of Appeals' factual findings must still be pleaded, proved, and substantiated by the party alleging their inaccuracy. This Court likewise retains its full discretion to review the factual findings.

3. ID.; ID.; PLEADINGS AND PRACTICES; VERIFICATION; FOR A PLEADING TO BE VERIFIED, THE AFFIANT

MUST ATTEST THAT HE OR SHE HAS READ THE PLEADING AND THAT THE ALLEGATIONS ARE TRUE AND CORRECT BASED ON HIS OR HER PERSONAL KNOWLEDGE OR ON AUTHENTIC RECORDS, OTHERWISE, THE PLEADING IS TREATED AS AN UNSIGNED PLEADING.— All petitions for certiorari are required to be verified upon filing. The contents of verification are stated under Rule 7, Section 4 of the Rules of Court x x x. Thus, for a pleading to be verified, the affiant must attest that he or she has read the pleading and that the allegations are true and correct based on his or her *personal knowledge* or on *authentic records*. Otherwise, the pleading is treated as an unsigned pleading.

4. ID.; ID.; ID.; ID.; MODES OF VERIFICATION; THE VERACITY OF THE ALLEGATIONS IN A PLEADING MAY BE AFFIRMED BASED ON EITHER ONE'S OWN PERSONAL KNOWLEDGE OR ON AUTHENTIC RECORDS, OR ON BOTH SOURCES, AS WARRANTED BY THE CIRCUMSTANCES.— A pleading may be verified by attesting that the allegations are based either on personal knowledge *and* on authentic records, or on personal knowledge *or* on authentic records. The use of *either*, however, is not subject to the affiant's whim but rather on the nature of the allegations being attested to. Circumstances may require that the affiant attest that the allegations are based only on personal knowledge or only on authentic records. Certainly, there can be situations where the affiant must attest to the allegations being based on both personal knowledge and on authentic records, thus: A reading of the above-quoted Section 4 of Rule 7 indicates that a pleading may be verified under either of the two given modes or under both. The veracity of the allegations in a pleading may be affirmed based on either one's own personal knowledge or on authentic records, or both, as warranted. The use of the [conjunction] "or" connotes that either source qualifies as a sufficient basis for verification and, needless to state, the concurrence of both sources is more than sufficient. Bearing both a disjunctive and conjunctive sense, this parallel legal signification avoids a construction that will exclude the combination of the alternatives or bar the efficacy of any one of the alternatives standing alone. Contrary to petitioner's position, the range of permutation is not left to the pleader's liking, but is dependent on the surrounding nature of the

allegations which may warrant that a verification be based either purely on personal knowledge, or entirely on authentic records, or on both sources.

5. **ID.; ID.; ID.; ID.; AUTHENTIC RECORDS MAY BE THE BASIS OF VERIFICATION IF A SUBSTANTIAL PORTION OF THE ALLEGATIONS IN THE PLEADING IS BASED ON PRIOR COURT PROCEEDINGS.—** Authentic records may be the basis of verification if a substantial portion of the allegations in the pleading is based on prior court proceedings. Here, the annexes that respondents allegedly failed to attach are employee information, supporting documents, and work-related documents proving that petitioners were employed by respondents. The fact of petitioners' employment, however, has not been disputed by respondents. These documents would not have been the "relevant and pertinent" documents contemplated by the rules.

6. **ID.; ID.; ID.; ID.; FOR VERIFICATION TO BE VALID, THE AFFIANT MUST HAVE AMPLE KNOWLEDGE TO SWEAR TO THE TRUTH OF THE ALLEGATIONS IN THE COMPLAINT OR PETITION, AS SUCH, FACTS RELAYED TO THE COUNSEL BY THE CLIENT WOULD BE INSUFFICIENT FOR COUNSEL TO SWEAR TO THE TRUTH OF THE ALLEGATIONS IN A PLEADING.—** The policy behind the requirement of verification is to guard against the filing of fraudulent pleadings. Litigants run the risk of perjury if they sign the verification despite knowledge that the stated allegations are not true or are products of mere speculation: Verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice. For what is at stake is the matter of verity attested by the sanctity of an oath to secure an assurance that the allegations in the pleading have been made in good faith, or are true and correct and not merely speculative. Thus, for verification to be valid, the affiant must have "ample knowledge to swear to the truth of the allegations in the complaint or petition." Facts relayed to the counsel by the client would be insufficient for counsel to swear to the truth of the allegations in a pleading. Otherwise, counsel would be able to disclaim liability for any misrepresentation by the simple expediency of stating that he or she was merely relaying facts with which he or she had no competency to attest to. For this reason, the

Rules of Court require no less than *personal* knowledge of the facts to sufficiently verify a pleading. Respondents' counsel, not having sufficient personal knowledge to attest to the allegations of the pleading, was not able to validly verify the facts as stated. Therefore, respondents' Petition for *Certiorari* before the Court of Appeals should have been considered as an unsigned pleading.

7. **ID.; ID.; ID.; CERTIFICATION OF NON-FORUM SHOPPING; THE CERTIFICATION OF NON-FORUM SHOPPING MUST BE SIGNED BY THE LITIGANT, NOT HIS OR HER COUNSEL, BUT THE LITIGANT MAY, FOR JUSTIFIABLE REASONS, EXECUTE A SPECIAL POWER OF ATTORNEY TO AUTHORIZE HIS OR HER COUNSEL TO SIGN ON HIS OR HER BEHALF.—** Respondents' certification of non-forum shopping is likewise defective. The certification of non-forum shopping must be signed by the litigant, not his or her counsel. The litigant may, for justifiable reasons, execute a special power of attorney to authorize his or her counsel to sign on his or her behalf. In this instance, the verification and certification against forum shopping was contained in one (1) document and was signed by respondents' counsel, Atty. Daclan.

8. **ID.; ID.; ID.; ID.; CORPORATIONS AND PARTNERSHIPS MAY AUTHORIZE THEIR AGENTS OR LAWYERS TO SIGN THE CERTIFICATION AGAINST FORUM SHOPPING ON THEIR BEHALF.—** Corporations, not being natural persons, may authorize their lawyers through a Secretary's Certificate to execute physical acts. Among these acts is the signing of documents, such as the certification against forum shopping. A corporation's inability to perform physical acts is considered as a justifiable reason to allow a person other than the litigant to sign the certification against forum shopping. By the same reasoning, partnerships, being artificial entities, may also authorize an agent to sign the certification on their behalf.

9. **ID.; ID.; ID.; ID.; ABSENT JUSTIFIABLE REASON, SOLE PROPRIETORSHIPS MAY NOT AUTHORIZE THEIR COUNSEL TO SIGN THE CERTIFICATION AGAINST FORUM SHOPPING ON THEIR BEHALF.—** [S]ole proprietorships, unlike corporations, have no separate legal personality from their proprietors. They cannot claim the inability

to do physical acts as a justifiable circumstance to authorize their counsel to sign on their behalf. Since there was no other reason given for authorizing their counsel to sign on their behalf, respondents Arqueza, Co, and Yeung's certification against forum shopping is invalid.

10. ID.; ID.; ID.; ID.; WHILE COURTS MAY ORDER THE RESUBMISSION OF THE VERIFICATION OR ITS SUBSEQUENT CORRECTION, A DEFECT IN THE CERTIFICATION OF NON-FORUM SHOPPING IS NOT CURABLE UNLESS THERE ARE SUBSTANTIAL MERITS TO THE CASE.— While courts may simply order the resubmission of the verification or its subsequent correction, a defect in the certification of non-forum shopping is not curable unless there are substantial merits to the case. However, respondents' Petition for *Certiorari* before the Court of Appeals was unmeritorious. Thus, its defective verification and certification of non-forum shopping should have merited its outright dismissal.

11. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE BURDEN OF PROOF IS ON THE EMPLOYER TO PROVE THAT THE EMPLOYEE WAS DISMISSED FOR A VALID CAUSE AND THAT THE EMPLOYEE WAS AFFORDED DUE PROCESS PRIOR TO THE DISMISSAL; WHEN EVIDENCE IN LABOR CASES IS IN EQUIPOISE, THE SCALES OF JUSTICE ARE TILTED IN FAVOR OF LABOR.— In illegal dismissal cases, the burden of proof is on the employer to prove that the employee was dismissed for a valid cause and that the employee was afforded due process prior to the dismissal. Respondents allege that there was no dismissal since they sent petitioners a First Notice of Termination of Employment, asking them to show cause why they should not be dismissed for their continued absence from work. However, petitioners argue that this evidence should not be given weight since there is no proof that they received this Notice. Indeed, no evidence has been presented proving that each and every petitioner received a copy of the First Notice of Termination of Employment. There are no receiving copies or acknowledgement receipts. What respondents presented were "Sample Letters of Respondents" and not the actual Notices

that were allegedly sent out. x x x. The lack of evidence of petitioners' receipts suggests that the Notices were an afterthought, designed to free respondents from any liability without having to validly dismiss petitioners. x x x. Where both parties in a labor case have not presented substantial evidence to prove their allegations, the evidence is considered to be in equipoise. In such a case, the scales of justice are tilted in favor of labor. Thus, petitioners are hereby considered to have been illegally dismissed.

12. ID.; ID.; ID.; ABANDONMENT; TO CONSTITUTE ABANDONMENT, THE EMPLOYER MUST PROVE THAT THE EMPLOYEE MUST HAVE FAILED TO REPORT FOR WORK OR MUST HAVE BEEN ABSENT WITHOUT VALID OR JUSTIFIABLE REASON, AND THAT THERE MUST HAVE BEEN A CLEAR INTENTION ON THE PART OF THE EMPLOYEE TO SEVER THE EMPLOYER-EMPLOYEE RELATIONSHIP MANIFESTED BY SOME OVERT ACT; NOT PROVED.— There is likewise no proof that petitioners abandoned their employment. To constitute abandonment, the employer must prove that "first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, [that] there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act." Abandonment is essentially a matter of intent. It cannot be presumed from the occurrence of certain equivocal acts. There must be a positive and overt act signifying an employee's deliberate intent to sever his or her employment. Thus, mere absence from work, even after a notice to return, is insufficient to prove abandonment. The employer must show that the employee unjustifiably refused to report for work *and* that the employee deliberately intended to sever the employer-employee relation. Furthermore, there must be a concurrence of these two (2) elements. Absent this concurrence, there can be no abandonment. Respondents have not presented any proof that petitioners intended to abandon their employment. They merely alleged that petitioners have already voluntarily terminated their employment due to their continued refusal to report for work. However, this is insufficient to prove abandonment.

13. ID.; ID.; ID.; DISMISSING EMPLOYEES MERELY ON THE BASIS THAT THEY AIR OUT THEIR GRIEVANCES

REGARDING THEIR EMPLOYMENT IN A PUBLIC FORUM, IS NOT ONLY INVALID, BUT ALSO UNCONSTITUTIONAL FOR VIOLATION OF THEIR RIGHT TO FREEDOM OF EXPRESSION.— This Court notes that had petitioners been able to substantially prove their dismissal, it would have been rendered invalid not only for having been made without just cause but also for being in violation of their constitutional rights. A laborer does not lose his or her right to freedom of expression upon employment. This is "[a] political [right] essential to man's enjoyment of his [or her] life, to his [or her] happiness, and to his [or her] full and complete fulfillment." While the Constitution and the courts recognize that employers have property rights that must also be protected, the human rights of laborers are given primacy over these rights. Property rights may prescribe. Human rights do not. When laborers air out their grievances regarding their employment in a public forum, they do so in the exercise of their right to free expression. They are "fighting for their very survival, utilizing only the weapons afforded them by the Constitution—the untrammelled enjoyment of their basic human rights." Freedom and social justice afford them these rights and it is the courts' duty to uphold and protect their free exercise. Thus, dismissing employees merely on the basis that they complained about their employer in a radio show is not only invalid, it is unconstitutional. However, there not being sufficient proof that the dismissal was meant to suppress petitioners' constitutional rights, this Court is constrained to limit its conclusions to that of illegal dismissal under the Labor Code.

14. ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO SEPARATION PAY, IN LIEU OF REINSTATEMENT, WHERE REINSTATEMENT PROVES TO BE IMPOSSIBLE DUE TO THE STRAINED RELATIONS BETWEEN THE PARTIES.— Petitioners were not dismissed under any of the causes mentioned in Article 279 [282] of the Labor Code. They were not validly informed of the causes of their dismissal. Thus, their dismissal was illegal. An employee who is found to have been illegally dismissed is entitled to reinstatement without loss of seniority rights and other privileges. If reinstatement proves to be impossible due to the strained relations between the parties, the illegally dismissed employee is entitled instead to separation pay.

APPEARANCES OF COUNSEL

Alexander V. Sebastian for petitioners.
Daclan and Associates Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

When the evidence in labor cases is in equipoise, doubt is resolved in favor of the employee.

This is a Petition for Review on Certiorari[1] assailing the February 25, 2013 Decision[2] and May 30, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 126522, which upheld the Labor Arbiter's finding that the employees voluntarily terminated their employment. The assailed judgments also set aside the National Labor Relations Commission's application of the principle of equipoise on the ground that the employees failed to present any evidence in their favor.

HSY Marketing Ltd., Co., Wantofree Oriental Trading, Inc., Coen Fashion House and General Merchandise, Asia Consumer Value Trading, Inc., Fabulous Jeans & Shirt & General Merchandise, LSG Manufacturing Corporation, Unite General Merchandise, Rosario Q. Co, Lucia Pun Lin Yeung, and Alexander Arqueza (respondents) are engaged in manufacturing and selling goods under the brand Novo Jeans & Shirt & General Merchandise (Novo Jeans).[4]

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

[2] *Id*. at 53-64. The Decision was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Fifteenth Division, Court of Appeals, Manila.

[3] *Id*. at 66-68. The Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Fifteenth Division, Court of Appeals, Manila.

[4] *Id*. at 163, Labor Arbiter Decision.

Sometime in May 2010 and June 2010, several Novo Jeans employees[5] went to Raffy Tulfo's radio program to air their grievances against their employers for alleged labor violations. They were referred to the Department of Labor and Employment Camanava Regional Office.[6]

These employees claimed that on June 7, 2010, they were not allowed to enter the Novo Jeans branches they were employed in. They further averred that while Novo Jeans sent them a show cause letter the next day, they were in truth already dismissed from employment. They sent a demand letter on July 19, 2010 to amicably settle the case before the Department of Labor and Employment but no settlement was reached. They alleged that upon learning that the Department of Labor and Employment was not the proper forum to address their grievances, they decided to file a notice of withdrawal and file their complaint with the Labor Arbiter.[7]

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[5] *Id*. at 163-165, Labor Arbiter Decision and 205-207, NLRC Decision. These employees were Charlie Hubilla, Joel Nayre, Nenita A. Tan, Pedro Magallanes, Jr., Arnel Yuson, Janice Cabatbat, Judy Papina, Vanessa Espiritu, Noemi Yalung, Genalyn Rescobillo, Fidel Zaquita, Nyl B. Calingasan, Janice Miradora, Evangeline Chua, Roschelle Mission, Melanie Ballesteros, Marilyn Bacalso, Renalyn Alcantara, Federico B. Viernes, Christopher B. Yares, Ana Mary R. Aguilar, Melanie San Marcos, Emerlove Monte, Chonalyn Lucas, Theresa Malicosio, Ma. Fe Cercares, Rubelyn R. Claro, Jonalyn M. Yalung, Mary Ann V. Macanag, Reslyn L. Flores, Cristel C. Roque, Teresa G. Munar, Susan A. Dela Cruz, Sheena Kay P. De Vera, Arlene R. Anes, Gina B. Binibini, Cherine V. Zorilla, Ma. Cristine Magtoto, Francis Marie O. De Castro, Vanessa R. Espiritu, Rachelle V. Quistoria, Julie Ann Ilan, Angelie F. Panotes, Anabel Payos, Melissa M. Perlas, Barvi Rose Peralta, Resie Aque, Rowena Rivera, Melanie M. Dy, Cherylyn Coro, Ranelyn Subong, Angela Subillaga, Thelma Bartolabac, Michelle C. Ilagan, Precious Mae De Guzman, Mary Caroline Colina, Frelyn Hipolito, Myline A. Callos, Janeth B. Sembillo, Lea Lyn F. Ferranco, May C. Santos, Roselle A. Noble, Jennifer D. Suyom, Warren Petchie C. Cajes, Rowelyn F. Catalan, Reizel Ann A. Alegre, Demetria B. Perez, Genalyn Osoc, Juvilyn N. Neri, Joy B. Pimentel, Airene Layon, Mary Joy Turqueza, Mary Ann Valentin, Rosie L. Niebres, Melca Mallorca, Joy Cagatcagat, Diana Camaro, Marivel Dijumo, Sheila Dela Cruz, Elizabeth Aringo, Melanie G. Tria, Gretchen D. Mejos, and Janelie R. Jimenez.

[6] *Id*. at 166, Labor Arbiter Decision.

[7] *Id*.

On the other hand, Novo Jeans claimed that these employees voluntarily severed their employment but that they filed complaints later with the Department of Labor and Employment. They alleged that the employees' notice of withdrawal was not actually granted by the Department of Labor and Employment but that the employees nonetheless filed their complaints before the Labor Arbiter.[8]

On May 31, 2011, Labor Arbiter Arden S. Anni rendered a Decision[9] dismissing the complaints. He found that other than the employees' bare allegations that they were dismissed from June 6 to 9, 2010, they did not present any other evidence showing that their employment was terminated or that they were prevented from reporting for work.[10] The Labor Arbiter likewise ruled that the employees voluntarily severed their employment since the airing of their grievances on Raffy Tulfo's radio program "[was] enough reason for them not to report for work, simply because of a possible disciplinary action by [Novo Jeans]."[11] The dispositive portion of the Labor Arbiter Decision read:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered DISMISSING the above-captioned consolidated cases for utter lack of merit and for forum-shopping.
>
> SO ORDERED.[12]

The employees appealed to the National Labor Relations Commission.[13]

On June 25, 2012, the National Labor Relations Commission rendered a Decision[14] reversing that of the Labor Arbiter and

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[8] *Id*. at 166-167, Labor Arbiter Decision.

[9] *Id*. at 161-172.

[10] *Id*. at 169.

[11] *Id*. at 170.

[12] *Id*. at 172.

[13] *Id*. at 174-191.

[14] *Id*. at 205-230. The Decision was penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Isabel G.

finding that the employees were illegally dismissed. It ruled that the allegations of both parties "were unsubstantiated and thus [were] equipoised" and that "if doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter."[15] The dispositive portion of the National Labor Relations Commission Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered finding the appeal meritorious with respect to the issue of illegal dismissal. Complainants-appellants' respective employers are hereby found liable, jointly and severally, to pay complainants-appellants their backwages and separation pay plus ten percent thereof as attorney's fees. Accordingly, the decision of the Labor Arbiter dated May 31, 2011 is hereby MODIFIED. All other dispositions STANDS (sic) undisturbed.
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> The computation of the aforesaid awards is as follows:
>
> . . . .
>
> TOTAL AWARD Php30,969,426.00
>
> SO ORDERED.[16]

Novo Jeans moved for partial reconsideration[17] but was denied by the National Labor Relations Commission in its August 24, 2012 Resolution.[18] Thus, it filed a Petition for Certiorari[19] with the Court of Appeals.

Panganiban-Ortiguerra and Nieves E. Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.

[15] *Id*. at 212.

[16] *Id*. at 215-230.

[17] *Id*. at 233-256.

[18] *Id*. at 257-261. The Resolution 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.

[19] *Id*. at 275-325.

On February 25, 2013, the Court of Appeals rendered a Decision[20] reversing the Decision of the National Labor Relations Commission and reinstating the Labor Arbiter Decision. The Court of Appeals found that Novo Jeans' counsel, as the affiant, substantially complied with the verification requirement even if his personal knowledge was based on facts relayed to him by his clients and on authentic records since he was not privy to the antecedents of the case.[21]

The Court of Appeals stated that while the employees merely alleged that they were no longer allowed to report to work on a particular day, Novo Jeans was able to present the First Notice of Termination of Employment sent to them, asking them to explain their sudden absence from work without proper authorization. It likewise found that the Notices of Termination of Employment (Notices) did not indicate that the employees were dismissed or that they were prevented from entering the stores.[22]

According to the Court of Appeals, the equipoise rule was inapplicable in this case since it only applied when the evidence between the parties was equally balanced. Considering that only Novo Jeans was able to present proof of its claims, the Court of Appeals was inclined to rule in its favor.[23] Thus, the Court of Appeals concluded that the case involved voluntary termination of employment, not illegal dismissal.[24] The dispositive portion of its Decision read:

WHEREFORE, in view of the foregoing, the instant Petition is hereby GRANTED. The assailed Decision dated June 25, 2012 and Resolution dated August 24, 2012 rendered by the National Labor Relations Commission in NLRC LAC No. 07-001930-11/NLRC NCR Cases No. 08-10645-10, 08-10649-10, 08-10655-10, 08-10660-10,

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[20] *Id*. at 53-64.

[21] *Id*. at 61.

[22] *Id*. at 61-62.

[23] *Id*. at 62.

[24] *Id*. at 63.

08-10662–10, 08-10666-10 and 08-10670-10 are hereby REVERSED and SET ASIDE. Corollarily, the Decision dated May 31, 2011 rendered by the Labor Arbiter is hereby REINSTATED.

SO ORDERED.[25]

The employees filed a Motion for Reconsideration[26] but it was denied in the Court of Appeals May 30, 2013 Resolution.[27] Hence, this Petition[28] was filed before this Court.

Petitioners point out that the Court of Appeals erred in not finding grave abuse of discretion, considering that the petition filed before it was a special civil action for certiorari. They aver that the Court of Appeals should not have used the special remedy of certiorari merely to re-evaluate the findings of a quasi-judicial body absent any finding of grave abuse of discretion.[29]

Petitioners likewise argue that respondents were unable to substantially comply with the verification requirement before the Court of Appeals. They submit that respondents' counsel would have been privy to the antecedents of the case so as to have personal knowledge and not merely knowledge as relayed by his clients.[30] They add that respondents "deliberately withheld the Annexes of the Position Paper of the Petitioners submitted to the Labor Arbiter[;] hence, said Position Paper cannot be considered authentic."[31]

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

[26] *Id*. at 467-473.

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

[28] *Id*. at 10-51. Respondents filed their Comment on September 30, 2013 (*rollo*, pp. 494-524) to which petitioners filed their Reply on February 12, 2014 (*rollo*, pp. 526-541). The parties were then directed by this Court to submit their respective memoranda (*rollo*, pp. 544-582 and 583-607) on March 31, 2014 (*rollo*, pp. 543-543-A).

[29] *Id*. at 589-590.

[30] *Id*. at 599-A-600.

[31] *Id*. at 603.

Petitioners assert that the Court of Appeals had no factual basis to rule in respondents' favor since there was no evidence to prove that the Notices were sent to petitioners at their last known addresses. The evidence on record merely showed sample letters of the Notices.[32] Petitioners maintain that this is a situation where the employees allege that they were prevented from entering their work place and the employer alleges otherwise. They insist that if doubt exists between the evidence presented by the employer and the evidence presented by the employees, the doubt must be resolved in favor of the employees, consistent with the Labor Code's policy to afford protection to labor.[33]

On the other hand, respondents argue that a defect in the verification will not necessarily cause the dismissal of the pleading and that they had sufficiently complied with the requirement when the affiant attested that the petition was based on facts relayed by his clients and on authentic records.[34] They also point out that only relevant and pertinent documents should be attached to their pleadings before the courts; thus, the annexes of petitioner, not being relevant or pertinent, need not be attached to their pleadings.[35]

Respondents contend that the Court of Appeals recognized that the issue in their Petition for Certiorari concerned the alleged grave abuse of discretion of the National Labor Relations Commission and thoroughly discussed the issue in the assailed judgment.[36] They likewise submit that the Court of Appeals may review factual findings of the National Labor Relations Commission since the finding of grave abuse of discretion requires a re-examination of the sufficiency or absence of evidence.[37]

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[32] *Id.* at 594-597.

[33] *Id.* at 598-599.

[34] *Id.* at 552-554.

[35] *Id.* at 555-556.

[36] *Id.* at 560-567.

[37] *Id.* at 569-570.

Respondents maintain that the receipt of the Notices was admitted and recognized by the parties before the Labor Arbiter and was never brought as an issue until the National Labor Relations Commission made a finding that the Notices were never received.[38] According to respondents, petitioners were estopped from questioning the receipt of the Notices when they already admitted to their receipt before the Labor Arbiter.[39] They argue that the Labor Arbiter and the Court of Appeals did not err in finding that the termination of employment was voluntary since petitioners failed to present evidence of the fact of their dismissal.[40]

The main issue before this Court is whether or not petitioners were illegally dismissed by respondents. However, there are certain procedural issues that must first be addressed, in particular: (1) whether or not the Court of Appeals may, in a petition for certiorari, review and re-assess the factual findings of the National Labor Relations Commission; and (2) whether or not verification based on facts relayed to the affiant by his clients is valid.

I

Before discussing the merits of the case, this Court takes this opportunity to clarify certain doctrines regarding the review of factual findings by the Court of Appeals.

Factual findings of labor officials exercising quasi-judicial functions are accorded great respect and even finality by the courts when the findings are supported by substantial evidence.[41] Substantial evidence is "the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion."[42] Thus, in labor cases, the issues in petitions for

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[38] *Id*. at 571.

[39] *Id*. at 572.

[40] *Id*. at 574.

[41] See *Norkis Trading Corporation v. Buenavista*, 697 Phil. 74 (2012) [Per *J*. Reyes, First Division].

[42] *Norkis Trading Corporation v. Buenavista*, 697 Phil. 74, 91 (2012) [Per *J*. Reyes, First Division].

certiorari before the Court of Appeals are limited only to whether the National Labor Relations Commission committed grave abuse of discretion.

However, this does not mean that the Court of Appeals is conclusively bound by the findings of the National Labor Relations Commission. If the findings are arrived at arbitrarily, without resort to any substantial evidence, the National Labor Relations Commission is deemed to have gravely abused its discretion:

> On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The [Court of Appeals] can then grant a petition for certiorari if it finds that the [National Labor Relations Commission], in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the [Court of Appeals], whose jurisdiction over labor cases has been expanded to review the findings of the [National Labor Relations Commission].[43]

The Court of Appeals may also review factual findings if quasi-judicial agencies' findings are contradictory to its own findings.[44] Thus, it must re-examine the records to determine which tribunal's findings were supported by the evidence.

In this instance, the Labor Arbiter and the National Labor Relations Commission made contradictory factual findings. Thus, it was incumbent on the Court of Appeals to re-examine

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[43] *Id*. citing *Prince Transport, Inc. v. Garcia*, 654 Phil. 296 (2011) [Per *J.* Peralta, Second Division] and *Emcor Incorporated v. Sienes*, 615 Phil. 33 (2009) [Per *J*. Peralta, Third Division].

[44] See *General Milling Corporation v. Viajar*, 702 Phil. 532 (2013) [Per *J.* Reyes, First Division].

their findings to resolve the issues before it. The Court of Appeals also found that the findings of the National Labor Relations Commission were not supported by substantial evidence, and therefore, were rendered in grave abuse of discretion.

Thus, in the determination of whether the National Labor Relations Commission committed grave abuse of discretion, the Court of Appeals may re-examine facts and re-assess the evidence. However, its findings may still be subject to review by this Court.

This Court notes that in cases when the Court of Appeals acts as an appellate court, it is still a trier of facts. Questions of fact may still be raised by the parties. If the parties raise pure questions of law, they may directly file with this Court. Moreover, contradictory factual findings between the National Labor Relations Commission and the Court of Appeals do not automatically justify this Court's review of the factual findings. They merely present a *prima facie* basis to pursue the action before this Court. The need to review the Court of Appeals' factual findings must still be pleaded, proved, and substantiated by the party alleging their inaccuracy. This Court likewise retains its full discretion to review the factual findings.

II

All petitions for certiorari are required to be verified upon filing.[45] The contents of verification are stated under Rule 7, Section 4 of the Rules of Court:

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[45] See RULES OF COURT, Rule 65, Sec. 1 provides:

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Section 4. Verification. Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief", or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

Thus, for a pleading to be verified, the affiant must attest that he or she has read the pleading and that the allegations are true and correct based on his or her *personal knowledge* or on *authentic records*. Otherwise, the pleading is treated as an unsigned pleading.

Shipside Incorporation v. Court of Appeals[46] required that the assurance should "not [be] the product of the imagination or a matter of speculation, and that the pleading is filed in good faith."[47] However, verification is merely a formal, not jurisdictional, requirement. It will not result in the outright dismissal of the case since courts may simply order the correction of a defective verification.[48]

Petitioners argue that respondents' verification was invalid since it was not based on authentic records, alleging that respondents' failure to attach petitioners' position paper annexes to their Petition for Certiorari before the Court of Appeals made their records inauthentic.[49]

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[46] 404 Phil. 981 (2001) [Per *J.* Melo, Third Division].

[47] *Id*. at 995.

[48] See *Jimenez vda. de Gabriel v. Court of Appeals*, 332 Phil. 157 (1996) [Per *J.* Vitug, First Division].

[49] *Rollo*, p. 603.

A pleading may be verified by attesting that the allegations are based either on personal knowledge *and* on authentic records, or on personal knowledge *or* on authentic records. The use of *either*, however, is not subject to the affiant's whim but rather on the nature of the allegations being attested to. Circumstances may require that the affiant attest that the allegations are based only on personal knowledge or only on authentic records. Certainly, there can be situations where the affiant must attest to the allegations being based on both personal knowledge and on authentic records, thus:

> A reading of the above-quoted Section 4 of Rule 7 indicates that a pleading may be verified under either of the two given modes or under both. The veracity of the allegations in a pleading may be affirmed based on either one's own personal knowledge or on authentic records, or both, as warranted. The use of the [conjunction] "or" connotes that either source qualifies as a sufficient basis for verification and, needless to state, the concurrence of both sources is more than sufficient. Bearing both a disjunctive and conjunctive sense, this parallel legal signification avoids a construction that will exclude the combination of the alternatives or bar the efficacy of any one of the alternatives standing alone.
>
> Contrary to petitioner's position, the range of permutation is not left to the pleader's liking, but is dependent on the surrounding nature of the allegations which may warrant that a verification be based either purely on personal knowledge, or entirely on authentic records, or on both sources.[50]

Authentic records may be the basis of verification if a substantial portion of the allegations in the pleading is based on prior court proceedings.[51] Here, the annexes that respondents allegedly failed to attach are employee information, supporting

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[50] *Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431, 438-439 (2007) [Per *J*. Carpio Morales, Second Division] citing *Bautista v. Sandiganbayan*, 387 Phil. 872, 881-882 (2000) [Per *J*. Bellosillo, Second Division] and *China Banking Corporation v. HDMF*, 366 Phil. 913 (1999) [Per *J*. Gonzaga-Reyes, Third Division].

[51] See *Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431 (2007) [Per *J*. Carpio Morales, Second Division].

documents, and work-related documents proving that petitioners were employed by respondents.[52] The fact of petitioners' employment, however, has not been disputed by respondents. These documents would not have been the "relevant and pertinent"[53] documents contemplated by the rules.

Petitioners likewise contend that respondents' Petition for Certiorari[54] before the Court of Appeals should not have been given due course since the verification[55] signed by respondents' counsel, Atty. Eller Roel I. Daclan (Atty. Daclan), attested that:

> 2. I caused the preparation of the foregoing petition and attest that, based upon facts relayed to me by my clients and upon authentic records made available, all the allegations contained therein are true and correct[.][56]

Thus, the issue on verification centers on whether the phrase "based upon facts relayed to me by my clients" may be considered sufficient compliance. To resolve this issue, this Court must first address whether respondents' counsel may sign the verification on their behalf.

The rules on compliance with the requirement of the verification and certification of non-forum shopping were already sufficiently outlined in *Altres v. Empleo*,[57] where this Court stated:

> For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
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> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-

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[52] *Rollo*, p. 102.

[53] RULES OF COURT, Rule 65, Sec. 1.

[54] *Rollo*, pp. 275-325.

[55] *Id*. at 313.

[56] *Id*.

[57] 594 Phil. 246 (2008) [Per *J.* Carpio Morales, *En Banc*].

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 thereby.

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 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.

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.[58]

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[58] *Id*. at 261-262 citing *Sari-Sari Group of Companies, Inc. v. Piglas-Kamao*, 583 Phil. 564 (2008) [Per *J*. Austria-Martinez, Third Division]; *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*, 586 Phil. 810 (2008) [Per *J*. Velasco, Jr., Second Division]; *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320 (2008) [Per *J*. Austria-Martinez, Third Division]; *Juaban v. Espina*, 572 Phil. 357 (2008) [Per *J*. Chico-Nazario, Third Division];

The policy behind the requirement of verification is to guard against the filing of fraudulent pleadings. Litigants run the risk of perjury[59] if they sign the verification despite knowledge that the stated allegations are not true or are products of mere speculation:

> Verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice. For what is at stake is the matter of verity attested by the sanctity of an oath to secure an assurance that the allegations in the pleading have been made in good faith, or are true and correct and not merely speculative.[60]

Thus, for verification to be valid, the affiant must have "ample knowledge to swear to the truth of the allegations in the complaint or petition."[61] Facts relayed to the counsel by the client would be insufficient for counsel to swear to the truth of the allegations in a pleading. Otherwise, counsel would be able to disclaim liability for any misrepresentation by the simple expediency

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Pacquing v. Coca-Cola Philippines, Inc., 567 Phil. 323 (2008) [Per J. Austria-Martinez, Third Division]; *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415 (2004) [Per J. Callejo, Sr., Second Division]; *Fuentebella v. Castro*, 526 Phil. 668 (2006) [Per J. Azcuna, Second Division]; and *Eslaban, Jr. v. Vda. de Onorio*, 412 Phil. 667 (2001) [Per J. Mendoza, Second Division].

[59] See REV. PEN. CODE, Art. 183 which states:

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

[60] *Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431, 439 (2007) [Per J. Carpio Morales, Second Division] citing *Grogun, Incorporation v. National Power Corp.*, 458 Phil. 217, 230-231 (2003) [Per J. Ynares-Santiago, First Division] and *Clavecilla v. Quitain*, 518 Phil. 53 (2006) [Per J. Austria-Martinez, First Division].

[61] *Altres v. Empleo*, 594 Phil. 246, 261 (2008) [Per J. Carpio Morales, *En Banc*].

of stating that he or she was merely relaying facts with which he or she had no competency to attest to. For this reason, the Rules of Court require no less than *personal* knowledge of the facts to sufficiently verify a pleading.

Respondents' counsel, not having sufficient personal knowledge to attest to the allegations of the pleading, was not able to validly verify the facts as stated. Therefore, respondents' Petition for Certiorari before the Court of Appeals should have been considered as an unsigned pleading.

Respondents' certification of non-forum shopping is likewise defective. The certification of non-forum shopping must be signed by the litigant, not his or her counsel. The litigant may, for justifiable reasons, execute a special power of attorney to authorize his or her counsel to sign on his or her behalf.[62] In this instance, the verification and certification against forum shopping[63] was contained in one (1) document and was signed by respondents' counsel, Atty. Daclan.

Corporations, not being natural persons, may authorize their lawyers through a Secretary's Certificate to execute physical acts. Among these acts is the signing of documents, such as the certification against forum shopping. A corporation's inability to perform physical acts is considered as a justifiable reason to allow a person other than the litigant to sign the certification against forum shopping.[64] By the same reasoning, partnerships, being artificial entities, may also authorize an agent to sign the certification on their behalf.

Respondents include three (3) corporations, one (1) partnership, and three (3) sole proprietorships. Respondents LSG Manufacturing Corporation, Asia Consumer Value Trading, Inc., and Wantofree Oriental Trading, Inc. submitted Secretary's Certificates[65]

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[62] See *Altres v. Empleo*, 594 Phil. 246 (2008) [Per *J.* Carpio Morales, *En Banc*].

[63] *Rollo*, p. 313.

[64] See *BA Savings Bank v. Sia*, 391 Phil. 370 (2000) [Per *J.* Panganiban, Third Division].

[65] *Rollo*, pp. 314-315, 320-321, and 322-323.

authorizing Atty. Daclan to sign on their behalf. On the other hand, respondent HSY Marketing Ltd., Co. submitted a Partnership Certification.[66] Meanwhile, respondents Alexander Arqueza (Arqueza), proprietor of Fabulous Jeans and Shirt and General Merchandise, Rosario Q. Co (Co), proprietor of Unite General Merchandise, and Lucia Pun Ling Yeung (Yeung), proprietor of Coen Fashion House & General Merchandise, submitted Special Powers of Attorney[67] on their behalf.

However, sole proprietorships, unlike corporations, have no separate legal personality from their proprietors.[68] They cannot claim the inability to do physical acts as a justifiable circumstance to authorize their counsel to sign on their behalf. Since there was no other reason given for authorizing their counsel to sign on their behalf, respondents Arqueza, Co, and Yeung's certification against forum shopping is invalid.

While courts may simply order the resubmission of the verification or its subsequent correction,[69] a defect in the certification of non-forum shopping is not curable[70] unless there are substantial merits to the case.[71]

However, respondents' Petition for Certiorari before the Court of Appeals was unmeritorious. Thus, its defective verification and certification of non-forum shopping should have merited its outright dismissal.

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[66] *Id.* at 317-318.

[67] *Id.* at 316, 319, and 324.

[68] See *Mangila v. Court of Appeals*, 435 Phil. 870 (2002) [Per *J.* Carpio, Third Division].

[69] See *vda. de Gabriel v. Court of Appeals*, 332 Phil. 157 (1996) [Per *J.* Vitug, First Division].

[70] See *Altres v. Empleo*, 594 Phil. 246 (2008) [Per *J.* Carpio Morales, *En Banc*].

[71] See *Sy Chin v. Court of Appeals*, 399 Phil. 442 (2000) [Per *J.* Kapunan, First Division].

III

When the evidence of the employer and the employee are in equipoise, doubts are resolved in favor of labor.[72] This is in line with the policy of the State to afford greater protection to labor.[73]

Petitioners allege that they were illegally dismissed from service when they were prevented from entering their work premises a day after airing their grievance in a radio show. On the other hand, respondents deny this allegation and state that petitioners were never dismissed from employment.

In illegal dismissal cases, the burden of proof is on the employer to prove that the employee was dismissed for a valid cause and that the employee was afforded due process prior to the dismissal.[74]

Respondents allege that there was no dismissal since they sent petitioners a First Notice of Termination of Employment, asking them to show cause why they should not be dismissed for their continued absence from work. However, petitioners argue that this evidence should not be given weight since there is no proof that they received this Notice.

Indeed, no evidence has been presented proving that each and every petitioner received a copy of the First Notice of Termination of Employment. There are no receiving copies or acknowledgement receipts. What respondents presented were "Sample Letters of Respondents"[75] and not the actual Notices that were allegedly sent out.

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[72] *Mobile Protective & Detective Agency v. Ompad*, 494 Phil. 621, 635 (2005) [Per *J.* Puno, Second Division] citing *Asuncion vs. NLRC*, 414 Phil. 329 (2001) [Per *J.* Kapunan, First Division].

[73] See LABOR CODE, Sec. 4 and CONST., Art. II, Sec. 18.

[74] See *Ledesma v. National Labor Relations Commission*, 562 Phil. 939 (2007) [Per *J.* Chico-Nazario, Third Division].

[75] *Rollo*, p. 56, *see* footnote 3.

While petitioners admitted that the Notices may have been sent, they have never actually admitted to receiving any of them. In their Position Paper before the Labor Arbiter and in their Memorandum of Appeal before the National Labor Relations Commission:

> On June 7, 2010, all employees who went to complain against the respondent[s] were not allowed to enter the stores of respondent[s]. The next day, respondent[s] sent letter[s] to the employees purporting to be a show cause letter but the truth of the matter is that all employees who went to the office of Tulfo to complain against the respondent[s] were already terminated[.][76]

The lack of evidence of petitioners' receipts suggests that the Notices were an afterthought, designed to free respondents from any liability without having to validly dismiss petitioners.

There is likewise no proof that petitioners abandoned their employment. To constitute abandonment, the employer must prove that "first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, [that] there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act."[77]

Abandonment is essentially a matter of intent. It cannot be presumed from the occurrence of certain equivocal acts.[78] There must be a positive and overt act signifying an employee's

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[76] *Id*. at 103 and 177.

[77] *MZR Industries v. Colambot*, 716 Phil. 617, 627 (2013) [Per *J*. Peralta, Third Division] citing *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003) [Per *J*. Sandoval-Gutierrez, Third Division]; *MSMG-UWP v. Hon. Ramos*, 383 Phil. 329, 371-372 (2000) [Per *J*. Purisima, Third Division]; *Icawat v. NLRC*, 389 Phil. 441, 445 (2000) [Per *J*. Buena, Second Division]; *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*, 418 Phil. 411, 427 (2005) [Per *J*. Sandoval-Gutierrez, Third Division]; *Seven Star Textile Company v. Dy*, 541 Phil. 468 (2007) [Per *J*. Callejo, Sr., Third Division].

[78] See *Samarca v. Arc-Men Industries*, 459 Phil. 506 (2003) [Per *J*. Sandoval-Gutierrez, Third Division].

deliberate intent to sever his or her employment. Thus, mere absence from work, even after a notice to return, is insufficient to prove abandonment.[79] The employer must show that the employee unjustifiably refused to report for work *and* that the employee deliberately intended to sever the employer-employee relation. Furthermore, there must be a concurrence of these two (2) elements.[80] Absent this concurrence, there can be no abandonment.

Respondents have not presented any proof that petitioners intended to abandon their employment. They merely alleged that petitioners have already voluntarily terminated their employment due to their continued refusal to report for work. However, this is insufficient to prove abandonment.

Where both parties in a labor case have not presented substantial evidence to prove their allegations, the evidence is considered to be in equipoise. In such a case, the scales of justice are tilted in favor of labor. Thus, petitioners are hereby considered to have been illegally dismissed.

This Court notes that had petitioners been able to substantially prove their dismissal, it would have been rendered invalid not only for having been made without just cause[81] but also for being in violation of their constitutional rights. A laborer does not lose his or her right to freedom of expression upon employment.[82] This is "[a] political [right] essential to man's enjoyment of his [or her] life, to his [or her] happiness, and to

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[79] See *Insular Life Assurance Co., Ltd. Employees Association-NATU v. The Insular Life Assurance Co., Ltd.*, 147 Phil. 194 (1971) [Per *J.* Castro, *En Banc*].

[80] See *Hodieng Concrete Products v. Emilia*, 491 Phil. 434 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[81] See LABOR CODE, Art. 282 on the acts and omissions constituting just causes for termination.

[82] See CONST., Art. III, Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

his [or her] full and complete fulfillment."[83] While the Constitution and the courts recognize that employers have property rights that must also be protected, the human rights of laborers are given primacy over these rights. Property rights may prescribe. Human rights do not.[84]

When laborers air out their grievances regarding their employment in a public forum, they do so in the exercise of their right to free expression. They are "fighting for their very survival, utilizing only the weapons afforded them by the Constitution—the untrammelled enjoyment of their basic human rights."[85] Freedom and social justice afford them these rights and it is the courts' duty to uphold and protect their free exercise. Thus, dismissing employees merely on the basis that they complained about their employer in a radio show is not only invalid, it is unconstitutional.

However, there not being sufficient proof that the dismissal was meant to suppress petitioners' constitutional rights, this Court is constrained to limit its conclusions to that of illegal dismissal under the Labor Code.

Petitioners were not dismissed under any of the causes mentioned in Article 279 [282][86] of the Labor Code. They were

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[83] *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.*, 151-A Phil. 656, 675 (1973) [Per *J.* Makasiar, *En Banc*].

[84] See *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.,* 151-A Phil. 656 (1973) [Per *J.* Makasiar, *En Banc*].

[85] *Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co.*, 151-A Phil. 656, 678 (1973) [Per *J.* Makasiar, *En Banc*].

[86] LABOR CODE, Art. 297 [282] provides:

Article 297 [282]. Termination by employer. An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

not validly informed of the causes of their dismissal. Thus, their dismissal was illegal.

An employee who is found to have been illegally dismissed is entitled to reinstatement without loss of seniority rights and other privileges.[87] If reinstatement proves to be impossible due to the strained relations between the parties, the illegally dismissed employee is entitled instead to separation pay.[88]

WHEREFORE, the Petition is **GRANTED**. The February 25, 2013 Decision and May 30, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 126522 are **SET ASIDE**. Respondents are **DIRECTED** to reinstate petitioners to their former positions without loss of seniority rights or other privileges.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Martires, and *Gesmundo, JJ.,* concur.

(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.

[87] *See* LABOR CODE, Art. 294 [279]. See also *Pepsi Cola Products v. Molon*, 704 Phil. 120 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[88] See *Kingsize Manufacturing Co. v. National Labor Relations Commission*, 308 Phil. 367 (1994) [Per *J.* Mendoza, Second Division].

SECOND DIVISION

[G.R. No. 208197. January 10, 2018]

ARACELI MAYUGA, substituted by MARILYN MAYUGA SANTILLAN for and on behalf of all the heirs, *petitioner, vs.* **ANTONIO ATIENZA, representing the heirs of ARMANDO[*] ATIENZA; BENJAMIN ATIENZA, JR., representing the heirs of BENJAMIN A. ATIENZA, SR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTION FOR DECLARATION OF NULLITY OF FREE PATENTS AND CERTIFICATES OF TITLE DISTINGUISHED FROM AN ACTION FOR RECONVEYANCE.— The Court in *Spouses Galang v. Spouses Reyes*, citing *Heirs of Kionisala v. Heirs of Dacut*, observed the essential differences among an action for declaration of nullity of free patents and the corresponding certificates of titles issued pursuant thereto, an action for reversion and an action for reconveyance, *viz.*: An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. x x x On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake; as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow

[*] Also referred to as Armanda in other parts of the *rollo*.

and whatever patent or certificate of title obtained therefor is consequently void *ab initio*. The real party in interest is x x x the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant. x x x Given the foregoing differences, an action for reconveyance and an action for declaration of nullity of the free patent cannot be pursued simultaneously. The former recognizes the certificate of title issued pursuant to the free patent as indefeasible while the latter does not. They may, however, be pursued alternatively pursuant to Section 2, Rule 8 of the Rules of Court on alternative causes of action or defenses.

2. ID.; ID.; ACTION FOR RECONVEYANCE; AN ACTION FOR RECONVEYANCE INVOLVING LAND THAT IS TITLED PURSUANT TO A FREE PATENT IS ONE THAT SEEKS TO TRANSFER PROPERTY, WRONGFULLY REGISTERED BY ANOTHER, TO ITS RIGHTFUL AND LEGAL OWNER OR TO ONE WITH A BETTER TITLE; NOT PROPER IN CASE AT BAR.— Proceeding now to the determination of whether the petitioner has succeeded in proving her cause of action for reconveyance, the petitioner likewise failed in this respect. As correctly pointed out by the CA and stated earlier, an action for reconveyance involving land that is titled pursuant to a free patent is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner or to one with a better title. As such, two facts must be alleged in the complaint and proved during the trial, namely: (1) the plaintiff was the owner of the land or possessed it in the concept of owner, and (2) the defendant illegally divested him of ownership and dispossessed him of the land. Such facts, as the CA observed, were not only not alleged in the amended complaint, the petitioner Araceli Mayuga (Araceli) also failed to prove that she was entitled to 1/3 of the two lots in dispute by succession. x x x Furthermore, as the persons who applied for and were awarded free patents, the respondents are the rightful, legal owners of the disputed lots. The free patents having been issued by the Department of Environment and Natural Resources on February 28, 1992 and recorded in the Book of Entries at the Office of the Registry of Deeds in June 1992, the respondents' certificates of title have already become indefeasible pursuant to Section 32 of Presidential Decree No. 1529 (the Property Registration Decree), which pertinently

provides: "Upon the expiration of said period of one year [from and after the date of entry of the decree of registration], the decree of registration and the certificate of title issued shall become incontrovertible."

3. CIVIL LAW; SUCCESSION; WILL; INSTITUTION OF HEIR; PRETERITION; IN ORDER THAT THERE BE PRETERITION, IT IS ESSENTIAL THAT THE HEIR MUST BE TOTALLY OMITTED; NOT ESTABLISHED IN CASE AT BAR.— Since the Civil Code allows partition *inter vivos*, it is incumbent upon the compulsory heir questioning its validity to show that his legitime is impaired. Unfortunately, Araceli has not shown to what extent the Confirmation Affidavit prejudiced her legitime. Araceli could not also claim preterition by virtue of the Confirmation Affidavit on the assumption that the disputed two lots pertained to Perfecto's inheritance, he had only three legal heirs and he left Araceli with no share in the two lots. Article 854 of the Civil Code partly provides: "[t]he preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious." As explained by Justice Eduardo P. Caguioa: x x x Preterition consists in the omission in the testator's will of a compulsory heir in the direct line or anyone of them either because they are not mentioned therein or although mentioned they are neither instituted as heir nor expressly disinherited. The act of totally depriving a compulsory heir of his legitime can take place either expressly or tacitly. The express deprivation of the legitime constitutes disinheritance. The tacit deprivation of the same is called preterition. x x x In order that there be preterition, it is essential that the heir must be totally omitted. x x x Although Araceli was a compulsory heir in the direct descending line, she could not have been preterited. Firstly, Perfecto left no will. As contemplated in Article 854, the presence of a will is necessary. Secondly, before his death, Perfecto had properties in Limon, Rizal which was almost 50 hectares, part of which was developed for residential and agricultural purposes, and in Odiongan. Araceli could not have been totally excluded in the inheritance of Perfecto even if she was not allegedly given any share in the disputed two lots.

APPEARANCES OF COUNSEL

Arthur B. Capili for petitioner.
Petroni F. Fradejas for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated July 8, 2013 of the Court of Appeals[3] (CA) in CA-G.R. CV No. 95599 which granted the appeal by the respondents Antonio Atienza[4] and Benjamin Atienza, Jr.[5] and reversed and set aside the Decision[6] dated April 27, 2010 of the Regional Trial Court, Fourth Judicial Region, Branch 82, Odiongan, Romblon (RTC) in Civil Case No. OD-489.

Facts and Antecedent Proceedings

As culled from the CA Decision, the antecedents are as follows:

On May 4, 2000, Araceli Mayuga (Araceli, for short), as plaintiff, instituted a petition for Cancellation and Recall of Free Patent Application (FPA) No. 11636 and FPA No. 11637 [and Reconveyance] against Antonio Atienza, representing the heirs of Armando Atienza, Benjamin Atienza, Jr., representing the heirs of Benjamin Atienza, Sr., Community Environment and Natural Resource Officer and Register of Deeds of Romblon, as defendants. The petition, docketed

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[1] *Rollo*, pp. 16-27, excluding Annexes.

[2] *Id*. at 28-44. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Noel G. Tijam (now a Member of this Court) and Leoncia R. Dimagiba concurring.

[3] Special Seventh (7th) Division.

[4] Representing the Heirs of Armando Atienza.

[5] Representing the Heirs of Benjamin A. Atienza, Sr.

[6] *Rollo*, pp. 45-52. Penned by Executive Judge Jose M. Madrid.

as Civil Case No. OD-489, was raffled to the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82[.]

In her Petition, Araceli, alleged, that [she, Benjamin A. Atienza, Sr. and Armando A. Atienza are the surviving legitimate, legal and forced heirs of the late Perfecto Atienza who died intestate on June 1, 1978[7], and:]

x x x x x x x x x

3. That the said deceased Perfecto Atienza left estates, to wit:

(a) Lot 9819 Csd 341-D (known as Lot 61-A) with an area of 294 square meters, and

(b) Lot 9820 Csd 341-D (known as Lot 61-B) with an area of 280 square meters,

or a total area of 574 square meters, both lots are located at Budiong, Odiongan, Romblon to which the three (3) compulsory/ forced heirs are entitled to an equal share of 1/3 [each].

4. That through manipulation and misrepresentation with intent to defraud a co-heir, respondent Antonio L. Atienza[, son of deceased Armando Atienza,[8] was able to secure Free [P]atent (NRDN-21) 11636 while respondent Benjamin A. Atienza was able to secure Free Patent (NRDN- 21) 11637, both patents dated February 28, 1992.

5. That Petitioner was not notified of the application filed with public respondent Community Environment & Natural Resource Officer nor any notice of hearings of proceedings as required by law, being a co-heir and party-in-interest.

Thus, she prayed [for],

x x x x x x x x x

1. The recall and cancellation of FPA (NRD-IV-21) 11636 dated February 28, 1992 issued to Antonio L. Atienza.

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[7] *Id.* at 45 and 47.

[8] *Id.* at 48.

2. The recall and cancellation of FPA (NRD-IV-21) 11637 dated February 28, 1992 issued to Benjamin A. Atienza.

3. [The division of] the two lots into three (3) equal parts among the three (3) forced heirs, namely: the Petitioner, Benjamin A. Atienza and Armando A. Atienza.

x x x x x x x x x

On June 19, 2000, defendants filed a motion for bill of particulars because the allegations of manipulation and misrepresentation were general, vague and ambiguous on which they could not make an intelligent answer. In the Order dated June 22, 2000, plaintiff was directed to submit a bill of particulars.

Plaintiff submitted a Reply to Motion for Bill of Particulars, stating that the allegations on paragraph 4 in her petition are based on the following considerations:

x x x x x x x x x

1. That petition/application for title filed by Respondents before the Bureau of Lands dated June 22, 1973 was based on a "Confirmation Affidavit of Distribution of Real Estate," allegedly executed by Perfecto Atienza, allegedly confirming [an] alleged partition of 1960, was misrepresented to Perfecto Atienza as mere compliance of Presidential Decree No. 76 of December 6, 1972 for Real Estate Tax purposes;

2. That the Bureau of Lands [had] never notified the Petitioner, being one of the Compulsory/Forced heirs about the petition/ application for issuance of title and the hearing thereon;

3. That Respondents took advantage of the absence of Petitioner in the Philippines, who was in the United States then when they filed the Petition/Application for issuance of title in the year 1989.

x x x x x x x x x

On August 18, 2000, the RTC issued an Order admitting the Reply to Bill of Particulars.

In their Answer, defendants denied the material allegations of the complaint, and by way of affirmative defenses, averred that, the petition is moot and academic; the Free Patent Titles have become indefeasible after the lapse of one year from its issuance in 1992; fraud as a ground

for review of title under Section 38 of Act 496 is not applicable to a case where a certificate of title was issued in pursuance of a patent application; that they and their predecessors-in-interest have been in open, public, continuous possession of the subject property for over 30 years; the basis for their Application for Free Patent with the CENRO is a Confirmation Affidavit of Distribution of Real Estate executed by their father, Perfecto Atienza, confirming partition in 1960.

Defendant Community Environment and Natural Resources Officer (CENRO, for short) also filed an Answer, alleging that, Free Patent No. 045909-92-141P was issued by then Provincial Environment and Natural Resources Officer (PENRO), Dionico F. Gabay on February 28, 1992 by virtue of the Free Patent Application No. (NRD-IV-21)-11636 filed by Antonio L. Atienza at the CENRO Office in Odiongan, Romblon covering Lot No. 9819, Cad. 341-D, Odiongan Cadastre which is identical to Lot 61-A, Csd-04-008722-D; while Free Patent Application No. (NRD-IV-21)11637 filed by Benjamin A. Atienza with the CENRO Office covering Lot 9820, Cad. 341-D, Odiongan Cadastre which is identical to Lot 61-B, Csd-04-008722-D; it has no participation whatsoever in the processing and issuance of free patents and/or titles in the names of Antonio L. Atienza and Benjamin A. Atienza. It also prayed that it be excluded as a defendant in the case.

On July 9, 2001, plaintiff filed an Amended Complaint to implead the Heirs of Armando A. Atienza, namely, Antonio L. Atienza, Mae Atienza-Apostol, Susan Atienza-Sumbeling and Heirs of Benjamin M. (sic) Atienza, Sr., namely, Benjamin M. Atienza, Jr., Antonio M. Atienza, Pewrpetuo (sic) M. Atienza, Maribel M. Atienza and Cristina Atienza, as defendants.

Defendants moved to dismiss the original petition for failure of the plaintiff's counsels to state their IBP No. and P.T.R. No. and the amended complaint for failure to attach a verification and certification against forum-shopping but on September 13, 2001, the RTC issued an Order denying the motion to dismiss for lack of merit.

The parties thereafter submitted their respective pre-trial briefs. A pre-trial conference was conducted and later, trial ensued.

On April 27, 2010, the RTC ruled in favor of Plaintiff Araceli. It ruled that the application by the defendants for a Free Patent with the CENRO is tainted with fraud because said application was

processed without the plaintiff's knowledge nor a notice of hearing of any proceeding was sent to her. In fact, the defendants took advantage while the latter was in the United States. Moreover, the titling of the fraudulently registered real property will not bar the action for reconveyance.

Thus, the RTC decreed, that:

x x x x x x x x x

> **WHEREFORE**, premises considered, the Register of Deeds [of] Romblon, Romblon is hereby directed to Cancel the Certificates issued pursuant [to] Free Patent No. 11636 in the name of Antonio L. Atienza and Free Patent No. 11637 in the name of Benjamin A. Atienza.
>
> The defendants are hereby ordered to reconvey the 1/3 share of Araceli A. Mayuga as the compulsory heir of the late Perfecto Atienza on Lot 9819 which is identical to Lot 61-A and 9820 which is identical to Lot 61-B all located at Budiong, Odiongan, Romblon.
>
> **SO ORDERED.**

x x x x x x x x x

Defendants filed a motion for reconsideration but the same was denied in the Order dated July 29, 2010.

Aggrieved, defendants interposed an appeal [before the Court of Appeals] assailing the decision of the RTC.[9]

The CA granted the appeal. It reversed and set aside the RTC Decision dated April 27, 2010, and dismissed the Amended Complaint for Recall and Cancellation of Free Patent Application (FPA) No. 11636 and FPA No. 11637 and Action for Reconveyance.[10]

On the procedural aspect of the appeal, the CA ruled that the RTC erred in not dismissing the Amended Complaint for failure to append a certification against non-forum shopping.[11]

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[9] *Id*. at 29-32.

[10] *Id*. at 42.

[11] *Id*. at 35.

On the substantive aspects of the appeal, the CA ruled that the free patents issued in favor of the respondents can no longer be assailed under the rule of indefeasibility and incontrovertibility of the certificate of title upon the expiration of one year from and after the date of the entry of the decree of registration pursuant to Section 32 of Presidential Decree No. 1529.[12] The CA further ruled that the RTC erred in its finding that fraud and misrepresentation attended the respondents' applications for free patents.[13] It noted that the basis for the respondents' application was the Confirmatory Affidavit of Distribution of Real Estate dated June 22, 1973 executed by their father, the late Perfecto Atienza during his lifetime and was at liberty to dispose of his property to anyone he desired.[14] The said document was duly notarized and the petitioner could not impugn its validity by mere self-serving allegations.[15] Besides, the records negate the claim of the petitioner that she was not notified of the free patent applications because a Notice of Application for Free Patent was "posted in conspicuous place on the land applied for, on the bulletin board of the barrio where the land is located, and at the door of [the] municipal building on the 2nd day of January, 1987 and remained posted until the 18th of December."[16] The respondents presented Romulo Fetalvero, Management Officer III of the PENRO-DENR, Odiongan, Romblon who testified that they complied with the requirements for the issuance of a free patent.[17] Thus, the petitioner's allegations of fraud, manipulation and misrepresentation were unsubstantiated.[18]

Furthermore, the CA held that the RTC erred in ordering the reconveyance of 1/3 of the subject properties to the petitioner

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[12] *Id* at 35-36.

[13] *Id*. at 36.

[14] *Id.* at 37.

[15] *Id*. at 38.

[16] *Id*. at 37-38.

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

[18] See *id*. at 37-38.

since she failed to establish her title and ownership over such portion.[19] The CA gave due recognition to the tax declarations dated as early as 1974 presented by the respondents and the Report of Investigation by Emilio Firmalo, Deputy Land Investigator/Inspector, which disclosed that Antonio Atienza and his predecessors-in-interest had possessed and occupied the subject land since 1962, while Benjamin Atienza and his predecessors-in-interest fully possessed the same since 1962.[20]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the appeal is **GRANTED**. The assailed Decision dated April 27, 2010 of the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82 in Civil Case No. OD-489, and the subsequent Order dated July 29, 2010 are **REVERSED and SET ASIDE**. The Amended Complaint for Recall and Cancellation of Free Patent Application (FPA) No. 11636 and FPA No. 11637 and Action for Reconveyance is **DISMISSED**.
>
> **SO ORDERED.**[21]

Proceedings Before the Court

Hence, the present Petition was filed after the Court granted the petitioner's Motion for Extension of Time to File Petition for Review[22] in its Resolution[23] dated September 16, 2013.

The respondents filed their Comments (To the Petition for Review)[24] dated December 16, 2013 (Comment). The Comment pointed as procedural flaw the defective verification and certification of the Petition on account of the lack of authority of Marilyn Mayuga Santillan, who verified the Petition instead of petitioner Araceli Mayuga. The respondents also argued that

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[19] *Id*. at 40.

[20] *Id*.

[21] *Id*. at 42.

[22] *Id*. at 3-6.

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

[24] *Id*. at 56-62.

the petitioner has not explained the lack of verification and certification against non-forum shopping in the original complaint which was one of the reasons for the reversal of the RTC Decision by the CA.[25] As substantive flaws, the respondents argued that their titles have become indefeasible one year after the date of entry of the decree of registration and the petitioner's complaint for recall and cancellation of free patent application and reconveyance, having been initiated eight years from the date of the entry in the registration book of the Register of Deeds and beyond four years from the discovery of the alleged fraud, was filed out of time.[26] The respondents further argued that the petitioner failed to prove that there was fraud or misrepresentation in the acquisition of their titles.[27]

The petitioner filed a Reply[28] dated April 11, 2014. The petitioner raised therein that title emanating from free patent fraudulently obtained does not become indefeasible,[29] and the action for reconveyance was seasonably filed based on implied or constructive trust.[30]

In a Manifestation[31] dated October 30, 2015, the Court was informed of the death of petitioner Araceli Mayuga in September 2015. The Court in its Resolution[32] dated January 18, 2016, required the petitioner's counsel to file a motion for substitution of party together with the death certificate of the petitioner.

The petitioner's counsel filed a Motion for Substitution of Party and Compliance[33] dated March 11, 2016, praying that Marilyn Mayuga

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[25] *Id*. at 56-57.

[26] See *id*. at 58-60.

[27] *Id*. at 58-59.

[28] *Id*. at 103-111.

[29] *Id*. at 104.

[30] *Id*. at 105-106.

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

[32] *Id*. at 121.

[33] *Id*. at 122-125.

Santillan be substituted as petitioner on behalf of all the heirs of the original petitioner Araceli Mayuga. In the Court's Resolution[34] dated April 20, 2016, the motion for substitution was granted.

Issue

Based on the Petition and the pleadings filed by the parties, the core issue is:

Whether the CA erred in reversing the RTC Decision and dismissing the amended complaint of the petitioner for cancellation of free patent and reconveyance.

The Court's Ruling

The Petition lacks merit.

To recall, the amended complaint filed by the petitioner was for "Recall and Cancellation of FPA No. 11636 and FPA No. 11637 and Reconveyance."[35]

The RTC considered the said complaint mainly as an action for declaration of nullity of the free patents and the corresponding certificates of title issued to the respondents. The RTC Decision directed the Register of Deeds of Romblon to cancel the certificates of title issued pursuant to Free Patent No. 11636 in the name of respondent Antonio L. Atienza and Free Patent No. 11637 in the name of Benjamin A. Atienza, Sr. and ordered the respondents to reconvey the alleged 1/3 share of petitioner Araceli A. Mayuga. On the other hand, the CA considered the separate merits of the amended complaint's causes of action for declaration of nullity of the free patents and reconveyance. The Court will follow the CA's path.

The Court in *Spouses Galang v. Spouses Reyes*,[36] citing *Heirs of Kionisala v. Heirs of Dacut*,[37] observed the essential differences

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[34] *Id*. at 128.

[35] The RTC Decision erroneously used FTA instead of FPA (Free Patent Application). *Id*. at 45.

[36] 692 Phil. 652 (2012).

[37] 428 Phil. 249, 260-262 (2002).

among an action for declaration of nullity of free patents and the corresponding certificates of titles issued pursuant thereto, an action for reversion and an action for reconveyance, *viz.*:

> An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. x x x
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> On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiffs ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake; as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void *ab initio*. The real party in interest is x x x the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant. x x x
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> x x x x x x x x x
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> With respect to the purported cause of action for reconveyance, it is settled that in this kind of action the free patent and the certificate of title are respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in the defendant's name. All that must be alleged in the complaint are two (2) facts which admitting them to be true would entitle the plaintiff to recover title to the disputed land, namely, (1) that the plaintiff was the owner of the land and, (2) that the defendant had illegally dispossessed him of the same.[38] (Emphasis omitted, underscoring in the original)

Given the foregoing differences, an action for reconveyance and an action for declaration of nullity of the free patent cannot be pursued simultaneously. The former recognizes the certificate of title issued pursuant to the free patent as indefeasible while

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[38] *Supra* note 36, at 660-662.

the latter does not. They may, however, be pursued alternatively pursuant to Section 2, Rule 8 of the Rules of Court on alternative causes of action or defenses.

The action for declaration of nullity of the free patents issued in favor of the respondents must fail, as the CA correctly ruled.

As noted by the CA, the respondents satisfactorily complied with the requirements for the issuance of a free patent. After quoting the pertinent portion of the direct examination of Romulo Fetalvero, Management Officer III of the PENRO-DENR, Odiongan, Romblon, on the respondents' compliance with the requirements, the CA stated:

> From the foregoing, the grant of free patents to defendants-appellants, having been performed in the course of the official functions of the DENR officers, enjoys the presumption of regularity. This presumption of regularity was not successfully rebutted by plaintiff-appellee. All told, there is no clear and convincing evidence of fraud and plaintiff-appellee's failure to prove it is fatal to [her] own cause. And there being none, We will have to sustain the issuance of [the] free patents to the defendants-appellants.[39]

Regarding the petitioner's allegation of fraud, the CA correctly dismissed the same, pointing out that her "averment that [she] was not notified of [the] applications for the free patent as well as of the proceedings which transpired leading to the granting and registration of the land in the [respondents'] name is bare and self-serving,"[40] and "the records negate this claim because a Notice of Application for Free Patent was 'posted in [a] conspicuous place on the land applied for, on the bulletin board of the barrio where the land is located, and at the door of [the] municipal building on the 2nd day of January, 1987 and remained posted until the 18th of December.'"[41] The CA was likewise not convinced with the petitioner's allegation of fraud and

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[39] *Rollo*, p. 39.

[40] *Id*. at 37.

[41] *Id*. at 37-38.

misrepresentation in the execution of the Confirmation Affidavit of Distribution of Real Estate dated June 22, 1973 (Confirmation Affidavit) by the petitioner's father, the late Perfecto Atienza (Perfecto). Being a notarized document, the CA imbued it with the legal presumption of validity, its due execution and authenticity not having been impugned by the mere self-serving allegations of the petitioner.[42]

The petitioner having failed to persuade the Court by clear and convincing evidence that the respondents perpetuated fraud against her, the Court's conclusion in *Spouses Galang* finds application in the present case, *viz.*:

> x x x As between these two claims, this Court is inclined to decide in favor of the Galangs who hold a valid and subsisting title to the property which, in the absence of evidence to the contrary, the Court presumes to have been issued by the PENRO in the regular performance of its official duty.
>
> The bottom line here is that, fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, with mere preponderance of evidence not being adequate. Fraud is a question of fact which must be proved.
>
> In this case, the allegations of fraud were never proven. There was no evidence at all specifically showing actual fraud or misrepresentation. x x x.[43]

Also, *Lopez v. Court of Appeals*[44] supports the recognition of the respondents as the absolute and exclusive owner of the disputed lots, being grantees of free patents over them.

In *Lopez*, the homestead application of one Fermin Lopez had unfortunately remained unacted upon up to the time of his death, being neither approved nor denied by the Director of the (then) Bureau of Lands as the Bureau failed to process it;

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[42] *Id*. at 38.

[43] *Spouses Galang v. Spouses Reyes*, *supra* note 36, at 666-667.

[44] 446 Phil. 722 (2003).

the Court ruled that he could not have acquired any vested rights as a homestead applicant over the property,[45] and his heirs did not inherit any property right from him.[46] The other heirs of Fermin had no right to be declared co-owners with Hermogenes Lopez, the eldest child of Fermin, who filed a new application after Fermin's death and was granted a homestead patent over the land which was subject of Fermin's application because the land exclusively pertained to Hermogenes. The Court reasoned out:

> The failure of the Bureau of Lands to act on the application of Fermin up to the time of his death, however, prevented his heirs to be subrogated in all his rights and obligations with respect to the land applied for.
>
> Perforce, at the time Hermogenes applied for a homestead grant over the disputed property, it was still part of alienable public land. As he applied for it in his own name, his application inures to his sole benefit. After complying with the cultivation and residency requirements, he became a grantee of a homestead patent over it, thereby making him its absolute and exclusive owner.[47]

Thus, the CA did not commit any reversible error in dismissing the complaint for the recall and cancellation of the free patent applications of the respondents.

Proceeding now to the determination of whether the petitioner has succeeded in proving her cause of action for reconveyance, the petitioner likewise failed in this respect. As correctly pointed out by the CA and stated earlier, an action for reconveyance involving land that is titled pursuant to a free patent is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner or to one with a better title.[48] As such, two facts must be alleged in the complaint and proved during the trial, namely: (1) the plaintiff was the owner of the

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[45] *Id*. at 739.

[46] *Id*. at 740, citing CIVIL CODE, Arts. 774 and 776.

[47] *Id*., citing *Santos v. CA*, 267 Phil. 578 (1990).

[48] CA Decision, p. 13, *rollo*, p. 40; citations omitted.

land or possessed it in the concept of owner, and (2) the defendant illegally divested him of ownership and dispossessed him of the land.[49]

Such facts, as the CA observed, were not only not alleged in the amended complaint, the petitioner Araceli Mayuga (Araceli[50]) also failed to prove that she was entitled to 1/3 of the two lots in dispute by succession.

Apparently, Araceli had taken the position that being one of the surviving compulsory heirs of their late father, Perfecto, she was entitled to 1/3 of the disputed lots on the assumption that the decedent left only three legal heirs (his children Araceli, Benjamin, Sr. and Armando)[51] and that the disputed lots were part of the inheritance[52] left by their father when he died in 1978. Araceli, however, overlooked the fact that Perfecto executed the Confirmation Affidavit dated June 22, 1973 almost five years prior to his death on June 1, 1978. Araceli did not even bother to provide the Court a copy thereof so that the Court could make a determination of its legal import. And the CA correctly accorded the Confirmation Affidavit the legal presumption of validity, being a duly notarized document, where its validity could not be impugned by mere self-serving allegations.[53]

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[49] *Id*., *id*.; citations omitted.

[50] For purposes of this portion of the Decision.

[51] CIVIL CODE, Arts. 978 and 980 provide:

ART. 978. Succession pertains, in the first place, to the descending direct line.

x x x x x x x x x

ART. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

[52] *Id*., Art. 776 provides:

ART. 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death.

[53] *Rollo*, p. 38.

Assuming that Perfecto owned the disputed lots and the Confirmation Affidavit was a deed of partition, Perfecto could have legally partitioned his estate during his lifetime. Under Article 1080 of the Civil Code, "[s]hould a person make a partition of his estate by an act *inter vivos*, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs."

Unlike in the old Civil Code, partition *inter vivos* is expressly allowed in the present Civil Code. The rationale for the change is exhaustively explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa,[54] thus:

> xxx This article allows the deceased to make a partition of his estate before his death which partition shall be respected insofar as it does not prejudice the legitime of the co-heirs. This partition may be made either by an act **inter vivos** or by will. Whether one or the other, however, is followed, the requirements of law as to form must be complied with.[55] If the testator should make it by will, then there is no doubt that the same is valid and binding on the heirs. If the testator makes a partition **inter vivos**, should such partition be after the making of a will and in accordance therewith or can the testator make a partition **inter vivos** without any supporting will? Under the old Civil Code the article employed the term "testator"[56] in lieu of the term now used which is "person." Interpreting this provision of law our Supreme Court in line with the opinion of the Spanish Supreme Court and Manresa, ruled that the word "testator" in the article can have no other meaning than that there must have been a previous will executed by the decedent wherein the property was disposed of to the heirs. Subsequently, the testator makes a partition by an act **inter vivos** in accordance with the disposition made in such will. Hence, our Supreme Court ruled that where the testator made a partition **inter vivos** but the will was declared null and void, the partition was also null and void.[57]

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[54] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW CIVIL CODE OF THE PHILIPPINES,* Vol. III (1970 3rd Ed.), pp. 467-469.

[55] *Id*. at 467, citing *Fajardo v. Fajardo*, 54 Phil. 842 (1930).

[56] *Id*., citing Art. 1056, Spanish Civil Code.

[57] *Id*., citing *Legasto v. Verzosa*, 54 Phil. 766 (1930); *Maria Reyes v. Reyes*, 45 O.G. No. 4, p. 1836.

The word "testator" in the Old Civil Code was changed by the New Civil Code into the term "person," precisely to do away with the interpretation given to the article by our Supreme Court, the Supreme Court of Spain and Manresa. Where the old code uses the specific term "testator," the New Civil Code uses the broader term "person." What is the effect of this change? There is no doubt that the intention behind the change is to do away with the interpretation requiring a valid will in order that there be a valid partition **inter vivos**. Consequently, we may say that a partition **inter vivos** may be valid even though there is no supporting will. However, in accordance with what disposition shall said partition be made if made **inter vivos**? May the deceased freely, in said partition **inter vivos**, designate the shares of the heirs granting that the same does not prejudice the legitime of the co-heirs? If this is so, is not this a will without the formalities of a will? Was that the intention of the legislature in amending the article from the term "testator" to "person"? If that is the intention, then property may pass through the will of the testator without the formalities of a will. Hence, this will in effect destroy the intention of the legislature in carefully providing for the formalities of the will so as to safeguard the testamentary right of a person. Any act **inter vivos** which will designate under this theory a partition of the property will be valid disposition even though it is not a will.

It is submitted that this is not the intention of the legislature. A distinction must be made between a disposition of property and its partition. The disposition of property must be made in the manner allowed by law, namely, by will. After the designation in the will, then comes the second part, the division in conformity with that disposition and the testator may make this division in the same will or another will or by an act **inter vivos**.[58] Hence, in reality, partition is simply making concrete and particular the apportionment already previously made by the testator in his will. Since our law now does not require a valid will in order that the partition **inter vivos** may be valid and as we submit that the partition cannot make the designation of heirs or the designation of shares but merely makes concrete, specific a designation previously made, according to what designation will this partition **inter vivos** be made if there is no will of the testator? It is submitted that this designation shall be in accordance with the

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[58] *Id*. at 468, citing 7 Manresa, 6th ed., pp. 634-636; Decision of Supreme Court of Spain of June 13 1903.

laws of intestacy. Inasmuch as the deceased did not make a will, it is presumed that he wanted the disposition in accordance with law, and this apportionment by the law must be interpreted to be the presumed will of the deceased; hence, the partition **inter vivos** must be in accordance with the designation laid down by law in case of intestacy. Said partition shall be valid so long as it does not impair the legitime of the co-heirs. That there can be a prejudice to the legitime of the co-heirs in intestate succession has been previously explained inasmuch as whether the succession is testamentary or legal, compulsory succession must always take place. From what has been explained, it is clear that should the testator institute a stranger as heir, he cannot make a partition **inter vivos** without making a designation by a valid will because the stranger cannot inherit by the laws of intestacy.

Since the Civil Code allows partition *inter vivos*, it is incumbent upon the compulsory heir questioning its validity to show that his legitime is impaired. Unfortunately, Araceli has not shown to what extent the Confirmation Affidavit prejudiced her legitime.

Araceli could not also claim preterition by virtue of the Confirmation Affidavit on the assumption that the disputed two lots pertained to Perfecto's inheritance, he had only three legal heirs and he left Araceli with no share in the two lots. Article 854 of the Civil Code partly provides: "[t]he preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious."

As explained by Justice Eduardo P. Caguioa:

x x x Preterition consists in the omission in the testator's will of a compulsory heir in the direct line or anyone of them either because they are not mentioned therein or although mentioned they are neither instituted as heir nor expressly disinherited. The act of totally depriving a compulsory heir of his legitime can take place either expressly or tacitly. The express deprivation of the legitime constitutes

disinheritance. The tacit deprivation of the same is called preterition. x x x[59]

x x x In order that there be preterition, it is essential that the heir must be totally omitted. This is clear from the wording of this article in conjunction with Article 906[60]. x x x[61]

x x x x x x x x x

Summarizing, therefore, total omission means that the omitted compulsory heir receives nothing under the will, whether as heir, legatee or devisee, has received nothing by way of donation inter vivos or propter [nuptias], and will receive nothing by way of intestate succession.[62]

Although Araceli was a compulsory heir in the direct descending line, she could not have been preterited. Firstly, Perfecto left no will. As contemplated in Article 854, the presence of a will is necessary. Secondly, before his death, Perfecto had properties in Limon, Rizal which was almost 50 hectares, part of which was developed for residential and agricultural purposes, and in Odiongan.[63] Araceli could not have been totally excluded in the inheritance of Perfecto even if she was not allegedly given any share in the disputed two lots.

If Araceli's share in the inheritance of Perfecto as claimed by her was indeed impaired, she could have instituted an action for partition or a settlement of estate proceedings instead of her complaint for cancellation of free patent and reconveyance.

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[59] *Id*. at 154-155, citing 6 Manresa, 6th ed., p. 340; *Neri v. Akutin*, 74 Phil. 185 (1943).

[60] CIVIL CODE, Art. 906 provides:

ART. 906. Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied.

[61] Eduardo P. Caguioa, *supra* note 54, at 155.

[62] *Id*. at 157.

[63] *Rollo*, p. 49.

Furthermore, as the persons who applied for and were awarded free patents, the respondents are the rightful, legal owners of the disputed lots. The free patents having been issued by the Department of Environment and Natural Resources on February 28, 1992 and recorded in the Book of Entries at the Office of the Registry of Deeds in June 1992,[64] the respondents' certificates of title have already become indefeasible pursuant to Section 32 of Presidential Decree No. 1529 (the Property Registration Decree), which pertinently provides: "Upon the expiration of said period of one year [from and after the date of entry of the decree of registration], the decree of registration and the certificate of title issued shall become incontrovertible."

Given the foregoing, the resolution of the procedural issues pertinent to the Petition has become superfluous.

WHEREFORE, the Petition is hereby **DENIED** for lack of merit. The Court of Appeals Decision dated July 8, 2013 in CA-G.R. CV No. 95599 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Perlas-Bernabe, JJ.*, concur.

Reyes, Jr., J., on leave.

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[64] *Id*. at 34.

THIRD DIVISION

[G.R. No. 210161. January 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BIENVINIDO UDANG, SR. *y* SEVILLA,**[1] *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; JURISDICTION HAVING ATTACHED WITH THE COURT, THE JUDGMENT OF ACQUITTAL IS DEEMED VALID, REGARDLESS OF THE FACT THAT ONE JUDGE WROTE IT AND ANOTHER PROMULGATED IT; CASE AT BAR.—** As early as 1915, this Court ruled in *United States v. Abreu* that in the absence of a law expressly prohibiting a judge from deciding a case where evidence was already taken, no such prohibition may be implied. x x x Further, this Court explained that with the existence of the transcript of records, which are presumed to be a "complete, authentic record of everything that transpires during the trial," there is "little reason for asserting that one qualified person may not be able to reach a just and fair conclusion from [the] record as well as another." Thus, it compelled Judge Abreu to proceed with deciding the cases where evidence was already taken by the former presiding judge. x x x Jurisdiction having attached with the court, the judgment of acquittal was deemed valid, regardless of the fact that one judge wrote it and another promulgated it. Applying the foregoing, the trial court decision convicting Udang is valid, regardless of the fact that the judge who heard the witnesses and the judge who wrote the decision are different.

2. **POLITICAL LAW; BILL OF RIGHTS; RIGHT AGAINST DOUBLE JEOPARDY; FOR THERE TO BE DOUBLE JEOPARDY, A FIRST JEOPARDY MUST HAVE ATTACHED PRIOR TO THE SECOND, THE FIRST JEOPARDY HAS BEEN VALIDLY TERMINATED, AND**

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[1] While the RTC documents referred to him as "Bienvinido Udang, Sr.," the CA referred to him as "Bienvenido Udang, Sr."

A SECOND JEOPARDY IS FOR THE SAME OFFENSE AS THAT IN THE FIRST.— The right against double jeopardy is provided in Article III, Section 21 of the Constitution: x x x The first sentence of the provision speaks of "the same offense," which this Court has interpreted to mean offenses having identical essential elements. Further, the right against double jeopardy serves as a protection: first, "against a second prosecution for the same offense after acquittal"; second, "against a second prosecution for the same offense after conviction"; and, finally, "against multiple punishments for the same offense." Meanwhile, the second sentence of Article III, Section 21 speaks of "the same act," which means that this act, punished by a law and an ordinance, may no longer be prosecuted under either if a conviction or acquittal already resulted from a previous prosecution involving the very same act. For there to be double jeopardy, "a first jeopardy [must] ha[ve] attached prior to the second; . . . the first jeopardy has been validly terminated; and . . . a second jeopardy is for the same offense as that in the first." A first jeopardy has attached if: first, there was a "valid indictment"; second, this indictment was made "before a competent court"; third, "after [the accused's] arraignment"; fourth, "when a valid plea has been entered"; and lastly, "when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent." Lack of express consent is required because the accused's consent to dismiss the case means that he or she actively prevented the court from proceeding to trial based on merits and rendering a judgment of conviction or acquittal. In other words, there would be a waiver of the right against double jeopardy if consent was given by the accused. x x x The only time that double jeopardy arises is when the same act has already been the subject of a previous prosecution under a law or an ordinance.

3. **CRIMINAL LAW; SECTION 5(B) OF REPUBLIC ACT NO. 7610 (PUNISHING SEXUAL ABUSE); SEXUAL ABUSE UNDER SECTION 5(B) OF REPUBLIC ACT NO. 7610 AND RAPE UNDER ARTICLE 266-A(1) OF THE REVISED PENAL CODE ARE TWO SEPARATE CRIMES WITH DISTINCT ELEMENTS; DISTINGUISHED.—** The provisions of Article 266-A of the Revised Penal Code punishing rape and Section 5 (b) of Republic Act No. 7610 punishing sexual abuse show that rape and sexual abuse are two (2) separate

crimes with distinct elements. The "force, threat, or intimidation" or deprivation of reason or unconsciousness required in Article 266-A(1) of the Revised Penal Code is not the same as the "coercion or influence" required in Section 5(b) of Republic Act No. 7610. Consent is immaterial in the crime of sexual abuse because "the [mere] act of [having] sexual intercourse . . . with a child exploited in prostitution or subjected to . . . sexual abuse" is already punishable by law. However, consent exonerates an accused from a rape charge as exhaustively explained in *Malto v. People*.

4. **ID.; ID.; ELEMENTS.—** To wit, the elements of sexual abuse are: first, "the accused commits the act of sexual intercourse or lascivious conduct"; second, "the said act is performed with a child exploited in prostitution"; and, finally, that "the child, whether male or female, is below 18 years of age."

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING THE INCIDENTS OF RAPE OR SEXUAL ABUSE WILL NOT AFFECT THE CREDIBILITY OF THE VICTIM; CASE AT BAR.—** AAA's delay in reporting the incidents did not affect her credibility. Delay is not and should not be an indication of a fabricated charge because, more often than not, victims of rape and sexual abuse choose to suffer alone and "bear the ignominy and pain" of their experience. Here, AAA would not have revealed the incidents had she not been interviewed by the police when she was arrested for sniffing rugby: x x x With AAA's categorical testimony, the prosecution discharged its burden of proving Udang's guilt beyond reasonable doubt and has made a *prima facie* case for two (2) counts of sexual abuse against him. In other words, the prosecution presented the "amount of evidence which would be sufficient to counterbalance the general presumption of innocence, and warrant a conviction." The burden of evidence then shifted to the defense to counter the prosecution's *prima facie* case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

A single act may give rise to multiple offenses. Thus, charging an accused with rape, under the Revised Penal Code, and with sexual abuse, under Republic Act No. 7610, in case the offended party is a child 12 years old and above, will not violate the right of the accused against double jeopardy.

This resolves an appeal from the October 9, 2013 Decision[2] of the Court of Appeals in CA-G.R. CR HC No. 01032 affirming the conviction of accused-appellant, Bienvinido Udang, Sr. y Sevilla (Udang), for two (2) counts of rape defined under Article 266-A, paragraph 1 of the Revised Penal Code.[3] Udang was sentenced to suffer the penalty of *reclusion perpetua* on both counts and ordered to pay the private complainant civil indemnity, moral damages, and exemplary damages.

On December 8, 2005, two (2) Informations for child abuse were filed against Udang before the Regional Trial Court of Cagayan de Oro City. The first was docketed as Family Case No. 2006-140, the accusatory portion of which read:

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[2] *Rollo*, pp. 3-14. The Decision was penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarra-Jacob and Edward B. Contreras of the Twenty-third Division, Court of Appeals, Cagayan de Oro City.

[3] REV. PEN. CODE, Art. 266-A(1) provides:

Article 266-A. *Rape; When And How Committed.* — Rape is committed—

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

   a) Through force, threat, or intimidation;

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

   c) By means of fraudulent machination or grave abuse of authority; and

   d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The undersigned Prosecutor II accuses BIENVINIDO UDANG for the crime of CHILD ABUSE, committed as follows:

That in the later of December, 2003, at more or less 9:00 o'clock in the evening, at [redacted], Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and sexually abuse one [AAA], 14 yrs. old, minor by committing the following acts, to wit: accused together with Bienvinido Udang, Jr., Betty Udang and the offended party dr[a]nk three (3) bottles of pocket size of [T]anduay rum in the house of the accused and when offended party became intoxicated, accused brought and carried her inside the room and undressed her by removing her . . . clothes and panty and accused placed himself on top of her and have sexual intercourse with offended party herein, which acts of the accused had clearly debased, degraded or demeaned the intrinsic worth and dignity of the said minor as a human being.

Contrary to and in Violation of Article 266-A in relation to Sec. 5(b) of R.A. 7610.[4]

The second Information, docketed as Family Case No. 2006-141, read:

The undersigned Prosecutor II accuses BIENVINIDO UDANG for the crime of CHILD ABUSE, committed as follows:

That in the later part of September, 2002, at more or less 9:00 o'clock in the evening, at [redacted], Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously, and sexually abuse one [AAA], 14 yrs. old, minor by committing the following acts, to wit: accused together with his [daughter] Betty Udang, Renato Yana and the offended party dr[a]nk five (5) bottles of pocket size [T]anduay rum in the house of the accused and when offended party became intoxicated, accused brought her inside his room, her clothings (sic) were removed and then and there accused placed himself on top of her and have sexual intercourse with the offended party herein, which acts of the accused had clearly debased, degraded or demeaned the intrinsic worth and dignity of the said minor as a human being.

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[4] RTC records, p. 3.

Contrary to and in Violation of Article 266-A in relation to Sec. 5(b) of R.A. 7610.[5]

Udang pleaded not guilty to both charges during his arraignment on June 26, 2006.[6] Joint trial then ensued.

Testimonies from prosecution witnesses, private complainant, AAA, and Dr. Darlene T. Revelo (Dr. Revelo) of the Department of Obstetrics and Gynecology of the [redacted], Cagayan de Oro City, proved the following version of the facts.

One evening in September 2002, AAA, then 12 years old,[7] drank alcoholic beverages with Udang's children, her neighbors: Betty Udang (Betty) and Bienvinido Udang, Jr. (Bienvinido, Jr.), at their house in [redacted], Cagayan de Oro City.[8]

After drinking five (5) bottles of Tanduay rum, AAA became intoxicated. She later realized that she was being carried by Udang into a dark room where he laid her on the bed, undressed her, and started kissing her.[9] Udang then went on top of AAA and inserted his penis into her vagina.[10]

After the incident, Udang went out to report for duty as barangay tanod while AAA remained inside his house as she was still too weak to move.[11]

One (1) year and three (3) months after, in December 2003, AAA, who by then was already 13 years old, again had some drinks at Udang's house. This time, she was with Bienvinido, Jr. and Udang himself. When AAA felt sleepy, she went into

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[5] *Id*. at 15.

[6] *Rollo,* p. 5, Court of Appeals Decision.

[7] *Id*. AAA was born on May 20, 1990.

[8] *Id*. at 5 and 9.

[9] *Id*. at 10.

[10] *Id*. at 11.

[11] *Id*.

one (1) of the rooms inside the house.[12] While AAA was lying in bed, Udang, who had followed her into the room, went on top of her, undressed her, and inserted his penis into her vagina until he ejaculated.[13] After having sexual intercourse with AAA, Udang went out to report for duty as barangay tanod. AAA, too tired, remained lying in bed.[14]

On April 14, 2004, AAA had herself physically examined by Dr. Revelo at the [redacted] in Cagayan de Oro City. Dr. Revelo found that AAA had hymenal lacerations in the 4, 7, and 10 o'clock positions,[15] as well as "excoriations" or reddish superficial scratched marks between her thighs and genitalia.[16] According to Dr. Revelo, these lacerations "could have been caused by trauma, frictions, infections, and also sexual intercourse."[17] Although in AAA's case, the hymenal lacerations were old and already healed.[18]

The defense presented as witnesses Udang and his daughter, Betty. Monera Gandawali (Gandawali) and Emirald Orcales (Orcales), fellow inmates of AAA at the Cagayan de Oro City Jail, also testified in Udang's defense. Their testimonies proved the following version of the facts.

Udang's daughter, Betty, denied drinking with AAA in September 2002. She also belied the claim that her father, Udang, and her brother, Bienvinido, Jr., had drinks with AAA in December 2003. However, she alleged that AAA once went to their house to invite her to sniff some rugby, an offer which she refused. She maintained that AAA only wanted to get back at her father for having AAA arrested after she was caught

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[12] *Id*.

[13] *Id*. at 12.

[14] *Id*.

[15] CA *rollo,* p. 38, Trial court Decision.

[16] TSN dated December 8, 2006, p. 8.

[17] *Rollo*, p. 12.

[18] CA *rollo*, p. 38.

grappling with Betty's grandmother because the latter tried to stop AAA from sniffing rugby inside Udang's house.[19]

After Udang caused the arrest of AAA for sniffing rugby,[20] AAA was detained at the Cagayan de Oro City Jail where she, Gandawali, and Orcales, became fellow inmates.[21]

Gandawali testified that sometime in 2007, she had the chance to talk to AAA when the latter became anxious for receiving a subpoena to testify in the cases she filed against Udang. During their conversation, AAA disclosed that she was never actually raped by Udang and that it was actually her stepfather who wanted to implicate him.[22]

For her part, Orcales testified that she did not know Udang personally. She claimed that she only knew Udang when AAA divulged her desire to write to Udang and ask for his forgiveness. AAA likewise disclosed to Orcales that it was not Udang but a security guard who had raped her and that it was AAA's mother who had forced her to testify against Udang in retaliation for her arrest for sniffing rugby.[23]

In his defense, Udang denied ever raping AAA. He testified that he was at home with his mother and other siblings at the time of the alleged incident in September 2002. As for the alleged second incident in December 2003, Udang claimed that he was again at home with his mother and siblings, Susan Udang and Cito Udang. He asserted that at 9:00 p.m., he reported for duty as barangay tanod with his colleagues, Ruel Labis and Carlo Banianon. Udang saw no reason for AAA to falsely charge him with rape since no animosity existed between them.[24]

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[19] *Id*. at 40.

[20] TSN dated November 11, 2010, p. 7.

[21] *Rollo,* p. 6, Court of Appeals Decision.

[22] CA *rollo,* p. 39, Trial Court Decision.

[23] *Id*. at 40.

[24] *Id*. at 39.

Branch 22, Regional Trial Court, Cagayan de Oro City found for the prosecution and convicted Udang of rape under Article 266-A(1) of the Revised Penal Code,[25] instead of sexual abuse under Section 5(b) of Republic Act No. 7610.[26] It ratiocinated that while the allegations in the first and second Informations satisfied the elements of rape under the first and third paragraphs of Article 266-A, respectively, the charges can only be one (1) for rape under the first paragraph of Article 266-A because "[an] accused cannot be prosecuted twice for a single criminal act."[27]

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[25] REV. PEN. CODE, Art. 266-A(1) partly provides:

Article 266-A. *Rape; When And How Committed*. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a) Through force, threat, or intimidation;
   b) When the offended party is deprived of reason or otherwise unconscious;
   c) By means of fraudulent machination or grave abuse of authority[.]

[26] Rep. Act No. 7610 (1992), Sec. 5 as amended by Rep. Act No. 8353 (1997), provides:

Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under [paragraph (d), Article 266-A of the Revised Penal Code, as amended by the Anti-Rape Law of 1997] and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

[27] CA *rollo,* p. 41, Trial Court Decision.

The trial court found that the prosecution "indubitably established"[28] Udang's act of raping AAA since she "categorically narrated"[29] how he took advantage of her while she was intoxicated and that had she resisted his advances, she would be mauled by Betty. That AAA was raped was also supported by Dr. Revelo's finding of hymenal lacerations and excoriations on AAA's thighs and genitalia.[30]

The trial court did not give credence to Udang's defense of denial and alibi, stating that he could have requested his family members and fellow barangay tanods, who were allegedly with him at the time of the incidents, to corroborate his testimony but that he failed to do so. Without the corroborating testimony of these alleged companions, his testimony was, for the trial court, "self-serving and unworthy to be believed."[31]

The trial court likewise discounted Gandawali's and Orcales' testimonies for being hearsay.[32] As for Betty, the trial court found her testimony "bare"[33] and "unsupported by evidence."[34]

In the Regional Trial Court March 12, 2012 Joint Decision,[35] Udang was sentenced to suffer the penalty of *reclusion perpetua* on both counts of rape under the first paragraph of Article 266-A of the Revised Penal Code. He was also ordered to pay AAA civil indemnity, moral damages, and exemplary damages. The dispositive portion of this Decision read:

WHEREFORE, the foregoing premises considered[,] judgment is hereby rendered finding the accused BIENVINIDO UDANG y SEVILLA:

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[28] *Id*. at 42.

[29] *Id*.

[30] *Id*. at 42-44 and TSN dated December 8, 2006, p. 8.

[31] CA *rollo*, p. 44.

[32] *Id*. at 45.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 36-46. The Joint Decision was penned by Judge Richard D. Mordeno of Branch 22, Regional Trial Court, Cagayan de Oro City.

1. ***GUILTY*** beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A, Par. 1 of the Revised Penal Code in FC-Criminal Case No. 2006-140 and is hereby sentenced to suffer imprisonment of reclusion perpetua, and to pay "AAA" ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.

2. ***GUILTY*** beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A, Par. 1 of the Revised Penal Code in FC-Criminal Case No. 2006-141 and is hereby sentenced to suffer imprisonment of reclusion perpetua, and to pay "AAA" ₱50,000.00 as civil indemnity, ₱50,000.000 as moral damages and 30,000.00 as exemplary damages.

SO ORDERED.[36] (Emphasis in the original)

Udang appealed before the Court of Appeals, maintaining that he did not rape AAA. He also claimed that the judge who penned the Decision, Judge Richard D. Mordeno (Judge Mordeno), was not the judge who personally heard the witnesses testify and was not able to observe their demeanor during trial.[37] Udang argued that Judge Mordeno, therefore, was not in the position to rule on the credibility of AAA, given her "unbelievable story"[38] of rape.

Udang emphasized that AAA's testimony was not credible for if she was allegedly raped in his house in September 2002, she would not have gone to the same house to have drinks with her supposed rapist a year after, in December 2003, on the risk of being raped again.[39] He highlighted AAA's ill motive against him for having caused her detention in the Cagayan de Oro City Jail for sniffing rugby in his house.[40] Finally, he emphasized that Dr. Revelo's testimony established that the lacerations found

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[36] CA *rollo,* p. 46, Trial Court Decision.

[37] *Id*. at 25. Appellant's Brief.

[38] *Id*. at 26.

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

[40] *Id*. at 30-32.

in AAA's genitalia could have been caused by trauma other than rape.[41]

In its ruling, the Court of Appeals found that although Judge Mordeno was not the one who conducted trial, Udang's guilt was nonetheless proven beyond reasonable doubt based on the records of the case and AAA's "categorical, convincing and consistent" testimony. [42]

That AAA returned to Udang's house a year after she was allegedly raped was, for the Court of Appeals, not as bizarre as Udang would make it appear. The Court of Appeals reasoned that "there is no standard form of behavior that can be expected of rape victims after they have been defiled because people react differently to emotional stress."[43]

Finally, the Court of Appeals rejected Udang's claim that AAA charged him with rape as vengeance for her arrest for sniffing rugby. It explained that "ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim which clearly established the liability of the accused."[44]

Thus, the Court of Appeals affirmed the trial court Decision *in toto* and dismissed Udang's appeal in its October 9, 2013 Decision,[45] the dispositive portion of which read:

> WHEREFORE, premises considered, the appeal is DISMISSED. The March 12, 2012 Joint Decision of the Regional Trial Court, 10th Judicial Region, Branch 22 of Cagayan de Oro City in FC Criminal Case Nos. 2006-140 and 2006-141 is hereby AFFIRMED *in toto*.
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> **SO ORDERED.**[46] (Emphasis in the original)

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

[42] *Rollo,* p. 9, Court of Appeals Decision.

[43] *Id.* at 12.

[44] *Id.* at 13.

[45] *Id.* at 3-14.

[46] *Id.* at 13.

The case was brought on appeal before this Court through a Notice of Appeal filed on October 23, 2013.[47] In its February 26, 2014 Resolution,[48] this Court directed the parties to file their respective supplemental briefs.

In their respective manifestations, the Office of the Solicitor General,[49] representing the People of the Philippines, and accused-appellant Udang[50] requested this Court to treat their appeal briefs filed before the Court of Appeals as their appeal briefs before this Court. This Court noted the parties' respective manifestations in its July 7, 2014 Resolution[51] and the case was considered submitted for decision.

Udang denies ever raping AAA and maintains his innocence, just as he did before the Court of Appeals. For him, AAA is not a credible witness and her story of rape is unbelievable. He claims that AAA should not have returned to his house a year after the alleged first incident to have drinks with him and his son, Bienvinido, Jr., had he really raped her. He also emphasizes how the rape charges were made only after he caused AAA's arrest for sniffing rugby in his house. He points out how two (2) of AAA's fellow inmates in the Cagayan de Oro City Jail, Gandawali and Orcales, even attested to his innocence based on AAA's confession that he did not rape her. Thus, the accused prays for his acquittal.

In its Brief for the Appellee,[52] the Office of the Solicitor General argues that Udang was correctly convicted of two (2) counts of rape punished under Article 266-A(1) of the Revised Penal Code. It claims that "testimonies of child-victims of

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[47] *Id*. at 15-17.

[48] *Id*. at 21.

[49] *Id*. at 27-31. Manifestation and Motion (In Lieu of Supplemental Brief).

[50] *Id*. at 32-35. Manifestation with Motion.

[51] *Id*. at 36.

[52] CA *rollo,* pp. 57-76.

rape are to be given full weight and credence"[53] because "a girl of tender years,"[54] like AAA at the time of the reported incidents, "is unlikely to impute to any man a crime so serious as rape, if what she claims is not true."[55] It adds that "when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment."[56]

The principal issue for this Court's resolution is whether or not accused-appellant, Bienvinido Udang, Sr. y Sevilla, was correctly convicted of rape punished under the first paragraph of Article 266-A of the Revised Penal Code.

The appeal is affirmed with modification. Based on the Informations, Udang was charged with two (2) counts of sexual abuse punished under Section 5(b) of Republic Act No. 7610. Hence, he could only be convicted of sexual abuse under the Informations filed in this case and not for rape under the Revised Penal Code. Furthermore, upon examination of the evidence presented, this Court finds Udang guilty of two (2) counts of sexual abuse. Thus, the penalty erroneously imposed on him—*reclusion perpetua* for each count of rape—should be reduced accordingly.

I

Udang attempts to raise doubt in his conviction because the judge who penned the trial court decision, Judge Mordeno, was not the judge who heard the parties and their witnesses during trial. For Udang, Judge Mordeno was in no position to rule on the credibility of the witnesses, specifically, of AAA, not having observed the manner by which the witnesses testified.

Ideally, the same trial judge[57] should preside over all the stages of the proceedings, especially in cases where the conviction

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[53] *Id*. at 71.

[54] *Id*.

[55] *Id*.

[56] *Id*.

[57] *People v. Court of First Instance of Quezon, Br. X,* G.R. No. L-48817, October 29, 1993, 227 SCRA 457, 461 [Per *J*. Bellosillo, First Division].

or acquittal of the accused mainly relies on the credibility of the witnesses. The trial judge enjoys the opportunity to observe, first hand, "the aids for an accurate determination"[58] of the credibility of a witness "such as the witness' deportment and manner of testifying, the witness' furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath."[59]

However, inevitable circumstances—the judge's death, retirement, resignation, transfer, or removal from office—may intervene during the pendency of the case.[60] An example is the present case, where the trial judge who heard the witnesses, Judge Francisco D. Calingin (Judge Calingin), compulsorily retired pending trial.[61] Judge Calingin was then replaced by Judge Mordeno, who proceeded with hearing the other witnesses and writing the decision. Udang's argument cannot be accepted as this would mean that every case where the judge had to be replaced pending decision would have to be refiled and retried so that the judge who hears the witnesses testify and the judge who writes the decision would be the same.[62] What Udang proposes is impracticable.

As early as 1915, this Court ruled in *United States v. Abreu*[63] that in the absence of a law expressly prohibiting a judge from deciding a case where evidence was already taken, no such prohibition may be implied. In *Abreu*, Judge Jose C. Abreu (Judge Abreu) refused to resolve a case where the witnesses were already heard by the former presiding judge who had

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[58] *People v. Diaz*, 331 Phil. 240, 252 (1996) [Per J. Davide, Jr., Third Division].

[59] *Id*.

[60] See *In Re: Transfer of Hearing of A.M. No. 07-11-592-RTC*, 572 Phil. 1, 5 (2008) [Per J. Reyes, R.T., Third Division].

[61] As per the Office of the Court Administrator.

[62] *United States v. Abreu*, 30 Phil. 402, 410 (1915) [*Per Curiam*, *En Banc*].

[63] *Id*.

resigned, arguing that the witnesses were heard by a judge whose authority had been superseded by the then newly enacted Act No. 2347.

In rejecting Judge Abreu's argument, this Court held that the legislature could not have intended to render void all the acts undertaken by judges prior to the enactment of Act No. 2347.[64] According to this Court, Act No. 2347's purpose was "simply to change the *personnel* of the judges"[65] and that it specifically provided that all cases and judicial proceedings pending decision or sentence under the jurisdiction of the old courts shall be continued until their final decision.[66]

Further, this Court explained that with the existence of the transcript of records, which are presumed to be a "complete, authentic record of everything that transpires during the trial,"[67] there is "little reason for asserting that one qualified person may not be able to reach a just and fair conclusion from [the] record as well as another."[68] Thus, it compelled Judge Abreu to proceed with deciding the cases where evidence was already taken by the former presiding judge.

In *People v. Court of First Instance of Quezon, Br. X*,[69] a decision acquitting the accused was penned by a trial judge temporarily detailed to Branch 10 of the Court of First Instance of Quezon. However, the decision was later on promulgated by a different judge who was subsequently appointed permanently. The People of the Philippines then opposed the judgment of acquittal, arguing that it was void for being

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[64] *Id*. at 410.

[65] *Id*. at 408.

[66] *Id*.

[67] *Id*. at 415.

[68] *Id*.

[69] *People v. Court of First Instance of Quezon, Br. X,* G.R. No. L-48817, October 29, 1993, 227 SCRA 457, 461 [Per *J*. Bellosillo, First Division].

promulgated without authority as the temporary detail of the judge who penned the decision had already expired.

This Court rejected the reasoning that "[j]urisdiction is vested in the court, not in the judges, so that when a complaint or information is filed before one branch or judge, jurisdiction does not attach to said branch of the judge alone, to the exclusion of the others."[70] Jurisdiction having attached with the court, the judgment of acquittal was deemed valid, regardless of the fact that one judge wrote it and another promulgated it.

Applying the foregoing, the trial court decision convicting Udang is valid, regardless of the fact that the judge who heard the witnesses and the judge who wrote the decision are different. With no showing of any irregularity in the transcript of records, it is presumed to be a "complete, authentic record of everything that transpire[d] during the trial,"[71] sufficient for Judge Mordeno to have evaluated the credibility of the witnesses, specifically, of AAA.

II

However, this Court disagrees with the trial court's ruling that charging Udang with both rape, under Article 266-A(1) of the Revised Penal Code, and sexual abuse, under Section 5(b) of Republic Act No. 7610, would violate his right against double jeopardy.

The right against double jeopardy is provided in Article III, Section 21 of the Constitution:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.[72]

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[70] *Id*. at 461.

[71] *United States v. Abreu*, 30 Phil. 402, 415 (1915) [*Per Curiam*, *En Banc*].

[72] CONST., Art. III, Sec. 21.

The first sentence of the provision speaks of "the same offense," which this Court has interpreted to mean offenses having identical essential elements.[73] Further, the right against double jeopardy serves as a protection: first, "against a second prosecution for the same offense after acquittal";[74] second, "against a second prosecution for the same offense after conviction";[75] and, finally, "against multiple punishments for the same offense."[76]

Meanwhile, the second sentence of Article III, Section 21 speaks of "the same act," which means that this act, punished by a law and an ordinance, may no longer be prosecuted under either if a conviction or acquittal already resulted from a previous prosecution involving the very same act.

For there to be double jeopardy, "a first jeopardy [must] ha[ve] attached prior to the second; . . . the first jeopardy has been validly terminated; and . . . a second jeopardy is for the same offense as that in the first."[77]

A first jeopardy has attached if: first, there was a "valid indictment";[78] second, this indictment was made "before a competent court";[79] third, "after [the accused's] arraignment";[80] fourth, "when a valid plea has been entered";[81] and lastly, "when the accused was acquitted or convicted, or the case was dismissed

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[73] See *People v. Judge Relova*, 232 Phil. 269, 283 (1987) [Per *J.* Feliciano, First Division].

[74] *People v. Dela Torre*, 430 Phil. 420, 430 (2002) [Per *J.* Panganiban, Third Division].

[75] *Id.*

[76] *Id.*

[77] See *People v. Cawaling*, 355 Phil. 1, 24 (1998) [Per *J.* Panganiban, First Division].

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.*

or otherwise terminated without his express consent."[82] Lack of express consent is required because the accused's consent to dismiss the case means that he or she actively prevented the court from proceeding to trial based on merits and rendering a judgment of conviction or acquittal.[83] In other words, there would be a waiver of the right against double jeopardy if consent was given by the accused.[84]

To determine the essential elements of both crimes for the purpose of ascertaining whether or not there is double jeopardy in this case, below is a comparison of Article 266-A of the Revised Penal Code punishing rape and Section 5(b) of Republic Act No. 7610 punishing sexual abuse:

Rape under Article 266-A(1) of the Revised Penal Code	**Sexual abuse under Section 5(b) of Republic Act No. 7610**
Article 266-A. *Rape; When and How Committed*. — Rape is committed — 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority[.]	SECTION 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: . . .

[82] *Id*.

[83] See *People v. Salico,* 84 Phil. 722, 726 (1949) [Per *J*. Feria, *En Banc*].

[84] *Id*.

	(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] (Underscoring provided)

The provisions show that rape and sexual abuse are two (2) separate crimes with distinct elements. The "force, threat, or intimidation" or deprivation of reason or unconsciousness required in Article 266-A(1) of the Revised Penal Code is not the same as the "coercion or influence" required in Section 5(b) of Republic Act No. 7610. Consent is immaterial in the crime of sexual abuse because "the [mere] act of [having] sexual intercourse . . . with a child exploited in prostitution or subjected to . . . sexual abuse"[85] is already punishable by law. However, consent exonerates an accused from a rape charge as exhaustively explained in *Malto v. People*:[86]

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[85] Rep. Act No. 7610, Sec. 5(b).

[86] 560 Phil. 119 (2007) [Per *J.* Corona, First Division].

VIOLATION OF SECTION 5 (B), ARTICLE III OF RA 7610 AND RAPE ARE SEPARATE AND DISTINCT CRIMES

Petitioner was charged and convicted for violation of Section 5 (b), Article III of RA 7610, not rape. The offense for which he was convicted is punished by a special law while rape is a felony under the Revised Penal Code. They have different elements. The two are separate and distinct crimes. Thus, petitioner can be held liable for violation of Section 5 (b), Article III of RA 7610 despite a finding that he did not commit rape.

CONSENT OF THE CHILD IS IMMATERIAL IN CRIMINAL CASES INVOLVING VIOLATION OF SECTION 5, ARTICLE III OF RA 7610

Petitioner claims that AAA welcomed his kisses and touches and consented to have sexual intercourse with him. They engaged in these acts out of mutual love and affection. But may the "sweetheart theory" be invoked in cases of child prostitution and other sexual abuse prosecuted under Section 5, Article III of RA 7610? No.

The sweetheart theory applies in acts of lasciviousness and rape, felonies committed against or without the consent of the victim. It operates on the theory that the sexual act was consensual. It requires proof that the accused and the victim were lovers and that she consented to the sexual relations.

For purposes of sexual intercourse and lascivious conduct in child abuse cases under RA 7610, the sweetheart defense is unacceptable. *A child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person.*

The language of the law is clear: it seeks to punish

> [t]hose who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse.

Unlike rape, therefore, *consent is immaterial in cases involving violation of Section 5, Article III of RA 7610.* The mere act of having sexual intercourse or committing lascivious conduct with a child who

is exploited in prostitution or subjected to sexual abuse constitutes the offense. It is a *malum prohibitum*, an evil that is proscribed.

A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.

The harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. (Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.

This must be so if we are to be true to the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth. This is consistent with the declared policy of the State

> **[T]o provide special protection to children from all forms of abuse**, neglect, cruelty, **exploitation** and discrimination, **and other conditions prejudicial to their development; provide sanctions for their commission** and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination.

as well as to

> **intervene on behalf of the child** when the parents, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation, and discrimination or when **such acts against the child are committed by the said parent, guardian, teacher** or person having care and custody of the same.

This is also in harmony with the foremost consideration of the child's best interests in all actions concerning him or her.

> **The best interest of children shall be the paramount consideration in all actions concerning them**, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principles of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. **Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life**.[87] (Emphasis in the original, citations omitted)

People v. Abay[88]—insofar as it ruled that charging an accused with both rape, under Article 266-A(1) of the Revised Penal Code, and sexual abuse, under Section 5(b) of Republic Act No. 7610, violates his or her right against double jeopardy[89]—must therefore be abandoned.[90] As held in *Nierras v. Dacuycuy*:[91]

> [A] single criminal act may give rise to a multiplicity of offenses and where there is variance or differences between the elements of an offense in one law and another law as in the case at bar there will be no double jeopardy because what the rule on double jeopardy prohibits refers to identity of elements in the two (2) offenses. Otherwise stated prosecution for the same act is not prohibited. What is forbidden is prosecution for the same offense. Hence, the mere filing of the two (2) sets of information does not itself give rise to double jeopardy.[92]

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[87] *Id*. at 138-142.

[88] *People v. Abay,* 599 Phil. 390 (2009) [Per *J.* Corona, First Division].

[89] *Id*. at 395-396.

[90] Other cases citing the *Abay* doctrine are: *People v. Dahilig*, 667 Phil. 92 (2011) [Per *J*. Mendoza, Second Division]; and *People v. Matias*, 687 Phil. 386 (2012) [Per *J*. Perlas-Bernabe, Third Division].

[91] *Nierras v. Dacuycuy,* 260 Phil. 6 (1990) [Per *J*. Paras, *En Banc*].

[92] *Id*. at 13, citing *People v. Miraflores*, 115 SCRA 570 (1982) [Per *J.* Escolin, Second Division].

In *People v. Judge Relova*:[93]

> [T]he constitutional protection against double jeopardy is *not* available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although both the first and second offenses may be based upon the same act or set of acts.[94]

The only time that double jeopardy arises is when the same act has already been the subject of a previous prosecution under a law or an ordinance. This is not the situation in the present case.

All told, the trial court erred in ruling that prosecuting an accused both for rape, under Article 266-A(1) of the Revised Penal Code, and sexual abuse, under Section 5(b) of Republic Act No. 7610, violates his or her right to double jeopardy.

III

Moreover, contrary to the trial court's determination, the Informations actually charged Udang with sexual abuse, under Section 5(b) of Republic Act No. 7610, and not with rape, under Article 266-A(1) of the Revised Penal Code.

Based on the Informations, the charge against Udang was "child abuse,"[95] defined in Section 3 of Republic Act No. 7610 as "the maltreatment, whether habitual or not, of [a] child" and includes "any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being." The allegations in the Informations stated that Udang "sexually abuse[d]"[96] AAA by having sexual intercourse with her while she was intoxicated, thus, "debas[ing], degrad[ing], or demean[ing] the intrinsic worth of AAA."[97] While the

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[93] *People v. Judge Relova*, 232 Phil. 269, 283 (1987) [Per *J.* Feliciano, First Division].

[94] *Id.* at 278.

[95] RTC records, pp. 3 and 15.

[96] *Id.*

[97] *Id.*

Informations stated that the acts were "[c]ontrary to and in [v]iolation of Article 266-A in relation to Sec. 5 (b) of R.A. 7610,"[98] the factual allegations in the Informations determine the crime being charged.[99]

Given that the charges against Udang were for sexual abuse, this Court examines whether or not the elements of sexual abuse under Section 5(b) of Republic Act No. 7610 are present in this case. Section 5(b) of Republic Act No. 7610 reads:

> SECTION 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
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> . . . . . .
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> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.]

To wit, the elements of sexual abuse are: first, "the accused commits the act of sexual intercourse or lascivious conduct";[100] second, "the said act is performed with a child exploited in

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[98] *Id*.

[99] See *Malto v. People*, 560 Phil. 119, 135-136 (2007) [Per *J.* Corona, First Division].

[100] *Amployo v. People*, 496 Phil. 747, 758 (2005) [Per *J*. Chico-Nazario, Second Division].

prostitution";[101] and, finally, that "the child, whether male or female, is below 18 years of age."[102]

All the elements of sexual abuse are present in this case.

As an adult and the father of AAA's friend, Betty, Udang had influence over AAA, which induced the latter to have drinks and later on have sexual intercourse with him. AAA, born on May 20, 1990,[103] was 12 and 13 years old when the incidents happened. The following transcript of stenographic notes shows AAA's "categorical, convincing and consistent"[104] testimony as to how Udang sexually abused her in September 2002:

> Q. In September, 2002 AAA, what unusual incident that happened between you and the accused?
> A. Yes.
> Q. What is that AAA?
> A. We are drinking in their house.
>
> Q. You are saying in the house of Bienvenido Udang, Sr.?
> A. Yes.
> Q. Where was it located?
> A. We are neighbors.
> Q. So, in crossing [redacted], Cagayan de Oro City?
> A. Yes.
> Q. And you said that you were drinking, what were you drinking in the house of B[ie]nvenido Udang, Sr.?
> A. Tanduay.
> Q. And who were your companions, if any, at that time?
> A. Betty, myself and Bienvenido, Jr.
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> . . . .
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> Q. So, how many Tanduay bottles were you really drinking in September, 2002?
> A. Five.

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[101] *Id*.

[102] *Id*.

[103] *Rollo*, p. 5, Court of Appeals Decision.

[104] *Id* at 9.

Q. What happened next while you were in the house of the accused?
A. They let me drink until I was drunk and carried me to the room.
Q. And when you were carried to the room, what happened next?
A. Then he undressed me.
Q. Let us clarify this, who carried you to the room?
A. Bienvenido Udang, Sr.
Q. When he carried you to the room, you said you were undressed, who undressed you?
A. Bienvenido Udang, Sr.
Q[.] And what happened next?
A. He kissed me and then went on top of me.
Q. And when he was on top of you, what, if any, was your position then?
A. I was lying down.
Q. By the way, you said that you were undressed at that time, AAA, so at that time you had no upper garments?
A. No more.
Q. How about your lower garment?
A. No more.
Q. How about Bienvenido Udang, Sr., what was the state of his dress?
A. I could not remember because it was already night and it was dark.
Q. When he went on top of you, what was the state of his dress at that time?
A. I did not notice.
Q. When Bienvenido Udang[,] Sr. went on top of you while you were lying down, what was Bienvenido Udang, Sr. do[ing]?
A. I am shy.

Pros. Sia-Galvez:

We would like to manifest at this juncture, your honor, that the witness is hesitant in answering [the] question because of the feeling of embarrassment, your honor.

(To witness) AAA, would you want your mother inside this court room or we will have her stay outside this court room?

A. She will stay.
Q. Can we continue, AAA?
A. Yes.

. . . . . .

Q. Let us go back, when Bienvenido Udang[,] Sr. was on top o[f] you and you were lying down, what happened next?
A. He inserted his penis on my vagina.

. . . . . .

Q. So, you felt [his] penis entering your vagina?
A. Yes.
Q. And how many times, if any, did he do that [i]n September, 2002?
A. Only once.[105]

As for the sexual abuse in December 2003, AAA testified:

Q. In December, 2003, AAA, what incident, if any, happened between you and the accused?
A. Yes, there was.
Q. What incident was that?
A. The same thing, we had a drinking session with Bienvenido Udang, Sr., and Jr.
Q. And when was this happened?
A. In the house.

. . . . . .

Q. You said that you were drinking in the house of the accused, what were you drinking then?
A. Tanduay
Q. And you said it happened again, where did it happened (sic)?
A. In their house, in a room.

. . . . . .

Q. And when you were inside the room, what happened next?
A. I was lying down and after a while, they went inside.
Q. You are referring to?
A. Bienvenido Udang, Sr.
Q. And when they were inside the room, what happened next?
A. The same thing, he undressed me and inserted his penis into my vagina?
Q. How many times?
A. Until he had an ejaculation.[106]

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

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

This Court finds AAA credible not because of the generalization that she was a child of tender years incapable of fabricating a story of defloration but because of her categorical narration of her experience and her straightforward explanation that she was intimidated by Betty to have drinks with her father. Thus, she was compelled to return to the accused's house even after she was raped. AAA testified that Betty, her "friend," "sold"[107] her to Udang; Betty, who was taller than AAA, even threatened to "maul" her had she resisted:

> Q. After the September, 2002 incident, did you tell any person about the incident?
>
> A. No, I did not tell it to anyone because if I tell, his child will maul me.
>
> Q. And after the said incident, you still went back to their house, is that correct?
>
> A. Yes, because his child wanted me to go.
>
> Q. And you were drinking Tanduay with the accused.
>
> A. Yes, because if [I] will not drink, his child Betty will maul me.
>
> Q. Was (sic) this Betty already mauled you?
>
> A. Yes, because whenever she asked me to buy cigarette, she maul (sic) me because she was taller than me before.[108]

To this Court, Betty's threat of violence was enough to induce fear in AAA.

AAA's delay in reporting the incidents did not affect her credibility. Delay is not and should not be an indication of a fabricated charge because, more often than not, victims of rape and sexual abuse choose to suffer alone and "bear the ignominy

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[107] CA *rollo,* p. 28, Appellant's Brief citing TSN dated December 7, 2007, pp. 16-17.

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

and pain" of their experience.[109] Here, AAA would not have revealed the incidents had she not been interviewed by the police when she was arrested for sniffing rugby:

> Q. To whom for the first time did you reveal these two incidents that happened to you?
>
> A. Only when Bienvenido Udang, Sr. ha[d] me arrested.
>
> Q. Why did Bienvenido Udang, Sr. have you arrested?
>
> A. Because his child let me used to sniff "rugby".
>
> Q. What is the name of that child?
>
> A. Betty Udang.
>
> Q. Do you mean to say that you also use "rugby"?
>
> A. No, I am not using "rugby", but I used it for the first time when his child let me used then (sic).
>
> Q. Were you, in fact, being arrested (sic) at that time when Bienvenido Udang, Sr. have you arrested?
>
> A. Yes.
>
> Q. Who arrested you?
>
> A. I was arrested by the police and I told the police about the incident because I wanted to go out but the police needed a signature in order for me to go out.
>
> Q. Whose signature is needed?
>
> A. Bienvenido Udang, Sr.
>
> Q. How come those two incidents of sexual abuse by Bienvenido Udang, Sr.
>
> A. I reported the incidents to the police because they interviewed me.[110]

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[109] See *People v. Bahuyan,* 308 Phil. 346, 358 (1994) [Per *J.* Romero, Third Division]. See also *People v. Errojo*, 299 Phil. 51, 61 (1994) [Per *J.* Nocon, Second Division].

[110] CA *rollo,* pp. 30-31, Appellant's Brief citing TSN dated December 7, 2007, p. 23.

With AAA's categorical testimony, the prosecution discharged its burden of proving Udang's guilt beyond reasonable doubt and has made a *prima facie* case for two (2) counts of sexual abuse against him. In other words, the prosecution presented the "amount of evidence which would be sufficient to counterbalance the general presumption of innocence, and warrant a conviction."[111] The burden of evidence then shifted to the defense to counter the prosecution's *prima facie* case. Explaining the difference between "burden of proof" and "burden of evidence," this Court in *Bautista v. Sarmiento*[112] said:

> When a *prima facie* case is established by the prosecution in a criminal case . . . the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed—the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial. This burden of going forward with the evidence is met by evidence which balances that introduced by the prosecution. Then the burden shifts back.[113] (Citation omitted)

Unfortunately Udang failed to present evidence sufficient to counter the prosecution's *prima facie* case against him.

To destroy AAA's credibility, Udang capitalizes on the fact that he was charged only after he had AAA arrested for sniffing rugby. However, given AAA's affirmative and credible testimony, Udang's allegation of ill motive is deemed inconsequential.

While prosecution witness Dr. Revelo testified that the lacerations found in AAA's genitalia could have been "introduced by other operation"[114] aside from sexual intercourse, Udang had nothing but denials and alibis as defenses. If, as Udang testified, he was with his mother, siblings, and some barangay

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[111] *Bautista v. Sarmiento*, 223 Phil. 181, 185 (1985) [Per *J*. Cuevas, Second Division], citing WORDS & PHRASES PERMANENT EDITION 33, p. 545.

[112] *Bautista v. Sarmiento*, 223 Phil. 181, 185 (1985) [Per *J*. Cuevas, Second Division].

[113] *Id*. at 186.

[114] CA *rollo,* p. 32, Appellant's Brief.

tanods during the alleged incidents, he could have presented them as witnesses to corroborate his testimony, but he did not. Neither is Betty's testimony that Udang never had drinks with AAA sufficient to acquit her father. Udang's and Betty's testimonies are "self-serving"[115] and were correctly disregarded by the trial court.

As correctly held by the trial court and by the Court of Appeals, the testimonies of Gandawali and Orcales, AAA's fellow inmates at the Cagayan de Oro City Jail, were hearsay, hence, inadmissible in evidence.[116] This is because Gandawali and Orcales had no personal knowledge of the incidents as they were not there when the incidents happened.

In sum, this Court is morally convinced that Udang committed two (2) counts of sexual abuse under Section 5(b) of Republic Act No. 7610, with each count punishable by *reclusion temporal* in its medium period to *reclusion perpetua*. Applying the Indeterminate Sentence Law[117] and absent any mitigating or aggravating circumstance in the present case, the maximum imposable penalty for each count should be the penalty prescribed by law in its medium period[118] which is *reclusion temporal* in

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[115] *Id*. at 44.

[116] RULES OF COURT, Rule 130, Sec. 36 provides:

Section 36. *Testimony generally confined to personal knowledge; hearsay excluded*. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

[117] Rep. Act No. 4103 (1965), as amended.

[118] REV. PEN. CODE, Art. 64(1) 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 courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

its maximum period ranging from 17 years, four (4) months, and one (1) day to 20 years.[119] On the other hand, the minimum term of the imposable penalty shall be the next penalty lower in degree than that prescribed by law which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period. This minimum term ranges from eight (8) years and one (1) day to 14 years and eight (8) months.[120] Udang shall serve the penalties successively.[121]

Further, AAA is entitled to ₱50,000.00 as civil indemnity.[122] The award of moral damages is likewise retained at ₱50,000.00.[123] However, the award of exemplary damages is deleted given the absence of any aggravating circumstance in this case.[124]

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[119] *People v. Matias,* 687 Phil. 386, 391 (2012) [Per *J.* Perlas-Bernabe, Third Division].

[120] *Id*.

[121] REV. PEN. CODE, Art. 70 partly provides:

Article 70. *Successive Service of Sentences; Exception.* — When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, said penalties shall be executed successively, following the order of their respective severity, which shall be determined in accordance with the following scale:

1. Death.
2. *Reclusión perpetua*.
3. *Reclusión temporal*.
4. *Prisión mayor*.
5. *Prisión correccional*.
6. *Arresto mayor*.
7. *Arresto menor*.

. . . . . .

[122] See *Malto v. People*, 560 Phil. 119, 143-144 (2007) [Per *J.* Corona, First Division].

[123] *Id.* at 144.

[124] *Id*. citing CIVIL CODE Art. 2230, which provides that "[i]n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

WHEREFORE, the appeal is **DENIED**. The Court of Appeals October 9, 2013 Decision in CA-G.R. CR HC No. 01032 is **AFFIRMED with MODIFICATION**. Bienvinido Udang, Sr. y Sevilla is found **GUILTY** beyond reasonable doubt of two (2) counts of sexual abuse, under Section 5(b) of Republic Act No. 7610, and is sentenced to suffer the penalty of twelve (12) years of *prision mayor* as minimum to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal* as maximum for each count. Furthermore, the accused shall pay AAA ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each count of sexual abuse, all amounts shall earn interest at the legal rate of six percent (6%) per annum from the finality of this Decision until full payment. The award of exemplary damages is deleted.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 225596. January 10, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEXANDER ALVARO *y* DE LEON and ROSALIE GERONIMO *y* MADERA**, *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND

APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In this case, accused-appellants were charged with illegal sale of dangerous drugs under Section 5, Article II of RA 9165, which has the following elements: (*a*) the identities of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** In addition, Geronimo was charged with illegal possession of dangerous drugs, the elements of which are: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

4. **ID.; ID.; CHAIN OF CUSTODY RULE; THE LAW AND ITS IMPLEMENTING RULES PROVIDE FOR THE PROCEDURE THE POLICE OFFICERS MUST FOLLOW IN HANDLING SEIZED DRUGS, IN ORDER TO PRESERVE THEIR INTEGRITY AND EVIDENTIARY VALUE; NON- COMPLIANCE WITH THE REQUIREMENTS UNDER JUSTIFIABLE GROUNDS, SHALL NOT RENDER VOID AND INVALID SUCH SEIZURES OF AND CUSTODY OVER SAID ITEMS.—** To obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must **be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti***. Section 21, Article II of RA 9165 provides the

chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, **immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same; also, the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination**. 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. However, for this saving clause to apply, **the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**. The justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

5. ID.; ID.; ID.; THE NUMEROUS LAPSES, EVEN INCONSISTENCIES TAINT THE PROSECUTION'S ACCOUNT OF HOW THE ARRESTING OFFICERS HANDLED THE SUBJECT CONFISCATED DRUGS, HENCE, THE COURT CONCLUDES THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SUBJECT DRUGS HAD BEEN COMPROMISED; ACQUITTAL OF THE ACCUSED IS PROPER.— In this case, accused-appellants point out unexplained breaks in the links in the custody of the confiscated drugs which, to them, constitute flagrant and procedural lapses and obvious evidentiary gaps that are fatal to the prosecution's case. x x x The Court concurs with accused-appellants that indeed, numerous lapses, and even inconsistencies, taint the prosecution's account of how the arresting officers handled the subject confiscated drugs, x x x In view of the unaccounted gap in the chain of custody and the multiple unrecognized and unjustified departures of

the police officers from the established procedure set under Section 21, Article II of RA 9165 and its Implementing Rules and Regulations, the Court therefore concludes that the integrity and evidentiary value of the subject drugs had been compromised. Case law states that in cases involving dangerous drugs, the drugs presented as the *corpus delicti* of the offense must be established with moral certainty to be the same illicit substance taken from the accused. Absent such conclusive identification, there can be no finding of guilt on the part of the accused. The persistence of reasonable doubt on the identity of the drugs seized from the accused results in the latter's acquittal, as in this case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Dulcisima S. Lotoc for accused-appellants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellants Alexander Alvaro *y* de Leon (Alvaro) and Rosalie Geronimo *y* Madera (Geronimo; collectively, accused-appellants) assailing the Decision[2] dated September 11, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05279, which affirmed the Decision[3] dated September 7, 2010 of the Regional Trial Court of Makati City, Branch 64 (RTC) in Criminal Case No. 08-1044 finding accused-appellants guilty beyond reasonable doubt of violating Section 5,[4] Article II of Republic

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[1] See Notice of Appeal dated June 18, 2015; *rollo*, pp. 17-18.

[2] *Id.* at 2-16. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicdican and Zenaida T. Galapate-Laguilles concurring.

[3] CA *rollo*, pp. 68-73. Penned by Judge Gina M. Bibat-Palamos.

[4] The pertinent portion of Section 5, Article II of RA 9165 reads:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled*

Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and in Criminal Case No. 08-1045 finding Geronimo guilty beyond reasonable doubt of violating Section 11,[6] Article II of RA 9165.

The Facts

The instant case stemmed from an Information[7] filed before the RTC charging accused-appellants of violating Section 5,

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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.

x x x x x x x x x

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (July 4, 2002).

[6] The pertinent portion of Section 11, Article II of RA 9165 provides:

Section 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[7] Dated June 17, 2008. Records, p. 2.

Article II of RA 9165, and another Information[8] accusing Geronimo of violating Section 11 of the same law, *viz.*:

Criminal Case No. 08-1044

That on or about the 5th day of June 2008, in the City of Makati Philippines, and a place within the jurisdiction of this Honorable Court, the above-named accused [Alvaro and Geronimo], conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point zero three (0.03) gram of Methylamphetamine hydrochloride which is a dangerous drug, in consideration of five hundred (₱500.00) pesos.

CONTRARY TO LAW.[9]

Criminal Case No. 08-1045

That on or about the 5th day of [June] 2008, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused [Geronimo], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription did then and there willfully, unlawfully and feloniously have in her possession[,] direct custody and control zero point zero one (0.01) gram of Methylamphetamine hydrochloride, which is a dangerous drug.

CONTRARY TO LAW.[10]

The prosecution alleged that at about 5:30 in the afternoon of June 5, 2008, after receiving a tip from a confidential informant about the drug peddling activity of an alias "Betchay," later identified as Geronimo, a team composed of Makati Anti-Drug Abuse Council (MADAC) and Station Anti-Illegal Drugs — Special Operation Task Force (SAID-SOTF) operatives proceeded to the Laperal Compound, Brgy. Guadalupe Viejo,

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[8] Dated June 17, 2008. *Id*. at 4.

[9] *Id*. at 2.

[10] *Id*. at 4.

Makati City. MADAC Operative Juan S. Siborboro, Jr.[11] (Siborboro) was designated as the poseur-buyer, while the rest of the team composed of PO3 Rafael J. Castillo (PO3 Castillo), PO2 Jaime Orante, Jr. (PO2 Orante), PO1 Percival Mendoza, and the other operatives acted as back-up.[12]

At the target area, Siborboro was introduced by the informant to Geronimo, who asked the former how much he intended to buy. Siborboro then handed the marked ₱500.00 bill to Geronimo, who, in turn, gave the same to her companion, Alvaro, who was about three (3) meters away. Thereafter, Geronimo took out two (2) plastic sachets of suspected *shabu*, and handed one to Siborboro. Upon receipt of the sachet, Siborboro gave the pre-arranged signal by lighting a cigarette and throwing it, prompting the back-up officers to rush in and arrest accused-appellants.[13]

Siborboro confiscated the remaining plastic sachet containing suspected drugs from Geronimo, while PO3 Castillo recovered the buy-bust money from Alvaro. Siborboro immediately marked the sachet subject of the sale with "JSJR," and the sachet he recovered from Geronimo with "JSJR-1."[14] He also prepared an inventory[15] of the seized items, which was signed by PO3 Castillo and Barangay Chairman Ernesto Bobier (Brgy. Chairman Bobier) as witnesses.[16] Accused-appellants were brought to the SAID-SOTF office, where the seized items were turned over to the investigator, PO1 Randy C. Santos (PO1 Santos), who then prepared the request for laboratory examination[17] and submitted the seized sachets to the PNP Crime Laboratory.

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[11] "Juan Siborboro" in some parts of the records.

[12] See *rollo*, p. 5.

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

[14] *Id*. at 6.

[15] See Inventory Receipt dated June 5, 2008; records, p. 141.

[16] *Id*.

[17] See Request for Laboratory Examination dated June 5, 2008; *id*. at 139.

Forensic chemist Police Senior Inspector (S/Insp.) Engr. Richard Allan B. Mangalip (S/Insp. Mangalip) examined[18] the specimen, which tested positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.[19]

In her defense, Geronimo maintained that at around 5 or 6 o'clock in the afternoon of June 5, 2008, she was resting at her uncle's house at the Laperal Compound, Bernardino Street, Guadalupe Viejo, Makati City, when suddenly, several men barged inside. One of the men told her "*manahimik ka diyan kung ayaw mong masaktan*," while the others searched the house. When the men found nothing, they frisked Geronimo and took her mobile phone, wallet, and a promissory note from a hospital. Afterwards, they ordered her to bring out her companions and the items she was allegedly hiding, to which she replied "*anong ilalabas ko, anong tinatago ko*?" The men then took Geronimo out of the house where they encountered Alvaro. Together, they were brought inside a van where they were invited for questioning. At the SAID-SOTF office, accused-appellants were investigated, and brought to the laboratory for drug testing. However, since the chemist was not present, they were merely made to sign a document; afterwhich, they were returned to the MADAC office.[20]

Upon arraignment, accused-appellants pleaded not guilty to the charges leveled against them.[21]

The RTC Ruling

In a Decision[22] dated September 7, 2010, the RTC found: (*a*) accused-appellants guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 for illegal sale of

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[18] See Physical Science Report No. D-238-08S dated June 5, 2008; *id*. at 140.

[19] *Rollo*, p. 6.

[20] See *id*. at 7-8.

[21] *Id*. at 4.

[22] CA *rollo*, pp. 68-73.

dangerous drugs, thereby sentencing them to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00 each in Criminal Case No. 08-1044; and (*b*) Geronimo guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 for illegal possession of dangerous drugs, thereby sentencing her to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to fifteen (15) years and to pay a fine in the amount of ₱400,000.00 in Criminal Case No. 08-1045.[23]

The RTC held that the prosecution was able to prove the presence of the respective elements of illegal sale and illegal possession of dangerous drugs. It observed that Siborboro positively identified accused-appellants as the persons from whom he purchased ₱500.00 worth of *shabu*, and found that Geronimo had in her possession another sachet of *shabu*, which was retrieved from her upon arrest. On the other hand, the RTC gave no credence to the defense of denial, frame-up, and alibi raised by accused-appellants for failure to substantiate the same.[24]

Aggrieved, accused-appellants appealed[25] their case to the CA.

The CA Ruling

In a Decision[26] dated September 11, 2014, the CA affirmed the RTC ruling *in toto*,[27] finding that the prosecution had indeed established the accused-appellants' guilt beyond reasonable doubt for the crimes charged. Moreover, the CA observed that the integrity and evidentiary value of the seized drugs were preserved and the chain of custody over them remained unbroken, notwithstanding the fact that some of the procedural requirements in Section 21, Article II of RA 9165 were not faithfully observed,

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

[24] See *id.* at 71-72.

[25] See Notice of Appeal dated April 6, 2011; *id.* at 30-31.

[26] *Rollo*, pp. 2-16.

[27] See *id.* at 15.

as well as the typographical error in the marking of one of the seized items.[28]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not accused-appellants' convictions for violation of Section 5, Article II of RA 9165, and Geronimo's conviction for violation of Section 11, Article II of RA 9165 should be upheld.

The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[29] 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.[30]

In this case, accused-appellants were charged with illegal sale of dangerous drugs under Section 5, Article II of RA 9165, which has the following elements: (*a*) the identities of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[31] In addition, Geronimo was charged with illegal possession of dangerous drugs, the elements of which are: (*a*) the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused

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[28] See *id.* at 10-15.

[29] See *People v. Dahil*, G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233.

[30] See *People v. Comboy*, G.R. No. 218399, March 2, 2016.

[31] *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 149, citing *People v. Viterbo*, G.R. No. 203434, July 23, 2014, 730 SCRA 672, 680.

freely and consciously possessed the said drug.[32] According to the tribunals *a quo*, all these elements were proven in these cases.

Notably, however, in order to secure a conviction for the foregoing crimes, it remains essential that the identity of the confiscated drugs be established beyond reasonable doubt. To obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must **be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti***.[33]

Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[34] Under the said section, the apprehending team shall, **immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same; also, the seized drugs must be turned over to the PNP Crime Laboratory within twenty four (24) hours from confiscation for examination**.[35]

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

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[32] *People v. Bio*, G.R. No. 195850, February 16, 2015, 750 SCRA 572, 578.

[33] See *People v. Viterbo*, *supra* note 31.

[34] *People v. Sumili*, *supra* note 31, at 150-151.

[35] See Section 21 (1) and (2), Article II of RA 9165.

and custody over said items.[36] However, for this saving clause to apply, **the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[37]

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[36] *People v. Sanchez*, 590 Phil. 214, 231-232 (2008) citing Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" approved on July 15, 2014, Section 1 of which states:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x."

[37] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

The justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[38]

In this case, accused-appellants point out[39] unexplained breaks in the links in the custody of the confiscated drugs which, to them, constitute flagrant and procedural lapses and obvious evidentiary gaps that are fatal to the prosecution's case.[40] Accordingly, they pray for their acquittal.[41]

The appeal is meritorious.

The Court concurs with accused-appellants that indeed, numerous lapses, and even inconsistencies, taint the prosecution's account of how the arresting officers handled the subject confiscated drugs, to wit:

First. With respect to the place of marking, Siborboro testified that he immediately marked and inventoried the seized items at the place of arrest.[42] This was, however, contradicted by PO3 Castillo who testified that they did not prepare the inventory at the place of the arrest since Laperal Compound was teeming with people; instead, they conducted the inventory along EDSA, at the trunk of the service vehicle.[43]

Second. The prosecution failed to show that the inventory was made in the presence of the accused as required by law. The presence of the required witnesses, *i.e.*, the representatives from the media and the DOJ, and any elected official, was also not established. While records show that Brgy. Chairman Bobier had signed the inventory receipt, based on Siborboro's own

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[38] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[39] See Appellants' Brief dated May 7, 2012; CA *rollo*, pp. 44-67.

[40] See *id*. at 60.

[41] See *id*. at 66.

[42] See TSN, December 2, 2008, pp. 18-19. See also TSN, December 9, 2008, p. 43.

[43] See TSN, May 20, 2009 (May 26, 2009 in the TSN's 1st page), pp. 43-44.

statement, the former was not present when the same was prepared and that it was only brought to his office for signature.[44] For his part, PO3 Castillo testified that the apprehending team immediately returned to their office right after the inventory and preservation marking, without passing by any other place. He also contradicted his previous statement that the inventory was made along EDSA, when he later stated that Brgy. Chairman Bobier signed the inventory receipt at the place of arrest.[45]

Third. The prosecution failed to show that the seized items were photographed. While Siborboro could not recall if photographs of the seized items were taken,[46] PO3 Castillo testified that the items were photographed by a designated photographer.[47] Unfortunately, the records do not support PO3 Castillo's claim as the prosecution did not offer the photographs of the seized items as evidence.[48]

Fourth. The sachet subject of the sale was purportedly marked by Siborboro as "JSJR" and the other sachet confiscated from Geronimo was marked as "JSJR-1."[49] However, the crime laboratory's report shows that S/Insp. Mangalip, the forensic chemist, examined two (2) sachets, one marked "JSJRND" and the other "JSJR-1."[50] Instead of presenting PO1 Santos – as the receiving investigator – and S/Insp. Mangalip, the prosecution stipulated upon and dispensed with their testimonies.[51] The stipulation was, in fact, limited to the fact "[t]hat the white crystalline substance contained in a transparent plastic sachet with

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[44] See TSN, December 9, 2008, pp. 44-45.

[45] See TSN, May 20, 2009, pp. 43-47.

[46] See TSN, December 9, 2008, pp. 43-44.

[47] See TSN, May 20, 2009, pp. 41-42.

[48] See Joint Formal Offer of Exhibits dated July 29, 2009; records, pp. 134-135.

[49] See TSN, December 2, 2008, p. 18.

[50] See Physical Science Report No. D-238-08S; records, p. 140.

[51] See Order dated September 3, 2008 penned by Presiding Judge Gina M. Bibat-Palamos; *id.* at 58-59.

markings 'JSJR and JSJR-1' were submitted to the PNP Crime Laboratory Office together with the Request for Laboratory Examination."[52] Consequently, no witness could explain the provenance of the sachet "JSJRND" and the whereabouts of the sachet "JSJR" after the same were left to the custody of PO1 Santos. Neither did the prosecution justify if the said discrepancy was a mere typographical error.

Fifth. The records reveal that the request for laboratory examination was not delivered by PO1 Santos but by a certain Serrano.[53] Siborboro and PO3 Castillo both failed to explain how Serrano came to possess the seized items, while PO2 Orante's testimony[54] shows that he had no personal knowledge of the arrest and what transpired thereafter. With PO1 Santos's testimony stipulated upon and dispensed with, no witness was able to explain how Serrano came to have custody over the seized items.

In view of the unaccounted gap in the chain of custody and the multiple unrecognized and unjustified departures of the police officers from the established procedure set under Section 21, Article II of RA 9165 and its Implementing Rules and Regulations, the Court therefore concludes that the integrity and evidentiary value of the subject drugs had been compromised. Case law states that in cases involving dangerous drugs, the drugs presented as the *corpus delicti* of the offense must be established with moral certainty to be the same illicit substance taken from the accused. Absent such conclusive identification, there can be no finding of guilt on the part of the accused. The persistence of reasonable doubt on the identity of the drugs seized from the accused results in the latter's acquittal,[55] as in this case.

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[52] *Id*. at 58.

[53] See Request for Laboratory Examination; *id*. at 139.

[54] See TSN, May 12, 2009, pp. 19-21.

[55] See *People v. Sorin*, G.R. No. 212635, March 25, 2015, 754 SCRA 594, 610-611.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 11, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05279 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Alexander Alvaro *y* de Leon and Rosalie Geronimo *y* Madera are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

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

Reyes, Jr., J., on leave.

THIRD DIVISION

[G.R. No. 225735. January 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BELEN MEJARES *y* VALENCIA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; THEFT; ELEMENTS.— Theft is consummated when three (3) elements concur: (1) the actual act of taking without the use of violence, intimidation, or force upon persons or things; (2) intent to gain on the part of the taker; and (3) the absence of the owner's consent.

2. ID.; ID.; QUALIFIED THEFT; ELEMENTS.— . . . [F]or qualified theft to be committed, the following elements must concur: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation

against persons, nor of force upon things; 6. That it be done with grave abuse of confidence.

3. ID.; ID.; ID.; ID.; INTENT TO GAIN OR *ANIMUS LUCRANDI* IS AN INTERNAL ACT THAT IS PRESUMED FROM THE UNLAWFUL TAKING BY THE OFFENDER OF THE THING SUBJECT OF ASPORTATION.— This Court has been consistent in holding that "intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. [Thus,] [a]ctual gain is irrelevant as the important consideration is the intent to gain." In this case, it is clear from the established facts that it was accused-appellant who opened the drawer in the masters' bedroom and took away the cash and valuables it contained. Therefore, the burden is on the defense to prove that intent to gain was absent despite accused-appellant's *actual* taking of her employer's valuables. It is precisely this burden that the defense failed to discharge. The Court of Appeals is correct in pointing out that the actions of accused-appellant before, during, and after the crime all belie her claim that she did not willfully commit the crime.

4. ID.; ID.; ID.; ID.; GRAVE ABUSE OF CONFIDENCE IS A CIRCUMSTANCE WHICH AGGRAVATES AND QUALIFIES THE COMMISSION OF THE CRIME OF THEFT.— This Court has explained that while grave abuse of trust and confidence *per se* does not produce the felony as an effect, it is a "circumstance which aggravates and qualifies the commission of the crime of theft"; hence, the imposition of a higher penalty is necessary. It is not difficult to understand why the character of accused-appellant's work as a domestic helper qualifies the offense she committed.

5. ID.; REPUBLIC ACT NO. 10951 (AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF THE PROPERTY AND DAMAGE ON WHICH PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE); THE NEW LAW, AMONG OTHERS, INCREASED THE FINES FOR TREASON AND THE PUBLICATION OF FALSE NEWS AND LIKEWISE INCREASED THE BASELINE AMOUNTS AND VALUES OF PROPERTY AND DAMAGE TO MAKE THEM COMMENSURATE TO THE PENALTIES METED ON THE OFFENSES COMMITTED IN RELATION TO THEM; APPLICATION

IN CASE AT BAR.— However, this Court modifies the penalty to be imposed upon accused-appellant pursuant to Republic Act No. 10951, in view of the other details of the case, as established during trial. On August 29, 2017, President Rodrigo Roa Duterte signed into law Republic Act No. 10951 that sought, among others, to help indigent prisoners and individuals accused of committing petty crimes. It also increased the fines for treason and the publication of false news; and likewise increased the baseline amounts and values of property and damage to make them commensurate to the penalties meted on the offenses committed in relation to them. Basic wisdom underlies the adjustments made by Republic Act No. 10951. Imperative to maintaining an effective and progressive penal system is the consideration of exigencies borne by the passage of time. This includes the basic economic fact that property values are not constant. To insist on basing penalties on values identified in the 1930s is not only anachronistic and archaic; it is unjust and legally absurd to a moral fault. x x x Given its possibly fairer and more just consequences, Republic Act No. 10951 is a welcome development in our legal system. Republic Act No. 10951 has since come into effect during the pendency of this case. It likewise specifically stipulates that its provisions shall have retroactive effect. Section 100 adds that this retroactivity applies not only to persons accused of crimes but have yet to be meted their final sentence, but also to those already "serving sentence by final judgment." This retroactivity is in keeping with the principle already contained in Article 22 of the Revised Penal Code that "[p]enal laws shall have a retroactive effect in so far as they favor the person guilty of a felony." Given these circumstances, it is proper for this Court to adjust the penalty to be imposed on accused-appellant. x x x Given that the value of the stolen personal properties in this case was not determined by reliable evidence independent of the prosecution's uncorroborated testimonies, this Court is constrained to apply the minimum penalty under Article 309(6) of the Revised Penal Code, as amended by Section 81 of Republic Act No. 10951, which is *arresto mayor*. However, in view of Article 310 of the Revised Penal Code concerning qualified theft, accused-appellant must be meted a penalty two (2) degrees higher, *i.e.*, *prision correccional* in its medium and maximum periods with a range of two (2) years, four (4) months, and one (1) day to six (6) years.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

This Court affirms with modification the conviction of accused-appellant Belen Mejares y Valencia (Mejares) for the crime of qualified theft. While this Court finds no reversible error in the ruling that she was guilty beyond reasonable doubt, this Court finds it necessary to modify the penalty initially imposed upon her. In light of the recently enacted Republic Act No. 10951,[1] which adjusted the amounts of property and damage on which penalties are based, applying the Indeterminate Sentence Law, and considering the prosecution's failure to establish the precise values of the stolen items, accused-appellant must be ordered released on time served.

In an Information dated May 24, 2012,[2] Mejares was charged with qualified theft of cash and jewelry amounting to ₱1,556,308.00. This Information read:

That on or about the 22nd day of May 2012 in the City of San Juan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a domestic servant of complainant Jacqueline Suzanne Gavino y Aquino, as such, enjoyed the trust and confidence reposed upon her with intent to gain, without the consent of the owner thereof and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

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[1] An Act Adjusting the Amount or the Value of the 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, Republic Act No. 10951 (2017).

[2] CA *rollo,* p. 10.

Rolex wrist watch (antique)	-	Php 400,000.00
Assorted jewelries gold and	-	1,000,000.00
Cash money	-	50,000.00
Cash money ($2,000.00)	-	86, 308.00
Cash assorted foreign money	-	20,000.00

with a total amount of Php 1,556,308.00, belonging to said complainant to the damage and prejudice of the latter in the aforementioned amount.

CONTRARY TO LAW.[3]

The prosecution presented five (5) witnesses. The first witness, Raquel Torres (Torres), was a household helper for Mark Vincent and Jacqueline Suzanne Gavino (the Spouses Gavino) from August 2011 to July 2012.[4]

According to Torres, she was cleaning the dining area of the condominium unit of the Spouses Gavino at around 1:00 p.m. on May 22, 2012, when she noticed that Mejares' cellphone kept ringing. Mejares answered it, hurrying to the computer room and away from Torres. When Mejares returned, she was "pale, perspiring and panicky."[5] When Torres asked about the identity of the caller, Mejares did not answer. She told her instead that Jacqueline Suzanne Gavino (Jackie) met an accident and instructed her to get something from a drawer in the masters' bedroom. Since it was locked, Mejares was supposedly told to destroy it.[6]

Torres added that when Mejares emerged from the bedroom, she was holding a plastic hamper that contained a black wallet and envelopes and was talking with someone on her cellphone. After a few minutes, Mejares informed her that Jackie did not want other household members to know what happened and that Mejares was instructed to also take a watch and jewelry,

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[3] *Rollo,* p. 4.

[4] CA *rollo*, p. 26.

[5] *Id*.

[6] *Id*.

since the cash in the drawer was not enough to pay the other driver in the accident who was threatening to sue. Torres narrated that after preparing everything, Mejares left with a green bag.[7]

When Mejares returned at about 3:00 p.m., she asked Torres if there had been an incoming landline call while she was gone. Torres answered in the negative and Mejares stated that she had purposely hung it. At 4:00 p.m., Torres started to receive calls from Jackie, who sounded "loud, normal and animated,"[8] making Torres wonder if Jackie had really encountered an accident. Torres then asked Mejares once again if it was Jackie she had spoken with earlier. According to Torres, Mejares "grew ashen and perspired" before answering that she was certain.[9]

The prosecution's second witness was private complainant, Jackie.

She recalled that when she interviewed Mejares back in May 2011, Mejares then indicated that she was familiar with the operation of the *dugo-dugo* gang. She further narrated that in the early afternoon of May 22, 2012, she was at work. She tried calling but could not access her household landline past 5:00 p.m., so she decided to call Torres' cellular phone to have her instruct the driver to pick her up from the Movie and Television Review and Classification Board's Office. After the phone call was cut, she then received a call from Mejares, informing her about what happened.[10]

According to Jackie, Mejares told her about receiving a call from a certain Nancy, who stated that Jackie wanted to avoid the publicity that may arise from her supposed accident. Jackie continued that Mejares thereafter claimed that she was instructed to break the drawer in the masters' bedroom and to take all its contents. However, Jackie clarified in her account that she

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

[8] *Id*. at 27.

[9] *Id*.

[10] *Id*. at 28.

had neither a personal secretary nor an aide named Nancy. She also affirmed that she did not figure in any accident.[11]

The third prosecution witness was Bonifacio Baluyot (Baluyot), the stay-in driver of the Spouses Gavino who had been working for Jackie since 1976.[12]

Baluyot claimed that on May 22, 2012, Mejares told him to bring her to Greenhills Shopping Mall, allegedly on Jackie's orders. He complied. He narrated that he saw her carry a green bag. After dropping Mejares at the mall entrance, he returned to the condominium. He added that when the incident was subsequently being investigated, he heard the guards say that they tried to stop Mejares from leaving, although she had told him that it was only Torres who was stopped by the guards for not having a gate pass.[13]

The prosecution's fourth witness was Pedro Garcia (Garcia), the condominium security guard who was on duty at the lobby on May 22, 2012.[14]

Garcia narrated that at around 1:30 p.m., he saw Mejares about to leave the premises carrying a green bag. However, he did not allow her to leave in the absence of a gate pass signed by her employer. Despite his insistence that Mejares call her employer, she did not. After a few moments, her cellphone rang. Instead of answering Garcia's query on the caller's identity, Mejares rushed to the elevator. Afterwards, Garcia saw Mejares leave using her employer's car driven by Baluyot. According to him, he still attempted to stop them by warning them that they could be victims of *dugo-dugo* gang, to no avail.[15]

The prosecution's last witness was investigating officer PO3 Clifford Hipolito (PO3 Hipolito).

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

[12] *Id*. at 29.

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

[14] *Id*. at 30.

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

He testified that during the investigation, he questioned Mejares about what happened. She stated that someone called her and instructed her to destroy her employer's drawer, take the cash and valuables there, and bring everything to Baclaran because Jackie had met an accident. When asked if she was aware of the *dugo-dugo* gang, she answered that she was. PO3 Hipolito was likewise informed that condominium security initially prevented Mejares from leaving but she went back to the unit, refusing to call her employer.[16]

The defense presented Mejares as its lone witness. She denied the charge and claimed that she was a victim of the *dugo-dugo* gang.

According to her, she received a phone call from the condominium unit's landline at 1:00 p.m. on May 22, 2012 from a certain Nancy, who introduced herself as Jackie's assistant and informed her that Jackie had met an accident. Afterwards, she claimed that Jackie herself talked to her and instructed her to get something from a drawer in the master's bedroom and to use a screwdriver to destroy its lock because the other driver in the accident had a 50-50 chance of survival. She further narrated that when the lobby guard did not allow her to leave after she had gathered and packed the contents of the drawer, Jackie called her and told her to return to the unit and to ask the driver to take her to Virra Mall. From there, she took a cab going to Baclaran Church, where she met an unknown woman. Before handing the bag to the unidentified lady, she claimed that she was able to talk again over the phone to Jackie, who told her to give the bag to the woman and return to the unit. She only had second thoughts about what had happened when after arriving at the condominium, Torres stated that she might have been tricked. She also contended that she had never heard of the *dugo-dugo* gang.[17]

After trial, the Regional Trial Court found accused-appellant guilty beyond reasonable doubt of the crime of qualified theft

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[16] *Id*. at 31-32.

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

of assets amounting to ₱1,056,308.00. The dispositive portion of its February 6, 2014 Decision[18] read:

> WHEREFORE, the court hereby renders judgment finding accused BELEN MEJARES y VALENCIA GUILTY beyond reasonable doubt of the felony of qualified theft of articles worth ₱1,056,308.00, thereby sentencing her to *reclusion perpetua*, pursuant to Article 310 vis à vis Article 309 of the Revised Penal Code. Accused is ordered to pay to Jacqueline Aquino Gavino the sum mentioned in actual damages. Cost against accused.
>
> SO ORDERED.[19]

On appeal, the Court of Appeals affirmed the Regional Trial Court Decision *in toto* in its July 30, 2015 Decision.[20]

Accused-appellant filed her Notice of Appeal.[21]

In its January 23, 2017 Resolution,[22] this Court noted the parties' manifestations in lieu of supplemental briefs.

For resolution is the sole issue of whether or not accused-appellant Belen Mejares y Valencia is guilty beyond reasonable doubt of the crime of qualified theft.

I

Theft is consummated when three (3) elements concur: (1) the actual act of taking without the use of violence, intimidation, or force upon persons or things; (2) intent to gain on the part of the taker; and (3) the absence of the owner's

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[18] *Id*. at 26-35. The Decision, docketed as Crim. Case No. 148240, was penned by Judge Myrna V. Lim-Verano of Branch 160, Regional Trial Court, Pasig City.

[19] *Id*. at 35.

[20] *Rollo*, pp. 2-22. The Decision, docketed as CA-G.R. CR HC No. 06778, was penned by Associate Justice Fernanda Lampas Peralta and concurred in by Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela of the Sixth Division, Court of Appeals, Manila.

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

[22] *Id*. at 42.

consent.[23] Moreover, for qualified theft to be committed, the following elements must concur:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;
6. That it be done with grave abuse of confidence.[24]

Accused-appellant hopes to convince this Court that her actions only reflected the will of her employer, emphasizing that there could be no theft on her part because there was no intent to gain.[25] She insists that she only took instructions from the secretary of private complainant and later on, from private complainant herself.[26] Additionally, she claims that she is as much a victim of the *dugo-dugo* gang as was her employer.[27]

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[23] REV. PEN. CODE, Art. 308:

Article 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

[24] *People v. Puig*, 585 Phil. 555, 562 (2008) [Per *J*. Chico-Nazario, Third Division].

[25] CA *rollo*, p. 133.

[26] *Id*. at 129-130.

[27] *Id*. at 133.

Her contentions are untenable.

This Court has been consistent in holding that "intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. [Thus,] [a]ctual gain is irrelevant as the important consideration is the intent to gain."[28] In this case, it is clear from the established facts that it was accused-appellant who opened the drawer in the masters' bedroom and took away the cash and valuables it contained. Therefore, the burden is on the defense to prove that intent to gain was absent despite accused-appellant's *actual* taking of her employer's valuables. It is precisely this burden that the defense failed to discharge.

The Court of Appeals is correct in pointing out that the actions of accused-appellant before, during, and after the crime all belie her claim that she did not willfully commit the crime. It correctly underscored the following observations of the Regional Trial Court:

> Why would accused hang the landline phone if not to insure that she was not discovered in the nick of time to have her loot recovered?
>
> While accused portrays herself as the victim, prosecution evidence has established that she is the victimizer. This conclusion has the following bases: first, the surreptitious way accused handled the incoming calls; second, her failure to heed the warnings of persons around her, i.e. Raquel and security guard Garcia; third, her inability to make use of the myriad opportunities available to verify the alleged vehicular accident where her mistress figured in.[29]

Normal human experience, as well as the consistency in and confluence of the testimonies of prosecution witnesses lead to no other conclusion than that accused-appellant, taking advantage of her being a domestic helper of private complainant for approximately a year, committed the crime of qualified theft. If she honestly believed that her employer had met an accident

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[28] *Matrido v. People*, 610 Phil. 203, 212 (2009) [Per *J.* Carpio Morales, Second Division].

[29] *Rollo*, p. 16.

and was genuinely worried for her, she could have easily sought the help of any of her co-workers in the household. When warned about the *dugo-dugo* gang, accused-appellant could have paused to re-assess the situation. She failed to do all these security measures with no convincing justification. Indeed, accused-appellant's persistence to leave the condominium with the valuables and her refusal to let the security guard talk to her employer further belie her position.

To make matters worse, accused-appellant was a domestic helper who had been working for the Spouses Gavino for at least one (1) year when she committed the crime. By this fact alone, the offense committed is qualified and warrants graver penalties, pursuant to Article 310 of the Revised Penal Code, as amended:

> Article 310. *Qualified theft*. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a **domestic servant**, or with **grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)

This Court has explained that while grave abuse of trust and confidence *per se* does not produce the felony as an effect, it is a "circumstance which aggravates and qualifies the commission of the crime of theft";[30] hence, the imposition of a higher penalty is necessary. It is not difficult to understand why the character of accused-appellant's work as a domestic helper qualifies the offense she committed. As explained in *Corpuz v. People of the Philippines*:[31]

> [T]he rationale for the imposition of a higher penalty against a domestic servant is the fact that in the commission of the crime, the helper

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[30] *People v. Syou Hu*, 65 Phil. 270, 271 (1938) [Per *J*. Villareal, First Division].

[31] 734 Phil. 353 (2014) [Per *J*. Peralta, *En Banc*].

will essentially gravely abuse the trust and confidence reposed upon her by her employer. After accepting and allowing the helper to be a member of the household, thus entrusting upon such person the protection and safekeeping of the employer's loved ones and properties, a subsequent betrayal of that trust is so repulsive as to warrant the necessity of imposing a higher penalty to deter the commission of such wrongful acts.[32]

The established facts point to the soundness of the Regional Trial Court's and the Court of Appeals' conclusion: that accused-appellant is guilty beyond reasonable doubt of qualified theft. Thus, her conviction must be upheld.

II

However, this Court modifies the penalty to be imposed upon accused-appellant pursuant to Republic Act No. 10951, in view of the other details of the case, as established during trial.

On August 29, 2017, President Rodrigo Roa Duterte signed into law Republic Act No. 10951 that sought, among others, to help indigent prisoners and individuals accused of committing petty crimes. It also increased the fines for treason and the publication of false news; and likewise increased the baseline amounts and values of property and damage to make them commensurate to the penalties meted on the offenses committed in relation to them.

Basic wisdom underlies the adjustments made by Republic Act No. 10951. Imperative to maintaining an effective and progressive penal system is the consideration of exigencies borne by the passage of time. This includes the basic economic fact that property values are not constant. To insist on basing penalties on values identified in the 1930s is not only anachronistic and archaic; it is unjust and legally absurd to a moral fault.

In his dissenting opinion in *Corpuz v. People*,[33] Justice Roberto Abad illustrated in the context of qualified theft the cruelty

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[32] *Id*. at 409.

[33] 734 Phil. 353 (2014) [Per J. Peralta, *En Banc*].

foisted by insistence on the values set by the Revised Penal Code when it was originally adopted:

> The harshness of this antiquated 1930 scheme for punishing criminal offenders is doubly magnified in qualified theft where the offender is a domestic helper or a trusted employee. Qualified theft is a grievous offense since its penalty is automatically raised two degrees higher than that usually imposed on simple theft. Thus, unadjusted for inflation, the domestic helper who steals from his employer would be meted out a maximum of:
>
> a) 6 years in prison for a toothbrush worth ₱5;
>
> b) 12 years in prison for a lipstick worth ₱39;
>
> c) 14 years and 8 months in prison for a pair of female slippers worth ₱150;
>
> d) 20 years in prison for a wristwatch worth ₱19,000; or
>
> e) 30 years in prison for a branded lady's handbag worth ₱125,000.
>
> Unless checked, courts will impose 12 years maximum on the housemaid who steals a ₱39 lipstick from her employer. They will also impose on her 30 years maximum for stealing a pricy lady's handbag. This of course is grossly obscene and unjust, even if the handbag is worth ₱125,000.00 since 30 years in prison is already the penalty for treason, for raping and killing an 8-year-old girl, for kidnapping a grade school student, for robbing a house and killing the entire family, and for a ₱50-million plunder.
>
> It is not only the incremental penalty that violates the accused's right against cruel, unusual, and degrading punishment. The axe casts its shadow across the board touching all property-related crimes. This injustice and inhumanity will go on as it has gone on for decades unless the Court acts to rein it in.[34] (Citations omitted.)

Given its possibly fairer and more just consequences, Republic Act No. 10951 is a welcome development in our legal system.

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[34] *J.* Abad, Dissenting Opinion in *Corpuz v. People*, 734 Phil. 353, 483-484 (2014) [Per *J.* Peralta, *En Banc*].

Republic Act No. 10951 has since come into effect during the pendency of this case.[35] It likewise specifically stipulates that its provisions shall have retroactive effect.[36] Section 100 adds that this retroactivity applies not only to persons accused of crimes but have yet to be meted their final sentence, but also to those already "serving sentence by final judgment."[37] This retroactivity is in keeping with the principle already contained in Article 22 of the Revised Penal Code that "[p]enal laws shall have a retroactive effect in so far as they favor the person guilty of a felony."[38] Given these circumstances, it is proper for this Court to adjust the penalty to be imposed on accused-appellant.

Since the penalty in cases of theft is dependent on the value of stolen personal properties,[39] it is critical to ensure that the penalty is based on the value proven during trial, and not merely on the Information or uncorroborated testimonies presented by the prosecution. Here, a perusal of the records leads to the conclusion that while the Regional Trial Court reduced the value of the stolen jewelry from ₱1,000,000.00[40] to ₱500,000.00 on the basis of the complainant's social standing,[41] such determination is devoid of evidentiary basis.

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[35] Rep. Act No. 10951, Sec. 102 provides:

Section 102. Effectivity.— This Act shall take effect within fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

[36] Rep. Act No. 10951, Sec. 100.

[37] Rep. Act No. 10951, Sec. 100.

[38] Article 22 of the Revised Penal Code spells out an exception to this retroactive effect, that is, when the person found guilty is "a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code." *Pardo de Tavera v. Garcia Valdez*, 1 Phil. 468 (1902) [*En Banc*, Per *J*. Ladd] has also clarified that there can be no retroactive application when expressly proscribed by the new law "as respects pending actions or existing causes of action."

[39] See *Candelaria v. People*, 749 Phil. 517 (2014) [Per *J*. Perlas-Bernabe, First Division].

[40] CA *rollo*, p. 10.

[41] *Id*. at 35.

Citing *People v. Paraiso*[42] and *People v. Marcos*[43] in *Francisco v. People*,[44] this Court explained that "an ordinary witness cannot establish the value of jewelry"[45] and that courts cannot take judicial notice of the value of properties when "[it] is not a matter of public knowledge [or] unquestionable demonstration"; thus:

> The value of jewelry is not a matter of public knowledge nor is it capable of unquestionable demonstration and **in the absence of receipts or any other competent evidence besides the self-serving valuation made by the prosecution, we cannot award the reparation for the stolen jewelry**.[46] (Emphasis supplied.)

The Regional Trial Court did not only err in setting the amount of the stolen jewelry on the basis of nothing but the complainant's social standing, but also in sustaining the values of the other stolen items as they appeared in the Information and asserted by the complainant. These items were valued as follows: the antique Rolex wristwatch at ₱400,000.00, the foreign currencies at ₱86,308.00, and cash at ₱50,000.00. They were valued this way since no other competent evidence such as in the form of watch make, model description, receipts, or exchange rates was presented to satisfactorily prove their value.

Thus, in the absence of factual and legal bases, the amount of ₱1,056,308.00 could *not* be the basis to determine the proper penalty to be imposed on accused-appellant. On the same ground, the complainant is likewise not entitled to reparation.[47] Instead, the rule articulated in *Candelaria v. People*[48] applies:

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[42] 377 Phil. 445 (1999) [*Per Curiam*, *En Banc*].

[43] 368 Phil. 143 (1999) [*Per Curiam*, *En Banc*].

[44] 478 Phil. 167 (2004) [Per *J.* Callejo, Sr., Second Division].

[45] *Id*. at 187.

[46] *Id*. at 188.

[47] *Viray v. People*, 720 Phil. 841-855 (2013) [Per *J.* Velasco, Jr., Third Division].

[48] 749 Phil. 517 (2014) [Per *J.* Perlas-Bernabe, First Division].

In the absence of independent and reliable corroboration of such estimate, the courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.[49] (Emphasis supplied, citation omitted.)

Given that the value of the stolen personal properties in this case was not determined by reliable evidence independent of the prosecution's uncorroborated testimonies, this Court is constrained to apply the minimum penalty under Article 309(6) of the Revised Penal Code, as amended by Section 81 of Republic Act No. 10951, which is *arresto mayor*.

However, in view of Article 310 of the Revised Penal Code concerning qualified theft,[50] accused-appellant must be meted a penalty two (2) degrees higher, i.e., *prision correccional* in its medium and maximum periods with a range of two (2) years, four (4) months, and one (1) day to six (6) years.

Also applying the Indeterminate Sentence Law, where there are no modifying circumstances and the minimum of the indeterminate penalty is computed from the full range of *arresto mayor in its maximum period* to *prision correccional in its minimum period* and the maximum of the indeterminate penalty is reckoned from the medium of *prision correccional in its medium and maximum period*, accused-appellant must only suffer a minimum indeterminate penalty of **four (4) months and one (1) day of *arresto mayor* to a maximum of three (3) years, six (6) months, and twenty-one (21) days of *prision correccional*.**

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[49] *Id*. at 527.

[50] REV. PEN. CODE, Art. 310 provides:

Article 310. *Qualified theft*. — The crime of theft shall be punished by the **penalties next higher by two degrees** than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied)

In view of these considerations, this Court finds that accused-appellant is now entitled to *immediate release* for having fully served her sentence. In a Letter from Elsa Aquino-Albado, Officer-in-Charge of the Correctional Institution for Women, dated October 15, 2016,[51] she affirmed that accused-appellant has been confined since **February 10, 2014** until today. Evidently, she has been deprived of her liberty for a period well beyond what the law has required, having already served her time for **almost 4 years**.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed Court of Appeals July 30, 2015 Decision in CA-G.R. CR HC No. 06778 is **AFFIRMED WITH MODIFICATION**.

While this Court affirms that accused-appellant Belen Mejares y Valencia is **GUILTY** of the offense of qualified theft, the prosecution failed to discharge the burden of proving the total value of the stolen articles through reliable and independent evidence. Thus, pursuant to Article 309(6) of the Revised Penal Code, as amended by Republic Act No. 10951, and upon application of the Indeterminate Sentence Law, accused-appellant is sentenced to suffer only the minimum penalty of four (4) months and one (1) day of *arresto mayor* to the maximum penalty of three (3) years, six (6) months, and twenty-one (21) days of *prision correccional*. Complainant Jacqueline Gavino is likewise no longer entitled to reparation.

However, given that accused-appellant has been confined for almost four (4) years already since February 10, 2014, she is now considered to have fully served her sentence and **MUST BE IMMEDIATELY RELEASED**, unless she is being detained for a separate charge.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

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[51] *Rollo*, p. 30.

SECOND DIVISION

[G.R. No. 227215. January 10, 2018]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **LEONOR MACABAGDAL, represented by EULOGIA MACABAGDAL PASCUAL (formerly John Doe "DDD"),** *respondent.*

SYLLABUS

1. **POLITICAL LAW; POWER OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION; THE PURPOSE OF JUST COMPENSATION IS NOT TO REWARD THE OWNER FOR THE PROPERTY TAKEN, BUT TO COMPENSATE HIM FOR THE LOSS THEREOF.—** The purpose of just compensation is not to reward the owner for the property taken, but to compensate him for the loss thereof. As such, the true measure of the property, as upheld in a plethora of cases, is the market value at the time of the taking, when the loss resulted. Indeed, the State is not obliged to pay premium to the property owner for appropriating the latter's property; it is only bound to make good the loss sustained by the landowner, with due consideration to the circumstances availing at the time the property was taken.

2. **ID.; ID.; ID.; ID.; THE VALUE OF THE LANDHOLDINGS SHOULD BE EQUIVALENT TO THE PRINCIPAL SUM OF THE JUST COMPENSATION DUE, AND INTEREST IS DUE AND SHOULD BE PAID TO COMPENSATE FOR THE UNPAID BALANCE OF THE PRINCIPAL SUM AFTER TAKING HAS BEEN COMPLETED.—** In addition, the Court also recognizes that the owner's loss is not only his property, but also its income-generating potential. Thus, when property is taken, full compensation of its value must be immediately paid to achieve a fair exchange for the property and the potential income lost. The value of the landholdings should be equivalent to the principal sum of the just compensation due, and **interest is due and should be paid to compensate**

for the unpaid balance of this principal sum after taking has been completed. This shall comprise the *real*, *substantial*, *full*, and *ample* value of the expropriated property, and constitutes due compliance with the constitutional mandate of just compensation in eminent domain.

3. ID.; ID.; ID.; ID.; DELAY IN THE PAYMENT OF JUST COMPENSATION AMOUNTS TO AN EFFECTIVE FORBEARANCE OF MONEY, ENTITLING THE OWNER TO INTEREST ON THE DIFFERENCE IN THE AMOUNT BETWEEN THE FINAL AMOUNT AS ADJUDGED BY THE COURT AND THE INITIAL PAYMENT MADE BY THE GOVERNMENT; APPLICABLE RATE OF INTEREST IN CASE AT BAR, EXPLAINED.— It is settled that the delay in the payment of just compensation amounts to an effective forbearance of money, entitling the landowner to interest on the difference in the amount between the final amount as adjudged by the court and the initial payment made by the government. However, as aptly pointed out by petitioner, the twelve percent (12%) p.a. rate of legal interest is only applicable until June 30, 2013. Thereafter, legal interest shall be at six percent (6%) p.a. in line with BSP-MB Circular No. 799, Series of 2013. Prevailing jurisprudence has upheld the applicability of BSP-MB Circular No. 799, Series of 2013 to **forbearances of money in expropriation cases**, contrary to respondent's contention. The cases of *Sy v. Local Government of Quezon City* and *Land Bank of the Philippines v. Wycoco*, cited by respondent are both inapplicable because they were all decided prior to the effectivity of BSP-MB Circular No. 799, Series of 2013 on July 1, 2013. Nonetheless, it bears to clarify that legal interest shall run *not* from the date of the filing of the complaint but from the date of the issuance of the Writ of Possession on May 5, 2008, since it is from this date that the fact of the deprivation of property can be established. As such, it is only proper that accrual of legal interest should begin from this date. Accordingly, the Court deems it proper to correct the award of legal interest to be imposed on the unpaid balance of the just compensation for the subject lot, which shall be computed at the rate of twelve percent (12%) p.a. from the date of the taking on May 5, 2008 until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due respondent shall earn legal interest at the rate of six percent (6%) p.a.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Ricardo Pilares, Jr. for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated September 13, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 104473, which affirmed the Decision[3] dated October 30, 2014 of the Regional Trial Court of Valenzuela City, Branch 172 (RTC) in Civil Case No. 49-V-08, imposing legal interest on the unpaid balance of the just compensation for the subject lot at the rate of twelve percent (12%) per annum (p.a.) computed from the time of the taking of the property until full payment.

The Facts

On January 23, 2008, petitioner the Republic of the Philippines (petitioner), represented by the Department of Public Works and Highways, filed[4] before the RTC a complaint[5] against an unknown owner for the expropriation of a 200-square meter (sq. m.) lot located in Barangay Ugong, Valenzuela City, identified as Lot 1343-A-2-A-2-G, (LRC)Psd-315943 (subject lot),[6] for the construction of the C-5 Northern Link Road Project, otherwise known as North Luzon Expressway (NLEX) Segment 8.1,

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[1] *Rollo*, pp. 12-17.

[2] *Id.* at 23-33. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando, concurring.

[3] *Id.* at 125-130. Penned by Judge Nancy Rivas-Palmones.

[4] *Id.* at 23 and 125.

[5] Dated October 11, 2007. *Id.* at 34-40.

[6] See Technical Description by Geodetic Engineer Epifanio D. Lopez; *id.* 42-43.

traversing from Mindanao Avenue in Quezon City to the NLEX in Valenzuela City.[7]

Petitioner thereafter applied for, and was granted[8] a writ of possession over the subject lot on May 5, 2008, and was required[9] to deposit with the court the amount of ₱550,000.00 (*i.e.*, at ₱2,750.00/sq. m.) representing the zonal value thereof (provisional deposit).[10]

On August 28, 2012, respondent Leonor Macabagdal (respondent), represented by Eulogia Macabagdal Pascual, was substituted as party-defendant upon sufficient showing that the subject lot is registered in her name under Transfer Certificate Title No. (TCT) V-103067. Respondent did not oppose the expropriation, and received the provisional deposit.[11]

The RTC appointed a board of commissioners to determine the just compensation for the subject lot, which thereafter submitted its Commissioners' Report (Re: Just Compensation)[12] dated May 23, 2014, recommending a fair market value of ₱9,000.00/sq. m. as the just compensation for the subject lot, taking into consideration its location, neighborhood and land classification, utilities, amenities, physical characteristics, occupancy and usage, highest and best usage, current market value offerings, as well as previously decided expropriation cases of the same RTC involving properties similarly situated in the same barangay.[13]

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[7] *Id*. at 35-36 and 125.

[8] See Order dated May 5, 2008 issued by Acting Presiding Judge Ma. Belen Ringpis Liban; *id*. at 52-55.

[9] See Order dated September 9, 2008 issued by Judge Nancy Rivas-Palmones; *id*. at 56-57.

[10] *Id*. at 24, 36, and 125.

[11] *Id*. at 125.

[12] *Id*. at 58-65.

[13] See *id*. at 60-64.

The RTC Ruling

In a Decision[14] dated October 30, 2014, the RTC found the recommendation of the commissioners to be reasonable and just, and accordingly: (*a*) fixed the just compensation for the subject lot at ₱9,000.00/sq. m.; (*b*) directed petitioner to pay the same, less the provisional deposit of ₱550,000.00; and (*c*) imposed legal interest at the rate of twelve percent (12%) p.a. on the unpaid balance, computed from the time of the taking of the subject lot until full payment.[15]

Dissatisfied, petitioner appealed[16] before the CA, questioning the just compensation of 9,000.00/sq. m. and the award of twelve percent (12%) interest rate p.a., instead of six percent (6%) p.a.[17] as provided under *Bangko Sentral ng Pilipinas* Monetary Board (BSP-MB) Circular No. 799, Series of 2013.[18]

The CA Ruling

In a Decision[19] dated September 13, 2016, the CA affirmed the RTC Decision, holding that the commissioners, in their recommendation, observed the parameters[20] set forth under Section 5 of Republic Act No. 8974,[21] and the findings of the RTC was amply supported by the evidence on record.[22]

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[14] *Id*. at 125-130.

[15] See *id*. at 130.

[16] See Brief for the Plaintiff-Appellant dated July 22, 2015; *id.* at 131-146.

[17] *Id*. at 27.

[18] Entitled "Subject: Rate of interest in the absence of stipulation" (July 1, 2013).

[19] *Rollo*, pp. 23-33.

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

[21] Entitled "AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES," approved on November 7, 2000.

[22] *Rollo*, p. 33.

Hence, the instant petition claiming that the CA did not rule on the issue of the applicable rate of interest which, in this case, should be at twelve percent (12%) p.a. from the filing of the complaint until June 30, 2013, and thereafter, at six percent (6%) p.a. until full payment.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in affirming the RTC's imposition of interest at the rate of twelve percent (12%) p.a. on the unpaid balance, computed from the time of the taking of the subject lot until full payment.

The Court's Ruling

The petition is partly meritorious.

The purpose of just compensation is not to reward the owner for the property taken, but to compensate him for the loss thereof. As such, the true measure of the property, as upheld in a plethora of cases, is the market value at the time of the taking, when the loss resulted.[23] Indeed, the State is not obliged to pay premium to the property owner for appropriating the latter's property; it is only bound to make good the loss sustained by the landowner, with due consideration to the circumstances availing at the time the property was taken.[24]

In addition, the Court also recognizes that the owner's loss is not only his property, but also its income-generating potential. Thus, when property is taken, full compensation of its value must be immediately paid to achieve a fair exchange for the property and the potential income lost.[25] The value of the landholdings should be equivalent to the principal sum of the just compensation due, and **interest is due and should be paid to compensate for the unpaid balance of this principal sum**

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[23] *Sec. of the Dep't. of Public Works and Highways v. Sps. Tecson*, 758 Phil. 604, 634 (2015).

[24] *Id.* at 635.

[25] *Id.*

after taking has been completed.[26] This shall comprise the *real*, *substantial*, *full*, and *ample* value of the expropriated property, and constitutes due compliance with the constitutional mandate of just compensation in eminent domain.[27]

In this case, from the date of the taking of the subject lot on May 5, 2008 when the RTC issued a writ of possession[28] in favor of petitioner,[29] until the just compensation therefor was finally fixed at ₱9,000.00/sq. m., petitioner had only paid a provisional deposit in the amount of ₱550,000.00 (*i.e.*, at ₱2,750.00/sq. m.). Thus, this left an unpaid balance of the "principal sum of the just compensation," warranting the imposition of interest. It is settled that the delay in the payment of just compensation amounts to an effective forbearance of money, entitling the landowner to interest on the difference in the amount between the final amount as adjudged by the court and the initial payment made by the government.[30]

However, as aptly pointed out by petitioner,[31] the twelve percent (12%) p.a. rate of legal interest is only applicable until June 30, 2013. Thereafter, legal interest shall be at six percent (6%) p.a. in line with BSP-MB Circular No. 799, Series of 2013. Prevailing jurisprudence[32] has upheld the applicability of BSP-MB Circular No. 799, Series of 2013 to **forbearances**

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[26] *Apo Fruits Corp. v. Land Bank of the Phils.*, 647 Phil. 251, 285 (2010).

[27] *Sec. of the Dep't. of Public Works and Highways v. Sps. Tecson*, *supra* note 23, at 642.

[28] See *Republic v. Mupas*, 769 Phil. 21, 199-200 and 223 (2015).

[29] *Rollo*, p. 56.

[30] See *Evergreen Manufacturing Corp. v. Republic*, G.R. Nos. 218628 and 218631, September 6, 2017; and *Republic v. Cebuan*, G.R. No. 206702, June 7, 2017.

[31] See *rollo*, p. 15.

[32] See *Evergreen Manufacturing Corp. v. Republic*, *supra* note 30; *Land Bank of the Philippines v. Omengan*, G.R. No. 196412, July 19, 2017; *Republic v. Cebuan*, *supra* note 30; *National Power Corporation v. Heirs of Ramoran*, G.R. No. 193455, June 13, 2016, 793 SCRA 211; and *Republic v. Mupas*, *supra* note 28.

of money in expropriation cases, contrary to respondent's contention.[33] The cases of *Sy v. Local Government of Quezon City*[34] and *Land Bank of the Philippines v. Wycoco*,[35] cited by respondent are both inapplicable because they were all decided prior to the effectivity of BSP-MB Circular No. 799, Series of 2013 on July 1, 2013.[36]

Nonetheless, it bears to clarify that legal interest shall run *not* from the date of the filing of the complaint but from the date of the issuance of the Writ of Possession on May 5, 2008, since it is from this date that the fact of the deprivation of property can be established. As such, it is only proper that accrual of legal interest should begin from this date.[37] Accordingly, the Court deems it proper to correct the award of legal interest to be imposed on the unpaid balance of the just compensation for the subject lot, which shall be computed at the rate of twelve percent (12%) p.a. from the date of the taking on May 5, 2008 until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due respondent shall earn legal interest at the rate of six percent (6%) p.a.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated September 13, 2016 of the Court of Appeals

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[33] *Rollo*, p. 164.

[34] 710 Phil. 549 (2013).

[35] 464 Phil. 83 (2004).

[36] In *Sec. of the Dep't. of Public Works and Highways v. Sps. Tecson* (*supra* note 23, at 639), the Court summarized the applicable rates of interest to loans or forbearance of money in the absence of an express contract as to such rate of interest, for the period of 1940 to present as follows:

Law, Rule and Regulations, BSP Issuances	Date of Effectivity	Interest Rate
Act No. 2655	May 1, 1916	6%
Central Bank (CB) Circular No. 416	July 29, 1974	12%
CB Circular No. 905	December 22, 1982	12%
BSP Circular No. 799	July 1, 2013	6%

[37] *National Power Corporation v. Heirs of Ramoran*, *supra* note 32, at 219.

(CA) in CA-G.R. CV No. 104473 is hereby **AFFIRMED** with the **MODIFICATION** imposing legal interest at the rate of twelve percent (12%) per annum (p.a.) on the unpaid balance of the just compensation, as determined by the Regional Trial Court of Valenzuela City, Branch 172, reckoned from the date of the taking on May 5, 2008 to June 30, 2013 and, thereafter, at six percent (6%) p.a. until full payment. The rest of the CA Decision stands.

SO ORDERED.

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

Reyes, Jr., J., on leave.

SECOND DIVISION

[G.R. No. 227395. January 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **OSCAR GIMPAYA and ROEL GIMPAYA,** *accused*, **OSCAR GIMPAYA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT; AS A GENERAL RULE, FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED GREAT WEIGHT AND RESPECT ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT; EXCEPTION; PRESENT IN CASE AT BAR.— As a general rule, factual findings of the trial court are accorded great weight and respect especially when they are affirmed by the appellate court. However, as with every rule, there are exceptions. In the case of *Quidet v. People*, the Court held: x x x where the trial court

overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. x x x In the instant case, the Court finds that the prosecution failed to prove beyond reasonable doubt the existence of conspiracy between accused-appellant Oscar and his co-accused Roel in the killing of Genelito.

2. CRIMINAL LAW; REVISED PENAL CODE; MURDER; CONSPIRACY; THE ESSENCE OF CONSPIRACY IS THE UNITY OF ACTION AND PURPOSE; NOT ESTABLISHED IN CASE AT BAR.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Conspiracy requires the same degree of proof required to establish the crime — proof beyond reasonable doubt. The RTC did not discuss its finding of conspiracy; it merely held that "both accused acted in concert towards a common criminal goal." Conspiracy was not also discussed by the CA. On the subject, the appellate court only said that "[the] [a]ccused-[a]ppellant [Oscar] and [a]ccused Roel Gimpaya acted in concert in killing the victim." These pronouncements do not sufficiently establish that there was a conspiracy between Oscar and Roel in the stabbing of the victim. The records are also wanting of any indication of conspiracy. To determine if Oscar conspired with Roel, the Court must examine the overt acts of accused-appellant before, during, and after the stabbing incident and the totality of the circumstances. The inception and location of the stabbing incident must also be considered. x x x As it was not Oscar who delivered the fatal blow (or any blows, at all) it was incumbent upon the prosecution to establish the existence of conspiracy. It must be borne in mind that the evidence required to prove conspiracy is of the same weight of evidence needed to establish the crime itself—proof beyond reasonable doubt. Even if the prosecution's version were to be believed, to the mind of the Court, the act of Oscar in merely hugging the victim does not establish conspiracy in the intent to kill. It was not proven that he acted in concert with Roel or that he even knew of Roel's intention to stab Genelito. It was not established that Oscar was hugging

Genelito deliberately to enable Roel to stab him as he had no knowledge of Roel's intention. The RTC's finding that this constituted conspiracy is thus a mere conjecture.

3. ID.; ID.; ID.; ID.; WHILE NON-FLIGHT IS NOT NECESSARILY AN INDICATION OF INNOCENCE, THE COURT RECOGNIZED THAT TAKEN TOGETHER WITH OTHER CIRCUMSTANCES, IT MAY BOLSTER THE INNOCENCE OF THE ACCUSED; CASE AT BAR.— While non-flight is not necessarily an indication of innocence, this Court has recognized that taken together with other circumstances, it may bolster the innocence of the accused. x x x Oscar can neither be considered a principal by indispensable cooperation or an accomplice. The cooperation that the law punishes is the assistance knowingly or intentionally rendered that cannot exist without previous cognizance of the criminal act intended to be executed. As discussed above, there is nothing on record which indicates that Oscar knew that Roel was going to stab Genelito. Notably, it was not Oscar, but his wife Lea, who called for help as she witnessed the altercation between Genelito and her husband. In addition, the stabbing incident was done in the heat of the moment, it was not premeditated or planned. x x x Thus, as admitted by Roselyn herself, she did not witness the actual stabbing incident. Furthermore, her testimony that she saw Oscar strangling her husband is not supported by the Medico-Legal Report and Death Certificate which both declare the cause of death as "stab wound" and not strangulation. There were also no findings of abrasions or bruising in the neck and jaw area in the said documents to indicate strangulation. Absent any evidence to create the moral certainty required to convict accused-appellant Oscar, the Court cannot uphold the RTC and CA's finding of guilt. Oscar's guilt was not proven beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an Appeal[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision[2] (assailed Decision) dated September 18, 2015 of the Court of Appeals (CA), Sixth (6th) Division in CA-G.R. CR HC No. 06785. The assailed Decision affirmed the Judgment[3] (RTC Decision) dated January 24, 2014 of the Regional Trial Court (RTC) of Biñan, Laguna, Branch 24, in Crim. Case No. 11475-B, finding herein accused-appellant Oscar Gimpaya (Oscar) and his co-accused Roel Gimpaya (Roel) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Information states as follows:

> That on or about September 16, 2000, in the Municipality of Biñan, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Oscar Gimpaya and Roel Gimpaya conspiring, confederating together and mutually helping one another, with intent to kill, abuse of superior strength and treachery while conveniently armed with a deadly bladed weapons (*sic*) (kampitan), did then and there wilfully, unlawfully and feloniously attack, assault and stab Genelito Clete y Gabuyo several times on the trunk which directly caused his death, to the damage and prejudice of his surviving heirs.
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> CONTRARY TO LAW.[4]

Oscar entered a plea of "not guilty" upon his arraignment.[5] Roel was still at-large as of the promulgation of the RTC Decision.

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[1] *Rollo*, pp. 12-15.

[2] *Id*. at 2-11. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring.

[3] CA *rollo*, pp. 55-60. Penned by Presiding Judge Marino E. Rubia.

[4] Records, p. 1

[5] *Id*. at 16-18.

The Facts

Version of the Prosecution

Roosevelt Agamosa (Roosevelt), the victim's neighbor, and Roselyn Clete (Roselyn), the victim's wife, testified as to the commission of the crime.

The testimonies of both witnesses, as summarized by the RTC, are as follows:

> Witness ROOSEVELT AGAMOSA testified: that he witnessed the commotion between the two (2) accused and victim, Genelito Clete; that he saw the victim Genelito Clete being hugged by accused Oscar Gimpaya while the other accused Roel Gimpaya was stabbing him; that when accused Roel Gimpaya saw the witness he uttered the words: "IKAW, GUSTO MO?"; that the witness upon hearing said utterance, ran and met along the way the wife of the victim Genelito Clete, Roselyn Clete; that Roselyn Clete likewise saw the manner how her husband was stabbed to death; that the victim was brought to the University of Perpetual Help System Hospital, where he was pronounced dead on arrival.
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> x x x x x x x x x
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> The witness [Roselyn B. Clete] testified: that on September 16, 2000 she was inside their house while the commotion happened; that as she was about to check what the commotion was all about, she was met by one Roosevelt Agamosa, who informed her that her husband Genelito Clete was stabbed; that when she reached the place of the incident, she saw the lifeless and bloodied body of her husband slumped on the ground; that [s]he saw accused Oscar Gimpaya on top of her husband as the former was strangling her husband; that the witness tried to help as she came to the assistance of her husband, but accused Oscar Gimpaya shoved her away; that thereafter, the Barangay authorities arrived; that her husband Genelito Clete was brought to [the] University of Perpetual Help Hospital, and died thereat.[6]

The prosecution also presented Dr. Erwin M. Escal, the Medico-Legal officer who examined the body of the victim

[6] CA *rollo*, p. 56.

Genelito Clete (Genelito) and prepared the Medico-Legal Report[7] and Death Certificate[8] which both indicated the cause of death as "stab wound." Abelardo Potenciano Almarinez, the employer of the victim, also testified as to the earnings of the victim at the time of his death.[9]

Version of the Defense

The defense presented the accused-appellant Oscar and his wife, Lea Gimpaya. Their testimonies, as summarized by the RTC, are as follows:

> The witness [Lea Gimpaya] testified: that when the incident happened, she was present; that the aggression came from the deceased himself Genelito Clete y Gabuyo; that one (1) of the accused herein was attacked by Genelito Clete and the other accused merely pacified him; that she is the wife of accused Oscar Gimpaya; that the other accused who remains to be at-large up to the present, named Roel Gimpaya is the cousin of her husband; that around 7:20 in the evening, upon her husband's arrival at home, she had coffee with him; the victim, Gene[l]ito Clete called on her husband, Oscar Gimpaya, and so the latter went outside their house; that Genelito Clete hit her husband Oscar Gimpaya with a long object which appears to be an umbrella; that Oscar Gimpaya fell down, thereafter, Genelito Clete went over him and continuously boxed him; that the witness shouted out for help and so Roel Gimpaya arrived at the scene; that when Roel Gimpaya approached Genelito Clete, Roel stabbed Genelito at his back and that her husband even tried to join the group that brought Genelito in going to [the] hospital, but he was already arrested by the Barangay Officials.
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> x x x x x x x x x
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> [Accused-appellant Oscar] testified: that he denies the allegation in the Criminal Information pertaining to the incident that happened on September 16, 2000; that he had been detained at the Provincial Jail of Santa Cruz, Laguna for nine (9) years and four (4) months at

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[7] Records, pp. 52-53.

[8] *Id.* at 10.

[9] CA *rollo*, p. 57.

the time that he took the witness stand and that his co-accused Roel Gimpaya is his cousin.[10]

Ruling of the RTC

The RTC held Oscar and Roel guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, and sentenced them to *reclusion perpetua*.[11] In arriving at its Decision, the trial court ruled:

> Based on the totality of the circumstances this Court is led to the inevitable conclusion that both the accused are guilty of the crime imputed against them. This Court have (*sic*) consistently ruled that there is treachery when the offender/s commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. x x x
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> In the case at bar, this Court appreciates the element of treachery, which as defined indicates that it is subjective in character. It was deliberately sought by the two (2) accused and consciously adopted the same as their mode of attack. The victim was rendered helpless and defenseless, as when he was hugged by accused Oscar Gimpaya while being stabbed to death by co-accused Roel Gimpaya, both accused acted in concert towards a common criminal goal.
>
> Indeed, the essence of treachery is the swift and unexpected attack on an unarmed victim even with provocation on his part.[12]

Oscar was further ordered to pay the heirs of the victim Fifty Thousand Pesos (₱50,000.00) as indemnity and the aggregate amount of One Hundred Thousand (₱100,000.00) as actual, moral, and exemplary damages. An alias warrant of arrest without expiration was issued against Roel.[13]

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

[11] See *id*. at 59-60.

[12] *Id*. at 59.

[13] *Id*. at 60.

Oscar appealed to the CA via Notice of Appeal[14] dated February 3, 2014. Oscar then filed his Brief[15] dated February 26, 2015, while the plaintiff-appellee, through the Office of the Solicitor General (OSG), filed its Brief[16] dated July 1, 2015. Thereafter, the appeal was submitted for decision.[17]

Ruling of the CA

The CA affirmed the RTC Decision with modification only as to the award of damages.[18]

The appellate court held that the prosecution was able to prove all the elements of Murder qualified by treachery. The witness Roosevelt had positively identified accused-appellant Oscar as the person who embraced and locked the victim while being stabbed by Roel. In so doing, the victim was completely deprived of the chance to defend himself. Such method employed by both the accused insured the execution of their plan to kill the victim. Thus, treachery clearly attended the killing of the victim.[19]

The CA then modified the award of damages accordingly: Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.[20]

On October 8, 2015, Oscar brought the instant case before this Court via Notice of Appeal.

In lieu of supplemental briefs, Oscar and plaintiff-appellee filed separate manifestations respectively dated February 10,

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[14] *Id*. at 30.

[15] *Id*. at 39-54.

[16] *Id*. at 71-87.

[17] CA Resolution dated August 10, 2015; *id*. at 94.

[18] *Rollo*, p. 10.

[19] See *id*. at 6-9.

[20] *Id*. at 10.

2017[21] and February 9, 2017,[22] foregoing their right to file the same.

Issue

Whether or not Oscar's guilt for the crime of Murder was proven beyond reasonable doubt.

The Court's Ruling

The Appeal is meritorious.

As a general rule, factual findings of the trial court are accorded great weight and respect especially when they are affirmed by the appellate court. However, as with every rule, there are exceptions. In the case of *Quidet v. People*,[23] the Court held:

> x x x where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. x x x[24]

In the instant case, the Court finds that the prosecution failed to prove beyond reasonable doubt the existence of conspiracy between accused appellant Oscar and his co-accused Roel in the killing of Genelito.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[25] The essence of conspiracy is the unity of action and purpose. Conspiracy requires the same degree of proof required to establish the crime — proof beyond reasonable doubt.[26]

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

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

[23] 632 Phil. 1 (2010).

[24] *Id*. at 12.

[25] REVISED PENAL CODE, Art. 8, par. 2.

[26] *San Juan v. People*, 664 Phil. 547, 562 (2011).

The RTC did not discuss its finding of conspiracy; it merely held that "both accused acted in concert towards a common criminal goal."[27] Conspiracy was not also discussed by the CA. On the subject, the appellate court only said that "[the] [a]ccused-[a]ppellant [Oscar] and [a]ccused Roel Gimpaya acted in concert in killing the victim."[28] These pronouncements do not sufficiently establish that there was a conspiracy between Oscar and Roel in the stabbing of the victim.

The records are also wanting of any indication of conspiracy. To determine if Oscar conspired with Roel, the Court must examine the overt acts of accused-appellant before, during, and after the stabbing incident and the totality of the circumstances. The inception and location of the stabbing incident must also be considered. These can be gleaned from the testimony of prosecution witness Roosevelt:

[Cross-examination of Roosevelt by Atty. Froilan Geronga]

Q Whose houses are inside the Almarinez Compound?

A Houses of ... there are several houses, sir, I just do not know the owners of that house. I only know Mang Danny who has a house there, sir.

Q I will help you recall. Is it not a fact that one of the houses there is owned by Oscar Gimpaya. Is that correct?

A Yes, sir. That is correct.

Q Another house located inside the compound is the house of another person by the name of Roel Gimpaya?

A Yes, sir.

Q How far was the house of Roel Gimpaya from the house [of] Oscar Gimpaya?

A Two houses apart, sir.

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[27] RTC Decision, p. 5, CA *rollo*, p. 59.

[28] CA Decision, p. 8, *rollo*, p. 9.

Q When you say two houses apart, are these houses independent or separately built Mr. Witness?

A Magkakadikit, sir.

x x x x x x x x x

Q You also know personally the person of Genelito Clete, allegedly the victim of the stabbing incident, Mr. Witness?

A Yes, sir, I know him.

Q The house of Genelito Clete is also located inside the Almarinez Compound?

A Yes, sir.

Q How far is that house of Genelito Clete from the House of Oscar Gimpaya, Mr. Witness?

A Malayo po, tatawid po ng highway.

x x x x x x x x x

Q How big is the compound if you say the house of Clete is also inside the compound Mr. Witness?

A It is big. It is a huge compound. There are actually two portions of the said compound, sir.

Q So, for clarification, Mr. Witness, you are telling this x x x Honorable Court that there are two Almarinez Compound?

A Yes, sir.

Q And these two Almarinez Compound are divided by the highway. Is that correct?

A Yes, sir.

Q In the first compound where the house ... I will recall ... the house of Oscar Gimpaya is located inside the first compound?

A Yes, sir.

Q And the house of Clete is located on the other compound?

A Yes, sir.

x x x x x x x x x

Q How does a person go inside the compound where the house of Oscar Gimpaya is located?

A There is a passage way in going inside the ... inside the compound, sir.

x x x x x x x x x

Q Aside from that passageway, there is no other exit or entrance?

A Yes, sir.

Q In relation to the passageway that you mentioned, where were you at the time you saw accused Oscar Gimpaya and Genelito Clete quarreling?

A I was standing on top of the [p]iles of cement pipes, sir.

Q How far were you from the passage way that you mentioned?

A About three (3) meters, sir.

Q At that juncture Mr. Witness, before the quarreling took place, is it not a fact that Genelito Clete entered the compound through the passageway you mentioned?

A Yes, sir.

x x x x x x x x x

Q Okay, will you tell us the distance where you saw Genelito Clete now bloodied in relation to the house of Oscar Gimpaya?

x x x x x x x x x

Q About ten (10) arms length, sir.[29]

Based on Roosevelt's testimony, it was the victim, Genelito, who went to the house of Oscar where the quarrel and stabbing incident took place. This is corroborated by the testimony of the wife of Oscar, Lea Gimpaya:

[Direct examination of Lea Gimpaya by Atty. Angel Navarroza]

Q Madam Witness, do you know Oscar Gimpaya?

A Yes, sir.

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[29] TSN, May 7, 2002, pp. 5-15.

Q Who is he in relation to you?

A He is my husband, sir.

Q How about Roel Gimpaya, do you know him?

A Yes, sir.

Q Who is he in relation to you?

A Cousin of my husband, sir.

Q On the 16th day of September 2000, do you recall where were you then?

A Yes, sir.

Q Where were you then?

A I was inside our house, sir.

x x x x x x x x x

Q When you were inside your house, do you recall of any untoward incident that you witnessed or that happened then?

A None, sir.

Q After that, do you recall of any incident that happened?

A My husband went home, sir.

Q What time when your husband arrived?

A Around 7:20, sir.

Q Morning or p.m.?

A In the evening, sir.

Q At what date?

A September 16, 2000, sir.

Q Upon arrival of your husband, what happened next?

A I gave him coffee and somebody called on him, sir.

Q Do you know who is that somebody that called him?

A Genelito Clete, sir.

Q You said Genelito Clete called your husband, what did your husband do when he was called?

A He went outside, sir.

Q When he went out where were you then?

A I followed him, sir.

Q Was your husband able to approach the one calling him?

A Yes, sir.[30]

Thus, Oscar was just at his house on September 16, 2000 at around 7:00 p.m. when he was called upon by Genelito. The house of Oscar and Genelito are on separate sides of the Almarinez Compound while the house of Roel is beside the house of Oscar.

Thereafter, Oscar and Genelito had a quarrel which escalated into a physical altercation. Roel intervened and stabbed Genelito in the back. Prosecution witness Roosevelt testified:

[Direct examination of Roosevelt by Prosecutor Eusebio Gatbonton]

Q: xxx [Did you witness] any unusual incident that happened?

A: Yes, there was.

Q: What was that unusual incident that you have witnessed?

A: There was a commotion.

Q: And what was that commotion all about?

A: There was a quarrel. There was a fight.

x x x x x x x x x

Q: **xxx who were those persons quarrelling?**

A: **Oscar Gimpaya and Lito.**

Q: **Who else?**

A: **Just the two of them.**

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[30] TSN, September 1, 2005, pp. 6-11.

Q: While these two were quarrelling what happened next?

A: Until it led to stabbing incident.

Q: You said that there was stabbing incident that insued (*sic*). Will you please tell the Honorable Court who were those persons involved in the said stabbing incident?

A: Roel Gimpaya and Oscar Gimpaya.

Q: And who else?

A: And the victim who died, Lito.

Q: Will you please tell the Honorable Court how the stabbing incident happened?

A: I noticed that while they were fighting, Oscar Gimpaya embraced Lito while Roel Gimpaya was stabbing him.

x x x x x x x x x

Q: Will you please explain further how did the said person stabbed (*sic*) the victim in this case?

A: When he was stabbed, Oscar Gimpaya embraced the victim Lito while Roel Gimpaya was stabbing Lito at his back.

x x x x x x x x x

Q: How far were you when you saw them?

A: About three (3) meters.

Q: What was the condition of your surroundings when you saw the stabbing incident?

A: In the area where they were fighting it was dark.

Q: And the place where the stabbing incident happened?

A: It was dark.

x x x x x x x x x

Fiscal Gatbonton: If I am the victim, how was I held by one of the accused?

A: This way.

Interpreter: Witness demonstrated how accused Oscar Gimpaya embraced the victim by putting his arms over the shoulder of the victim, encircling both arms.

Q: Where was Roel Gimpaya standing while he was stabbing the said victim in this case?

A: He was standing at the back of the victim, Lito, so that the back portion of the body of Lito was in front of the body of the one who stabbed him.

x x x x x x x x x

Q: What happened next after [Genelito] was stabbed?

A: He was raising his hand asking for help.

x x x x x x x x x

Q: In what instance, if you know, when Lito, the victim, was able to be released from the embrace of Oscar Gimpaya? (*sic*)

A: When the Barangay Officials arrived.

Q: And what happened after the Barangay Officials arrived?

A: Oscar Gimpaya was apprehended.

Q: How about the other accused?

A: He escaped.[31]

This testimony is also confirmed by the testimony of Lea:

[Direct examination of Lea Gimpaya by Atty. Navarroza (*continued*)]

Q Was your husband able to approach the one calling him?

A Yes, sir.

Q After that what happened?

A Genelito Clete hit Oscar Gimpaya, sir.

Q Hit by what Madam Witness?

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[31] TSN, April 23, 2002, pp. 3-7.

A He was struck with a long object which looks like an umbrella, sir.

Q What did your husband do because of that striking?

A He fell down, sir.

Q When he fell down, what happened next?

A Genelito Clete went over him and continuously boxed him, sir.

Q **At that instance when Genelito Clete was continuously boxing your husband, what transpired next?**

A **I shouted for help and Roel appeared, sir.**

Q Who is this Roel?

A The cousin of Oscar Gimpaya, sir.

Q Is this the same Roel the accused in this case?

A Yes sir.

Q **And what did Roel do when he peeped?**

A **After Roel had peeped on what was happening, he went back to the room and went out again and he approached Genelito Clete, sir.**

Q **When this accused Roel approached Genelito Clete, what happened next?**

A **Roel stabbed Genelito, sir.**

Q **Do you know what portion of Genelito's body he was hit?**

A **At his back, sir.**

Q How many times?

A I did not see anymore how many times he was stabbed because when Roel stabbed Genelito I together with my children went away, sir.

Q After that what else do you know about this incident?

A The barangay officials arrived, Oscar even tried to join them in going to the hospital but he was already arrested by the barangay officials, sir.[32] (Emphasis supplied)

There are thus conflicting versions as to Oscar's participation in the incident. According to prosecution witness Roosevelt, Oscar was hugging Genelito. Meanwhile, defense witness Lea testified that Oscar had fallen down after being struck by Genelito. The common thread in their testimony however, is that **it was Roel who stabbed Genelito in the back and not Oscar.**

As it was not Oscar who delivered the fatal blow (or any blows, at all) it was incumbent upon the prosecution to establish the existence of conspiracy. It must be borne in mind that the evidence required to prove conspiracy is of the same weight of evidence needed to establish the crime itself—proof beyond reasonable doubt.

Even if the prosecution's version were to be believed, to the mind of the Court, the act of Oscar in merely hugging the victim does not establish conspiracy in the intent to kill. It was not proven that he acted in concert with Roel or that he even knew of Roel's intention to stab Genelito. It was not established that Oscar was hugging Genelito deliberately to enable Roel to stab him as he had no knowledge of Roel's intention. The RTC's finding that this constituted conspiracy[33] is thus a mere conjecture.

In *People v. Jesalva*,[34] the Court ruled:

Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime. **It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the**

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[32] TSN, September 1, 2005, pp. 11-15.

[33] See RTC Decision, p. 5, CA *rollo*, p. 59.

[34] G.R. No. 227306, June 19, 2017.

responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose. x x x[35] (Emphasis supplied)

The necessity of community of criminal intent in conspiracy was also iterated in the case of *People v. Tilos*:[36]

The essence of conspiracy is community of criminal intent. It exists when two or more persons come to an agreement concerning the commission of a felony and perform overt acts to commit it. The overt act may consist of active participation in the actual commission of the criminal act, or it may be in the form of moral assistance such as the exertion of moral ascendancy over the other co-conspirators by moving them to implement the conspiracy. Conspiracy may be proven by direct evidence, or deduced from the manner in which the offense was committed, as when the accused acted in concert to achieve the same objective. x x x[37]

Furthermore, after the stabbing incident, Oscar did not flee and abandon the supposed victim, unlike Roel who immediately escaped and remains at-large. While non-flight is not necessarily an indication of innocence, this Court has recognized that taken together with other circumstances, it may bolster the innocence of the accused. In the case of *Buenaventura v. People*,[38] the Court held:

xxx Non-flight may not necessarily indicate innocence, but under the circumstances obtaining in the present case, **the Court recognizes the fact that while the guilty flees even as no one pursues him, the innocent remains as brave and steadfast as a lion**. x x x[39] (Emphasis supplied)

Even prosecution witness Roosevelt testified that Oscar went voluntarily with the barangay authorities after the incident:

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[35] *Id*. at 5.

[36] 402 Phil. 314 (2001).

[37] *Id*. at 327.

[38] 526 Phil. 199 (2006).

[39] *Id*. at 206.

[Cross-examination of Roosevelt by Atty. Geronga]

Q xxx Where was Oscar Gimpaya, was it Oscar Gimpaya who fled before the authorities arrived?

A Oscar Gimpaya was still embracing Genelito Clete when the Barangay Officials and police arrived, sir.

Q And he voluntarily went to the Barangay Officials?

A Yes, sir.

Q How about Roel Gimpaya, where was he when the authorities arrived at the crime scene?

A He already escaped, sir.[40]

Oscar can neither be considered a principal by indispensable cooperation or an accomplice. The cooperation that the law punishes is the assistance knowingly or intentionally rendered that cannot exist without previous cognizance of the criminal act intended to be executed.[41] As discussed above, there is nothing on record which indicates that Oscar knew that Roel was going to stab Genelito. Notably, it was not Oscar, but his wife Lea, who called for help as she witnessed the altercation between Genelito and her husband. In addition, the stabbing incident was done in the heat of the moment, it was not premeditated or planned.

The testimony of the victim's wife, Roselyn Clete, cannot be given any credence as she did not witness the stabbing incident. She arrived only thereafter as shown by her testimony:

[Direct examination of Roselyn Clete by Prosecutor Gatbonton]

Q While you were inside your house, do you remember of any unusual incident that happened during that day?

A There was a commotion going on outside our house, sir, and when I went outside the house, I met in my way Roosevelt Agamoza, sir.

Q What happened when you met in your way Roosevelt Agamoza?

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[40] TSN, May 7, 2002, pp. 18-19.

[41] *Rustia, Jr. v. People*, G.R. No. 208351, October 5, 2016, 805 SCRA 311, 324.

A He told me that my husband was stabbed.

Q What did you do if any when you learned that your husband was stabbed?

A I sent (sic) to the place of the incident, sir.

Q And were you able to reach the place of the crime?

A Yes, sir.

Q **And what happened when you reached the place?**

A **I saw the lifeless body of my husband bloodied slumped on the floor, sir.**

Q Who else if you remember have y[o]u seen in that particular place?

A I saw Oscar Gimpaya on top of my husband. He was strangling my husband, sir.[42] (Emphasis supplied)

Thus, as admitted by Roselyn herself, she did not witness the actual stabbing incident. Furthermore, her testimony that she saw Oscar strangling her husband is not supported by the Medico-Legal Report and Death Certificate which both declare the cause of death as "stab wound" and not strangulation. There were also no findings of abrasions or bruising in the neck and jaw area in the said documents to indicate strangulation.

Absent any evidence to create the moral certainty required to convict accused-appellant Oscar, the Court cannot uphold the RTC and CA's finding of guilt. Oscar's guilt was not proven beyond reasonable doubt.

WHEREFORE, premises considered, the Decision dated September 18, 2015 of the Court of Appeals, Sixth (6th) Division in CA-G.R. CR HC No. 06785 is **REVERSED** and **SET ASIDE**. Accused-appellant Oscar Gimpaya is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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[42] TSN, May 23, 2002, pp. 4-6.

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 (5) days from receipt of this Decision, the action he has taken. A copy of the Decision shall also be furnished to the Director General of the Philippine National Police for his information.

SO ORDERED.

Carpio (Chairperson), del Castillo,* and *Perlas-Bernabe, JJ.*, concur.

Reyes, Jr., J., on leave.

SECOND DIVISION

[G.R. No. 228799. January 10, 2018]

MACTAN ROCK INDUSTRIES, INC. and ANTONIO TOMPAR, *petitioners, vs.* **BENFREI S. GERMO**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT NEED NOT BE, AND ORDINARILY WILL NOT BE, CONSIDERED BY THE REVIEWING COURT, AS THESE CANNOT BE

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* Designated additional Member per Raffle dated January 8, 2018.

RAISED FOR THE FIRST TIME AT SUCH LATE STAGE; CASE AT BAR.— "As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court." While this rule admits of an exception, such is not applicable in this case. More importantly, MRII and Tompar's statements in their Answer constitute judicial admissions, which are legally binding on them. Case law instructs that even if such judicial admissions place a party at a disadvantageous position, he may not be allowed to rescind them unilaterally and that he must assume the consequences of such disadvantage, as in this case.

2. **ID.; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT; FACTUAL FINDINGS OF THE TRIAL COURT ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT, DESERVE GREAT WEIGHT AND RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION.—** Time and again, it has been consistently held that the factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect and will not be disturbed on appeal unless it appears that there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case; none of which are present insofar as this matter is concerned.

3. **MERCANTILE LAW; CORPORATION CODE; DIRECTORS, OFFICERS, OR EMPLOYEES OF A CORPORATION CANNOT BE HELD PERSONALLY LIABLE FOR THE OBLIGATIONS INCURRED BY THE CORPORATION, UNLESS IT CAN BE SHOWN THAT SUCH DIRECTOR/EMPLOYEE IS GUILTY OF NEGLIGENCE OR BAD FAITH, AND THAT THE SAME WAS CLEARLY AND CONVINCINGLY PROVEN.—** It is a basic rule that a corporation is a juridical entity which is vested with legal and personality separate and distinct from

those acting for and in behalf of, and from the people comprising it. As a general rule, directors, officers, or employees of a corporation cannot be held personally liable for the obligations incurred by the corporation, unless it can be shown that such director/officer/employee is guilty of negligence or bad faith, and that the same was clearly and convincingly proven. Thus, before a director or officer of a corporation can be held personally liable for corporate obligations, the following requisites must concur: (*1*) the 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*) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. In this case, Tompar's assent to patently unlawful acts of the MRII or that his acts were tainted by gross negligence or bad faith was not alleged in Germo's complaint, much less proven in the course of trial. Therefore, the deletion of Tompar's solidary liability with MRII is in order.

APPEARANCES OF COUNSEL

Muntuerto Miel Duyongco Cavada Law Offices for petitioners.
Javier Santiago & Torres Law Offices 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 August 8, 2016 and the Resolution[3] dated October 14, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 104431, which affirmed the Decision[4] dated January 14, 2015 of the

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[1] *Rollo*, pp. 11-47.

[2] *Id*. at 51-73. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Melchor Quirino C. Sadang concurring.

[3] *Id*. at 74.

[4] *Id*. at 117-124. Penned by Presiding Judge Antonietta Pablo-Medina.

Regional Trial Court of Muntinlupa City, Branch 276 (RTC) in Civil Case No. 11-029, finding petitioners Mactan Rock Industries, Inc. (MRII) and Antonio Tompar (Tompar) solidarily liable to pay respondent Benfrei S. Germo (Germo) the amount of ₱4,499,412.84 plus interest, damages, and attorney's fees.

The Facts

This case stemmed from a Complaint[5] for sum of money and damages filed by Germo against MRII – a domestic corporation engaged in supplying water, selling industrial maintenance chemicals, and water treatment and chemical cleaning services[6] – and its President/Chief Executive Officer (CEO), Tompar. The complaint alleged that on September 21, 2004, MRII, through Tompar, entered into a Technical Consultancy Agreement (TCA)[7] with Germo, whereby the parties agreed, *inter alia*, that: (*a*) Germo shall stand as MRII's marketing consultant who shall take charge of negotiating, perfecting sales, orders, contracts, or services of MRII, but there shall be no employer-employee relationship between them; and (*b*) Germo shall be paid on a purely commission basis, including a monthly allowance of ₱5,000.00.[8] On May 2, 2006 and during the effectivity of the TCA, Germo successfully negotiated and closed with International Container Terminal Services, Inc. (ICTSI) a supply contract of 700 cubic meters of purified water per day. Accordingly, MRII commenced supplying water to ICTSI on February 22, 2007, and in turn, the latter religiously paid MRII the corresponding monthly fees.[9] Despite the foregoing, MRII allegedly never paid Germo his rightful commissions amounting to ₱2,225,969.56 as of December 2009, inclusive of interest.[10] Initially, Germo filed a complaint before the National

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[5] Dated February 28, 2011. *Id*. at 199-203.

[6] *Id*. at 199-200.

[7] *Id*. at 132-134.

[8] See *id*. at 200.

[9] *Id*. at 201.

[10] *Id*.

Labor Relations Commission (NLRC), but the same was dismissed for lack of jurisdiction due to the absence of employer-employee relationship between him and MRII. He then filed a civil case before the Regional Trial Court of Muntinlupa, Branch 256, but the same was dismissed without prejudice to its re-filing due to his counsel's failure to mark all his documentary evidence at the pre-trial conference.[11] Hence, Germo filed the instant complaint praying that MRII and Tompar be made to pay him the amounts of ₱2,225,969.56 as unpaid commissions with legal interest from the time they were due until fully paid, ₱1,000,000.00 as moral damages, ₱1,000,000.00 as exemplary damages, and the costs of suit.[12]

In their Answer,[13] MRII and Tompar averred, among others, that: (*a*) there was no employer-employee relationship between MRII and Germo as the latter was hired as a mere consultant; (*b*) Germo failed to prove that the ICTSI account materialized through his efforts as he did not submit the required periodic reports of his negotiations with prospective clients; and (*c*) ICTSI became MRII's client through the efforts of a certain Ed Fornes.[14] Further, MRII and Tompar claimed that Germo should be made to pay them litigation expenses and attorney's fees as they were compelled to litigate and engage the services of counsel to protect their interest.[15]

Due to MRII, Tompar, and their counsel's multiple absences at the various schedules for pre-trial conference, the RTC considered them as "in default," thereby allowing Germo to present his evidence *ex-parte*.[16]

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[11] *Id*. at 202.

[12] *Id*. at 202-203.

[13] *Id*. at 204-207.

[14] See *id*. at 204-207.

[15] *Id*. at 207. See also *id*. at 57.

[16] *Id*. at 58.

The RTC Ruling

In a Decision[17] dated January 14, 2015, the RTC ruled in Germo's favor, and accordingly, ordered MRII and Tompar to solidarily pay him the amounts of: (*a*) ₱4,499,412.84 representing Germo's unpaid commissions from February 2007 until March 2012 with legal interest from judicial demand until fully satisfied; (*b*) ₱100,000.00 as moral damages; (*c*) ₱100,000.00 as exemplary damages; and (*d*) ₱50,000.00 as attorney's fees.[18]

The RTC found that MRII and Germo validly entered into a TCA whereby the latter shall act as the former's marketing consultant, to be paid on a commission basis.[19] It also found that MRII's contract with ICTSI was made possible through Germo's negotiation and marketing skills, and as such, the latter should be paid the commissions due to him. In this regard, Germo presented various sales invoices spanning the period of February 2007 to March 2012, wherein he should have been paid commissions in the amount of ₱4,499,412.84.[20] Further, based on the evidence presented and in order to deter those who intend to negate the fulfillment of an obligation to the prejudice of another, the RTC found it appropriate to award Germo moral damages, exemplary damages, and attorney's fees in the foregoing amounts.[21] Finally, the RTC imposed a lien equivalent to the appropriate legal fees on the monetary awards in Germo's favor, noting that the latter litigated the instant suit as an indigent.[22]

Aggrieved, MRII and Tompar appealed[23] to the CA, this time claiming, among others, that: (*a*) the jurisdiction over the case

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[17] *Id*. at 117-124.

[18] *Id*. at 124.

[19] *Id*. at 121-122.

[20] *Id*. at 123.

[21] *Id*. at 123-124.

[22] *Id*. at 124.

[23] See Appellants' Brief dated September 4, 2015; *id*. at 88-114.

lies before the NLRC as the same is a monetary dispute arising from an employer-employee relationship; and (*b*) Germo had no legal personality to pursue the instant case since he only signed the TCA as a representative of another entity.[24]

The CA Ruling

In a Decision[25] dated August 8, 2016, the CA affirmed the RTC ruling.[26] It held that Germo had sufficiently proven through the required quantum of evidence that: (*a*) he and MRII, through Tompar, entered into a TCA and thus, the provisions thereof are binding between them; (*b*) MRII's contract with ICTSI was realized through Germo's efforts; and (*c*) MRII failed to pay Germo the commissions due to him pursuant to the TCA and the ICTSI contract.[27]

Anent MRII and Tompar's additional arguments, the CA held that the same constitutes a new case theory, which cannot be introduced for the first time on appeal. The CA further pointed out that such new theory is directly contradictory to the judicial admissions they made in their Answer,[28] which are already binding on them.[29]

Undaunted, MRII and Tompar moved for reconsideration,[30] but the same was denied in a Resolution[31] dated October 14, 2016; hence, this petition.[32]

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[24] See *id*. at 70.

[25] *Id*. at 51-73.

[26] *Id*. at 72.

[27] *Id*. at 65-69.

[28] *Id*. at 204-207.

[29] *Id*. at 70-72.

[30] See Motion for Reconsideration dated September 8, 2016; *id*. at 75-87.

[31] *Id*. at 74.

[32] *Id*. at 11-47.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld MRII and Tompar's solidary liability to Germo.

The Court's Ruling

The petition is partly meritorious.

In the instant petition, MRII and Tompar insist, among others that: (*a*) the regular courts have no jurisdiction over the case as the present dispute involves an employment dispute cognizable by the NLRC; and (*b*) Germo had no legal personality to pursue the case as he signed the TCA not in his personal capacity, but as a representative of another entity.[33]

Such insistence is untenable.

As aptly pointed out by the CA, the foregoing constitutes a new theory raised for the first time on appeal, considering that in their Answer[34] before the RTC, MRII and Tompar admitted, *inter alia*, the: (*a*) lack of employer-employee relationship between MRII and Germo as the latter was hired as a mere consultant; and (*b*) genuineness, authenticity, and due execution of the TCA, among other documents proving Germo's claims.[35] "As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court."[36]

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[33] See *id*. at 28-37 and 39-42.

[34] *Id*. at 204-207.

[35] See *id*. at 71.

[36] *Maxicare PCIB CIGNA Healthcare (now Maxicare Healthcare Corporation) v. Contreras*, 702 Phil. 688, 696 (2013).

While this rule admits of an exception,[37] such is not applicable in this case.

More importantly, MRII and Tompar's statements in their Answer constitute judicial admissions,[38] which are legally binding on them.[39] Case law instructs that even if such judicial admissions place a party at a disadvantageous position, he may not be allowed to rescind them unilaterally and that he must assume the consequences of such disadvantage,[40] as in this case.

As to the merits of the case, the courts *a quo* correctly found that: (*a*) Germo entered into a valid and binding TCA with MRII where he was engaged as a marketing consultant; (*b*) aside from the ₱5,000.00 monthly allowance, Germo was going to be paid on a purely commission basis; (*c*) during the effectivity of the TCA and in the performance of his duties as marketing consultant of MRII, Germo successfully brokered MRII's contract of services with ICTSI, obviously resulting in revenues in MRII's favor; (*d*) despite the foregoing and demands from Germo, MRII refused to pay Germo's rightful commission fees; and (*e*) MRII's refusal to pay Germo resulted – or at the very least, contributed to – Germo's financial hardships. In light of the foregoing, the courts *a quo* correctly found MRII liable to Germo for the various monetary obligations as stated in their respective rulings. Time and again, it has been consistently

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[37] "As a rule, a change of theory cannot be allowed. However, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, as in this case, the Court may give due course to the petition and resolve the principal issues raised therein." (*Bote v. Spouses Veloso*, 700 Phil. 78, 88 [2012], citing *Canlas v. Tubil*, 616 Phil. 915, 923-924 [2009].)

[38] Section 4, Rule 129 of the Rules of Court states:

Section 4. *Judicial admissions.*— An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[39] See *Constantino v. Heirs of Constantino, Jr.*, 718 Phil. 575, 591 (2013).

[40] See *id.*, citing *Bayas v. Sandiganbayan*, 440 Phil. 54, 69 (2002).

held that the factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect and will not be disturbed on appeal unless it appears that there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case;[41] none of which are present insofar as this matter is concerned.

Be that as it may, the Court finds that the courts *a quo* erred in concluding that Tompar, in his capacity as then-President/CEO of MRII, should be held solidarily liable with MRII for the latter's obligations to Germo. It is a basic rule that a corporation is a juridical entity which is vested with legal and personality separate and distinct from those acting for and in behalf of, and from the people comprising it. As a general rule, directors, officers, or employees of a corporation cannot be held personally liable for the obligations incurred by the corporation, unless it can be shown that such director/officer/employee is guilty of negligence or bad faith, and that the same was clearly and convincingly proven. Thus, before a director or officer of a corporation can be held personally liable for corporate obligations, the following requisites must concur: (*1*) the 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*) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[42] In this case, Tompar's assent to patently unlawful acts of the MRII or that his acts were tainted by gross negligence or bad faith was not alleged in Germo's complaint, much less proven in the course of trial. Therefore, the deletion of Tompar's solidary liability with MRII is in order.

Further, the Court deems it proper to adjust the interests imposed on the monetary awards in Germo's favor. To recapitulate, he was awarded the amounts of ₱4,499,412.84 representing his unpaid commissions from February 2007 to March 2012,

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[41] See *Almojuela v. People*, 734 Phil. 636, 651 (2014); citations omitted.

[42] See *Arco Pulp and Paper Co., Inc. v. Lim*, 737 Phil. 137, 154 (2014).

₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees. Pursuant to prevailing jurisprudence, his unpaid commissions shall earn legal interest at the rate of twelve percent (12%) per annum from judicial demand, *i.e.*, the filing of the complaint on February 28, 2011 until June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until the finality of this Decision. Thereafter, all monetary awards due to him shall then earn legal interest at the rate of six percent (6%) per annum from the finality of this ruling until fully paid.[43]

Finally, since Germo litigated the instant suit as an indigent party as defined in Section 21, Rule 3[44] of the Rules of Court, it is only proper that the appropriate filing fees be considered as a lien on the monetary awards due to him, pursuant to the second paragraph of Section 19, Rule 141[45] of the same Rules.

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[43] See *Nacar v. Gallery Frames*, 716 Phil. 267, 278-283 (2013).

[44] Section 21, Rule 3 of the Rules of Court reads:

Section 21. *Indigent party*. – A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.

Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue or the payment thereof, without prejudice to such other sanctions as the court may impose.

[45] Pertinent portions of Section 19, Rule 141 reads:

Section 19. *Indigent litigants exempt from payment of legal fees.*—

x x x x x x x x x

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated August 8, 2016 and the Resolution dated October 14, 2016 of the Court of Appeals in CA-G.R. CV No. 104431 are hereby **AFFIRMED** with **MODIFICATION**, **DELETING** petitioner Antonio Tompar's solidary liability with petitioner Mactan Rock Industries, Inc. (MRII). Accordingly, MRII is solely liable to respondent Benfrei S. Germo (Germo) for the following amounts: (*a*) ₱4,499,412.84 representing his unpaid commissions from February 2007 to March 2012 with legal interest at the rate of twelve percent (12%) per annum from judicial demand, *i.e.*, the filing of the complaint on February 28, 2011 until June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until the finality of this Decision; (*b*) ₱100,000.00 as moral damages; (*c*) ₱100,000.00 as exemplary damages; and (*d*) ₱50,000.00 as attorney's fees. The total monetary awards shall then earn legal interest at the rate of six percent (6%) per annum from the finality of this ruling until fully paid.

Finally, let the appropriate filing fees be considered as a lien on the monetary awards due to Germo, who litigated the instant case as an indigent party, in accordance with Section 19, Rule 141 of the Rules of Court.

SO ORDERED.

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

Reyes, J., on leave.

The legal fees shall be a lien on any judgment rendered in the case favorable to the indigent litigant unless the court otherwise provides. x x x

FIRST DIVISION

[G. R. No. 190286. January 11, 2018]

RAMON E. REYES and CLARA R. PASTOR, *petitioners, vs.* **BANCOM DEVELOPMENT CORP.,** *respondent.*

SYLLABUS

MERCANTILE LAW; CORPORATION CODE; CORPORATE LIQUIDATION; A CORPORATION WHOSE CHARTER IS ANNULLED OR WHOSE CORPORATE EXISTENCE IS OTHERWISE TERMINATED, MAY CONTINUE AS A BODY CORPORATE FOR A LIMITED PERIOD OF THREE YEARS, BUT ONLY FOR CERTAIN SPECIFIC PURPOSES ENUMERATED BY LAW; EFFECT IN CASE AT BAR.— Section 122 of the Corporation Code provides that a corporation whose charter is annulled, or whose corporate existence is otherwise terminated, may continue as a body corporate for a limited period of three years, but only for certain specific purposes enumerated by law. These include the prosecution and defense of suits by or against the corporation, and other objectives relating to the settlement and closure of corporate affairs. Based on the provision, a defunct corporation loses the right to sue and be sued in its name upon the expiration of the three-year period provided by law. Jurisprudence, however, has carved out an exception to this rule. In several cases, this Court has ruled that an appointed receiver, an assignee, or a trustee may institute suits or continue pending actions on behalf of the corporation, even after the winding-up period. x x x [T]he mere revocation of the charter of a corporation does not result in the abatement of proceedings. Since its directors are considered trustees by legal implication, the fact that Bancom did not convey its assets to a receiver or assignee was of no consequence. It must also be emphasized that the dissolution of a creditor-corporation does not extinguish any right or remedy in its favor. x x x As a necessary consequence of the above rule, the corresponding liability of the debtors of a dissolved corporation must also be deemed subsisting. To rule otherwise would be to sanction the unjust enrichment of the debtor at the expense of the corporation.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on Certiorari[1] filed by Ramon E. Reyes and Clara R. Pastor seeking to reverse the Decision[2] and the Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 45959. The CA affirmed the ruling of the Regional Trial Court (RTC) holding petitioners jointly and severally liable to respondent Bancom Development Corporation (Bancom) as guarantors of certain loans obtained by Marbella Realty, Inc. (Marbella).

FACTS

The dispute in this case originated from a Continuing Guaranty[4] executed in favor of respondent Bancom by Angel E. Reyes, Sr., Florencio Reyes, Jr., Rosario R. Du, Olivia Arevalo, and the two petitioners herein, Ramon E. Reyes and Clara R. Pastor (the Reyes Group). In the instrument, the Reyes Group agreed to guarantee the full and due payment of obligations incurred by Marbella under an Underwriting Agreement with Bancom. These obligations included certain Promissory Notes[5] issued by Marbella in favor of Bancom on 24 May 1979 for the aggregate amount of ₱2,828,140.32.

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[1] *Rollo*, pp. 3-22; Petition for Review on *Certiorari* dated 27 November 2009 and filed under Rule 45 of the Rules of Court.

[2] *Id*. at 24-39; Decision dated 25 June 2009; penned by CA Associate Justice Arturo G. Tayag and concurred in by Associate Justices Noel G. Tijam (now a Member of this Court) and Normandie B. Pizzaro.

[3] *Id*. at 41-42; Resolution dated 9 November 2009.

[4] *Id*. at 107-110; Continuing Guaranty dated March 1979.

[5] Promissory Notes issued on 24 May 1979; *rollo*, pp. 83-89.

It appears from the records that Marbella was unable to pay back the notes at the time of their maturity. Consequently, it issued a set of replacement Promissory Notes[6] on 22 August 1979, this time for the increased amount of ₱2,901,466.48. It again defaulted on the payment of this second set of notes, leading to the execution of a third set[7] for the total amount of ₱3,002,333.84, and finally a fourth set[8] for the same amount.

Because of Marbella's continued failure to pay back the loan despite repeated demands, Bancom filed a Complaint for Sum of Money with a prayer for damages before the RTC of Makati on 7 July 1981.[9] The case, which sought payment of the total sum of ₱4,300,247.35, was instituted against (a) Marbella as principal debtor; and (b) the individuals comprising the Reyes Group as guarantors of the loan.

In their defense, Marbella and the Reyes Group argued that they had been forced to execute the Promissory Notes and the Continuing Guaranty against their will.[10] They also alleged that the foregoing instruments should be interpreted in relation to earlier contracts pertaining to the development of a condominium project known as Marbella II.[11]

The Marbella II contracts were entered into by Bancom; the Reyes Group, as owners of the parcel of land to be utilized for the condominium project along Roxas Boulevard; and Fereit Realty Development Corporation (Fereit), a sister company of Bancom, as the construction developer and project manager.[12] This venture, however, soon encountered financial difficulties. As a result,

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[6] Promissory Notes issued on 22 August 1979; *rollo*, pp. 90-94.

[7] Promissory Notes issued on 27 November 1979; *rollo*, pp. 95-100.

[8] Promissory Notes issued on 28 February 1980; *rollo*, pp. 101-106.

[9] CA Decision dated 25 June 2009, *supra* note 2, at 25.

[10] *Id*. at 28.

[11] *Id*.

[12] *See* Memorandum of Agreement dated 16 August 1977; *rollo*, pp. 43-48; Amendment of Memorandum of Agreement; *rollo*, pp. 111-114.

the Reyes Group was allegedly forced to enter into a Memorandum of Agreement to take on part of the loans obtained by Fereit from Bancom for the development of the project. Marbella, for its part, was supposedly compelled to assume Fereit's obligation to cause the release of ₱2.8 million in receivables then assigned to State Financing;[13] and subsequently to obtain additional financing from Bancom in the same amount for that purpose.[14]

The above developments were cited by Marbella and the Reyes group in support of the allegation that Bancom took advantage of their resultant financial distress. Bancom allegedly demanded the execution of Promissory Notes and the Continuing Guaranty from the Reyes Group,[15] despite the fact that additional financing became necessary only because of the failure of Fereit (Bancom's sister company) to comply with its obligation.[16]

To bolster its claim that the promissory notes were issued in connection with Fereit's obligations, Marbella, together with the Reyes Group, also presented a document entitled Amendment of Memorandum of Agreement.[17] In this instrument, Fereit undertook to reimburse Marbella for the ₱2.8 million the latter had paid, and for all penalties, fees, and charges incurred to obtain additional financing.

THE RTC RULING

In a Decision dated 8 April 1991, the RTC held Marbella and the Reyes Group solidarily liable to Bancom. The trial court ordered them to pay the amounts indicated on the Promissory Notes dated 28 February 1980 in the total amount of ₱4,300,247.35 plus interest computed from 19 May 1981, the date of demand; and to pay penalties and attorney's fees as well.[18]

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[13] CA Decision dated 25 June 2009, *supra* note 2, at 28.

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

[15] *Id.*

[16] *Id.*

[17] *Rollo*, pp. 111-114; Amendment of Memorandum of Agreement dated 16 August 1997.

[18] *Id.* at 29.

PROCEEDINGS BEFORE THE CA

Marbella and the Reyes Group appealed the RTC ruling to the CA.[19] They asserted that the trial court erred in disregarding the terms of the earlier agreements they had entered into with Bancom and Fereit.[20] The former also reiterated that the amounts covered by the Promissory Notes represented additional financing secured from Bancom to fulfill Fereit's obligations. Hence, they said they cannot be held liable for the payment of those amounts.[21]

In the course of the proceedings before the CA, Abella Concepcion Regala & Cruz moved to withdraw its appearance in the case as counsel for Bancom.[22] The law firm asserted that it had "totally lost contact" with its client despite serious efforts on the part of the former to get in touch with its officers.[23] The law firm also alleged that it had "received reports that the client has undergone a merger with another entity," thereby making its authority to represent the corporation subject to doubt.[24]

In a Resolution dated 1 June 2004,[25] the CA granted the motion after noting that the copy of a resolution sent to Bancom had been returned to the appellate court unclaimed. The CA held that this failure of service supported the claim of Abella Concepcion Regala & Cruz that the latter had lost all contact with its client.

THE CA RULING

In a Decision dated 25 June 2009,[26] the CA denied the appeal citing the undisputed fact that Marbella and the Reyes Group had failed to comply with their obligations under the Promissory

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[19] *Id*. at 24.

[20] *Id*. at 29.

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

[22] *Id*. at 76-77; Compliance with Manifestation and Motion to Withdraw Appearance dated 12 March 2000.

[23] *Id*. at 76.

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

[25] *Id*. at 82; Resolution dated 1 June 2004.

[26] Decision dated 25 June 2009, *supra* note 2.

Notes and the guaranty. The appellate court rejected the assertion that noncompliance was justified by the earlier agreements entered into by the parties. The CA explained:

> In this case, it is worth to note that it is an undisputed fact that defendants-appellants failed to make good their alleged obligations under the Promissory Notes and Continuing Guaranty which they issued in favor of BAN[C]OM. [The instruments'] genuineness and due execution are likewise undisputed.
>
> Defendants-appellants' only defense rests on the allegation that their non-payment of such obligations is justified taking into consideration the terms of the Memorandum of Agreement entered into by and among the plaintiff-appellee and defendants-appellants herein particularly paragraph 13 thereof. Said the appellants in support hereof, since Bancom [which was in full control of the financial affairs of Fereit] failed to cause the release of the aforesaid receivables (₱2,800,000) to State Financing by Fereit, Bancom should necessarily suffer the consequences thereof – not the defendants-appellants.
>
> Apparently, the thrust of defendants-appellants' defense points to Fereit's non-compliance with paragraph 13 of the "Memorandum of Agreement." However, records show that defendants-appellants did nothing to formally [assert] their rights against Fereit. Truly, this Court agrees with the trial court's pronouncement that defendants-appellants' failure to avail of the remedies provided by law, such as the filing of a third-party complaint against Fereit, necessarily indicates that they themselves did not seriously consider Fereit's non-compliance as affecting their own liability to BANCOM. This can be done for after all, Fereit is still a different entity with distinct and separate corporate existence from that of BANCOM even granting that BANCOM is in full control of the financial affairs of Fereit.
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> x x x x x x x x x
>
> Besides, the terms of the promissory notes and "Continuing Guaranty" xxx are clear and unequivocal, leaving no room [for] interpretation. For not being contrary to law, morals, good customs, public order and public policy, defendants' obligation has the force of law and should be complied with in good faith.[27]

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[27] *Id*. at 32-35.

Of the individuals comprising the Reyes Group, only petitioners filed a Motion for Reconsideration of the CA Decision.[28] They reiterated their argument that the Promissory Notes were not meant to be binding, given that the funds released to Marbella by Bancom were not loans, but merely additional financing. Petitioners also contended that the action must be considered abated pursuant to Section 122 of the Corporation Code. They pointed out that the Certificate of Registration issued to Bancom had been revoked by the Securities and Exchange Commission (SEC) on 31 May 2004, and that no trustee or receiver had been appointed to continue the suit; in fact, even Bancom's former counsel was compelled to withdraw its appearance from the case, as it could no longer contact the corporation.

On 23 July 2009, petitioners filed a Supplement to their Motion for Reconsideration.[29] In support of their argument on the abatement of the suit, they attached a Certificate of Corporate Filing/Information issued by the SEC. The latter confirmed that Bancom's Certificate of Registration[30] had been revoked on 26 May 2003 for noncompliance with the SEC's reportorial requirements.

In a Resolution[31] dated 9 November 2009, the CA denied the Motion for Reconsideration, since the points raised therein had already been passed upon in its earlier ruling.

PROCEEDINGS BEFORE THIS COURT

On 27 November 2009, petitioners filed the instant Petition for Review. They assert that the CA committed a grievous error in refusing to declare the suit abated despite the obvious fact that Bancom no longer exists. They likewise contend that the appellate court had incorrectly relied upon the Promissory Notes and the Continuing Guaranty. It allegedly failed to take into

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[28] *Id.* at 49-62; Motion for Reconsideration dated 17 July 2009.

[29] Supplement [to the Motion for Reconsideration dated July 17, 2009]; *rollo*, pp. 64-66.

[30] Certificate of Corporate Filing/Information dated 14 July 2009; *rollo*, p. 67.

[31] Resolution dated 9 November 2009, *supra* note 3.

account the parties' earlier related agreements that showed that petitioners could not be held liable for the debt.

In a Resolution[32] dated 17 February 2010, we ordered Bancom to comment on the Petition for Review. The copy of the Resolution served at Bancom's address on record was, however, returned unserved with the postal notation "RTS – non-existent address."[33] For this reason, we deemed the filing of a comment waived.[34]

ISSUES

The following issues are presented to the Court for resolution:

1. Whether the present suit should be deemed abated by the revocation by the SEC of the Certificate of Registration issued to Bancom

2. Whether the CA correctly ruled that petitioners are liable to Bancom for (a) the payment of the loan amounts indicated on the Promissory Notes issued by Marbella; and (b) attorney's fees

OUR RULING

We **DENY** the Petition.

The revocation of Bancom's Certificate of Registration does not justify the abatement of these proceedings.

Section 122[35] of the Corporation Code provides that a corporation whose charter is annulled, or whose corporate existence

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[32] *Rollo,* p. 268.

[33] *Id*. at 269.

[34] Resolution dated 19 January 2011; *rollo,* p. 276.

[35] Section 122 provides in relevant part:

Section 122. Corporate Liquidation. Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3)

is otherwise terminated, may continue as a body corporate for a limited period of three years, but only for certain specific purposes enumerated by law. These include the prosecution and defense of suits by or against the corporation, and other objectives relating to the settlement and closure of corporate affairs.

Based on the provision, a defunct corporation loses the right to sue and be sued in its name upon the expiration of the three-year period provided by law.[36] Jurisprudence, however, has carved out an exception to this rule. In several cases, this Court has ruled that an appointed receiver,[37] an assignee,[38] or a trustee[39] may institute suits or continue pending actions on behalf of the corporation, even after the winding-up period. The rule was first enunciated in the 1939 case *Sumera v. Valencia*,[40] in which we declared:

[I]f the corporation carries out the liquidation of its assets through its own officers and continues and defends the actions brought by or against it, its existence shall terminate at the end of three years from the time of dissolution; but if a receiver or assignee is appointed, as

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years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interests, all interests which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

[36] *Gelano v. Court of Appeals,* 190 Phil. 814 (1981) citing Fisher, 1929 ed., p. 386.

[37] See *Sumera v. Valencia*, 67 Phil. 721 (1939).

[38] *Id*.

[39] See *Gelano v. Court of Appeals, supra* note 36; *Clemente v. Court of Appeals*, 312 Phil. 823 (1995).

[40] *Supra* note 37, at 727.

has been done in the present case, with or without a transfer of its properties within three years, the legal interest passes to the assignee, the beneficial interest remaining in the members, stockholders, creditors and other interested persons; and said assignee may bring an action, prosecute that which has already been commenced for the benefit of the corporation, or defend the latter against any other action already instituted or which may be instituted even outside of the period of three years fixed for the officers of the corporation.

For the foregoing considerations, we are of the opinion and so hold that when a corporation is dissolved and the liquidation of its assets is placed in the hands of a receiver or assignee, the period of three years prescribed by section 77 of Act No. 1459 known as the Corporation Law is not applicable, and the assignee may institute all actions leading to the liquidation of the assets of the corporation even after the expiration of three years.

In subsequent cases, the Court further clarified that a receiver or an assignee need not even be appointed for the purpose of bringing suits or continuing those that are pending.[41] In *Gelano v. Court of Appeals,*[42] we declared that in the absence of a receiver or an assignee, suits may be instituted or continued by a trustee specifically designated for a particular matter, such as a lawyer representing the corporation in a certain case. We also ruled in *Clemente v. Court of Appeals*[43] that the board of directors of the corporation may be considered trustees by legal implication for the purpose of winding up its affairs.

Here, it appears that the SEC revoked the Certificate of Registration issued to Bancom on 26 May 2003.[44] Despite this revocation, however, Bancom does not seem to have conveyed its assets to trustees or to its stockholders and creditors. The corporation has also failed to appoint a new counsel after the law firm formerly representing it was allowed to withdraw its

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[41] *Reburiano v. Court of Appeals*, 361 Phil. 294 (1999).

[42] *Supra* note 39.

[43] *Id*.

[44] *See* Certificate of Corporation Filing/Information dated 14 July 2009, *supra* note 30.

appearance on 1 June 2004. Citing these circumstances, petitioners assert that these proceedings should be considered abated.

We disagree.

It is evident from the foregoing discussion of law and jurisprudence that the mere revocation of the charter of a corporation does not result in the abatement of proceedings. Since its directors are considered trustees by legal implication,[45] the fact that Bancom did not convey its assets to a receiver or assignee was of no consequence. It must also be emphasized that the dissolution of a creditor-corporation does not extinguish any right or remedy in its favor. Section 145 of the Corporation Code is explicit on this point:

> **Sec. 145.** ***Amendment or repeal.*** **— No right or remedy in favor of** or against **any corporation, its stockholders, members, directors, trustees, or officers,** nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, **shall be removed or impaired** either **by the subsequent dissolution of said corporation** or by any subsequent amendment or repeal of this Code or of any part thereof. (Emphasis supplied)

As a necessary consequence of the above rule, the corresponding liability of the debtors of a dissolved corporation must also be deemed subsisting. To rule otherwise would be to sanction the unjust enrichment of the debtor at the expense of the corporation.[46]

As guarantors of the loans of Marbella, petitioners are liable to Bancom.

On the merits of the claim, we affirm the finding of the CA on the liability of petitioners. Having executed a Continuing Guaranty in favor of Bancom, petitioners are solidarily liable with Marbella for the payment of the amounts indicated on the Promissory Notes.

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[45] See *Clemente v. CA*, *supra* note 39.

[46] *Knecht v. United Cigarette Corp.*, 433 Phil. 380 (2002); *Gelano v. Court of Appeals*, *supra* note 36.

As the appellate court observed,[47] petitioners did not challenge the genuineness and due execution of the promissory notes. Neither did they deny their nonpayment of Marbella's loans or the fact that these obligations were covered by the guaranty. Their sole defense was that the promissory notes in question were not binding, because the funds released to Marbella by Bancom were not loans but merely additional financing. This financial accommodation was supposedly meant to allow Marbella to rectify the failure of Fereit to cause the release of receivables assigned to another entity. In support of their allegations, petitioners cite certain provisions of the Memorandum of Agreement dated 16 August 1977[48] and its Amendment.[49]

We reject these contentions.

The obligations of Marbella and the Reyes Group under the Promissory Notes and the Continuing Guaranty, respectively, are plain and unqualified. Under the notes, Marbella promised to pay Bancom the amounts stated on the maturity dates indicated.[50] The Reyes Group, on the other hand, agreed to become liable if any of Marbella's guaranteed obligations were not duly paid on the due date.[51] There is absolutely no support for the assertion that these agreements were not meant to be binding.

We also note that even if the other agreements referred to by petitioners are taken into account, the result would be the

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[47] Decision dated 25 June 2009, *supra* note 2, at 32.

[48] Memorandum of Agreement dated 16 August 1977, *supra* note 12.

[49] Amendment of Memorandum of Agreement, *supra* note 17.

[50] *Supra* notes 5, 6, 7, and 8.

[51] Section 2 of the Continuing Guaranty (*supra* note 4, at 107) states:

Section 2. Liability of the Guarantor. – If any of the Guaranteed Obligations is not fully or duly paid or performed on due date thereof (whether of a stated maturity, by acceleration or otherwise) the Guarantor shall, without need for any notice, demand or any act or deed, immediately become liable therefor, and the Guarantor shall, upon demand, fully and duly pay and perform the same, together with any and all interests, penalties and other fees and charges thereon then accrued and outstanding at the time of payment.

same. They would still be deemed liable, since the two contracts they cited only establish the following premises: (a) Fereit took on the responsibility of causing the release of certain receivables from State Financing; (b) Marbella assumed the performance of the obligation of Fereit after the latter failed to fulfill its duty; (c) Bancom would grant Marbella additional financing for that purpose, with the obligation to be paid within three years; and (d) Fereit would reimburse Marbella for the expenses the latter would incur as a result of this assumption of the obligation. Specifically on the duty of Marbella to pay back the additional financing, the Amendment states:

> 1. Bancom hereby agrees to grant the additional financing requested by Marbella II in the principal amount of TWO MILLION EIGHT HUNDRED TWENTY EIGHT THOUSAND ONE HUNDRED FORTY & 32/100 (₱2,828,140.32), Philippine Currency, payable by Marbella II within three (3) years, under such terms and conditions as may be mutually agreed upon by Bancom and Marbella II. The additional financing herein requested by Marbella II shall be payable by Marbella II irrespective of whether Marbella II realizes a net profit after tax on its Marbella II Condominium Project.
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> 2. In lieu of the obligations of Fereit under Paragraph 9 and 13 of the Memorandum of Agreement, Fereit hereby agrees to reimburse Marbella II the principal sum of ₱2,828,140.32 plus interest, fees and other charges which Marbella II shall pay to Bancom in the settlement and/or liquidation of the additional financing. However, penalties, fees and other charges resulting from the default of Marbella II with respect to the additional financing shall be borne by Marbella II.

It is evident from the foregoing provisions that Bancom extended additional financing to Marbella on the condition that the loan would be paid upon maturity. It is equally clear that the latter obligated itself to pay the stated amount to Bancom without any condition. The unconditional tenor of the obligation of Marbella to pay Bancom for the loan amount, plus interest and penalties, is likewise reflected in the Promissory Notes

issued in favor of the latter.[52] Marbella, in turn, was granted the right to collect reimbursement from Fereit, an entirely distinct entity. While it was averred that Bancom had complete control of Fereit's assets and activities, we note that no sufficient evidence was presented in support of this assertion.

As to petitioners, the Continuing Guaranty evidently binds them to pay Bancom the amounts indicated on the original set of Promissory Notes, as well as any and all instruments issued upon the renewal, extension, amendment or novation thereof.[53] The Court notes that the final set of Promissory Notes issued by Marbella in this case reflect the total amount of ₱3,002,333.84.[54]

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[52] The Promissory Notes dated 28 February 1980, executed by Marbella in favor of Bancom uniformly, state:

For value received in the amount of …, ("Maker") promise[s] to pay to the order of Bancom Development Corporation ("Payee") the sum of… at its principal offices located at Pasay Road, Makati, Metro Manila on the maturity date stated above.

Demand and Dishonor waived. In case of default in the payment of this Note, **interest on the principal sum at the rate of TWELVE (12%) per annum** shall accrue from the date immediately following due date thereof. It is further agreed that if this Note is not paid within FORTY EIGHT (48) hours from maturity date, the Maker shall pay a **penalty equivalent to percent (20%**) of the unpaid balance of this Note and said penalty shall, in addition to the interest on the unpaid principal earn interest at the highest rate permitted by law from maturity date until fully paid.

If this Note is placed in the hands of an attorney for collection, the Maker shall pay as and for attorney's fees a sum equal to **TEN percent (10%) of the principal and interest then due thereon plus cost of collection in case of suit**. The Maker further agrees that any action accruing from this Note shall be instituted in the proper courts of the (sic). (Emphases supplied)

[53] The definition of "Guaranteed Obligations" under Section 1 of the Continuing Guaranty (*rollo*, p. 107) includes "[a]ll the obligations of the issuer under: (i) the Notes and the Agreement; (ii) any and all instruments or documents issued upon the renewal, extension, amendment or novation of the Notes and the Agreement, irrespective of whether such obligations as renewed, extended, amended or novated are in the nature of new, separate or additional obligations; (iii) any and all instruments or documents issued pursuant to the Notes and the Agreement;

[54] *Rollo*, pp. 101-106; Promissory Notes issued on 28 February 1980.

The CA and the RTC thus ordered the payment of ₱4,300,247.35, which represents the principal amount and all interest and penalty charges as of 19 May 1981, or the date of demand.

We affirm this ruling with the modification that petitioners are liable to pay Bancom the following amounts: (a) ₱4,300,247.35; (b) interest accruing on the principal sum of ₱3,002,333.84 (and not the entire amount of ₱4,300,247.35), from 19 May 1981, the date of demand, at the rates identified below;[55] and (c) penalties accrued in relation thereto, with legal interest from maturity date until fully paid.

Needless to state, the clear terms of these agreements cannot be negated and deemed non-binding simply on the basis of the self-serving testimony of Angel Reyes, one of the guarantors of the loan. The CA therefore correctly rejected the attempt of petitioners to renege on their obligations. We also find the award of ₱500,000 for attorney's fees in order, pursuant to the stipulation in the Promissory Notes allowing the recovery thereof. Nevertheless, in the interest of equity and considering that petitioners are already liable for penalties, we deem it proper to modify the stipulated rate of interest to conform to the legal interest rates under prevailing jurisprudence.

WHEREFORE, the Petition for Review is hereby **DENIED**, and the Decision dated 25 June 2009 and the Resolution dated 9 November 2009 issued by the Court of Appeals in CA-G.R. CV No. 45959 are **AFFIRMED with MODIFICATION**.

Petitioners Ramon E. Reyes and Clara R. Pastor are jointly and severally liable with Marbella Manila Realty, Inc., Angel

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[55] Section 5 of the Continuing Guaranty states:

Section 5. When Guarantor is in Default. – For purposes of this Guaranty, the Guarantor is in default, without need for any notice to or consent of the Guarantor for any other act or deed if the Issuer/Guarantor is in default within the meaning of the Agreement; and/or if the Guarantor fails, as required in Section 2 hereof, to fully and duly pay and perform any or all of the outstanding Guaranteed Obligations (together with any and all interests, penalties and other fees and charges thereon accrued and outstanding), upon demand on the Guarantor.

E. Reyes, Sr., Florencio Reyes, Jr., Rosario R. Du and Olivia Arevalo for the following amounts:

(a) ₱4,300,247.35, representing the principal sum and all interest and penalty charges as of 19 May 1981;

(b) legal interest on the principal sum of ₱3,002,333.84 at the rate of 12% per annum from 19 May 1981, the date of demand, until 30 June 2013, and at the rate of 6% per annum from 1 July 2013, until this Decision becomes final and executory;

(c) penalties equivalent to 20% of the obligation;

(d) legal interest on the penalty amount at the rate of 12% per annum from 19 May 1981, the date of demand, until 30 June 2013, and at the rate of 6% per annum from 1 July 2013, until this Decision becomes final and executory;

(e) attorney's fees in the amount of ₱500,000; and

(f) legal interest of 6% per annum on all the foregoing monetary awards from date of finality of this Decision until full payment thereof.

SO ORDERED.

Leonardo-de Castro, del Castillo, Jardeleza, and *Gesmundo,*[*] *JJ.,* concur.

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[*] Designated additional member in lieu of Associate Justice Noel Gimenez Tijam, who concurred in the Court of Appeals Decision, per raffle dated 8 January 2018.

FIRST DIVISION

[G.R. No. 196890. January 11, 2018]

CAREER EXECUTIVE SERVICE BOARD, represented by CHAIRPERSON BERNARDO P. ABESAMIS, EXECUTIVE DIRECTOR MA. ANTHONETTE VELASCO-ALLONES, and DEPUTY EXECUTIVE DIRECTOR ARTURO M. LACHICA, *petitioners, vs.* **CIVIL SERVICE COMMISSION, represented by CHAIRMAN FRANCISCO T. DUQUE III and BLESILDA V. LODEVICO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; REQUIREMENTS WHEN THE EXTRAORDINARY REMEDIES OF *CERTIORARI* AND PROHIBITION MAY BE RESORTED TO; EXCEPTIONS.— It is well-settled that the extraordinary remedies of *certiorari* and prohibition are resorted to only where (a) a tribunal, a board or an officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. In this case, it is clear that the second requirement is absent as petition for review under Section 1 of Rule 43 is available to petitioners. However, there are exceptions to the aforementioned rule, namely: "(a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority."

2. ID.; ID.; ID.; A RIGID APPLICATION OF THE RULES OF PROCEDURE WILL NOT BE ENTERTAINED IF IT WILL OBSTRUCT RATHER THAN SERVE THE BROADER INTEREST OF JUSTICE; CASE AT BAR.— In allowing the liberal application of procedural rules, We emphasized in the case of *Obut v. Court of Appeals, et al.*, that placing the administration of justice in a straightjacket, *i.e.*, following

technical rules on procedure would result into a poor kind of justice. We added that a too-rigid application of the pertinent provisions of the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration. Moreover, in the case of *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*, We denied the application of the technical rules to yield to substantive justice. In said case, We ruled that the rules of procedure should give way to strong considerations of substantive justice. Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration. Likewise, in the case of *Uy v. Chua*, We interpreted that "[t]he Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion." Considering the foregoing and the circumstances obtaining in this case, We allow the application of liberality of the rules of procedure to give due course to the petition filed by petitioners as the broader interest of justice so requires.

3. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION (CSC); POSITIONS IN THE CIVIL SERVICE ARE CLASSIFIED INTO CAREER AND NON-CAREER; DISTINGUISHED.—** The Civil Service Law classifies the positions in the civil service into career and non-career, to wit: The **career service** is characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure; while a **non-career position** is characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or limited to the duration of a particular project for which purpose employment was extended.

4. **ID.; ID.; ID.; ID.; THREE LEVELS OF POSITIONS IN THE CAREER SERVICE; CLARIFIED.—** There are also three

levels of positions in the career service, namely: (a) the first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies; (b) the second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and (c) **the third level shall cover positions in the Career Executive Service**. Under the third level, such positions in the **Career Executive Service** are further classified into Undersecretary, Assistant Secretary, Bureau Director, **Assistant Bureau Director**, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President. As to employment status and security of tenure, appointment in the career service shall be either permanent or temporary. Lack of civil service eligibility makes an appointment a temporary one and without a fixed and definite term and dependent entirely upon the pleasure of the appointing power. On the other hand, the acquisition of security of tenure is governed by the rules and regulations promulgated by the CESB.

5. ID.; ID.; ID.; ID.; ID.; CAREER EXECUTIVE SERVICE (CES); CES ELIGIBILITY AND APPOINTMENT TO THE APPROPRIATE CES RANK ARE THE TWO REQUISITES WHICH MUST CONCUR IN ORDER THAT AN EMPLOYEE IN THE CAREER EXECUTIVE SERVICE MAY ATTAIN SECURITY OF TENURE; CASE AT BAR.— In sum, for an employee to attain a permanent status in his employment, he must first be a CES eligible. Such eligibility can be acquired by passing the requisite civil service examinations and obtaining passing grade to the same. "At present, the CES eligibility examination process has four stages, namely: (1) Written Examination; (2) Assessment Center; (3) Performance Validation; and (4) Board Interview." After completing and passing the examination process, said employee is entitled to conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Such conferment of eligibility is done by the CESB through a formal Board Resolution after an evaluation is done of the employee's

performance in the four stages of the CES eligibility examinations. Conferment of a CES eligibility does not complete one's membership in the CES nor does it confer security of tenure. It is also necessary that an individual who was conferred CES eligibility be appointed to a CES rank. Such appointment is made by the President upon the recommendation of the CESB. Only after such process will the employees appointment in the service be considered as a permanent one, entitling him to security of tenure. In the CES ranking structure, there are recognized six ranks 6 — the highest rank is that of a CESO I while the lowest is that of CESO VI. As clearly set forth in the foregoing provisions, two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit: a) CES eligibility; and b) Appointment to the appropriate CES rank. x x x Thus, petitioners are correct in stating that mere appointment of Lodevico as Director III and her CES eligibility do not automatically mean that her appointment becomes a permanent one. It is necessary that she be appointed in an appropriate CES rank to convert her temporary appointment into a permanent one.

APPEARANCES OF COUNSEL

Tamayo Tantuan & Bragado Law Firm for private respondent.
The Solicitor General for public respondents.

D E C I S I O N

TIJAM, *J.*:

Before Us is a petition[1] for *certiorari* and prohibition under Rule 65, seeking to declare null and void the Decision dated January 31, 2011 of the Civil Service Commission (CSC) in CSC Decision[2] No. 11-0047, which declared null and void the Memorandum issued by Chairman Bernardo Abesamis

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[1] *Rollo*, pp. 6-41.

[2] Penned by Commissioner Mary Ann Z. Fernandez-Mendoza, concurred in by Chairman Francisco T. Duque III and Commissioner Cesar D. Buenaflor; *id*. at 48-55.

(Chairman Abesamis) of the Career Executive Service Board (CESB).

The Facts

Private respondent Blesilda Lodevico (Lodevico) was appointed by then President Gloria Macapagal-Arroyo on May 14, 2008 as Director III, Recruitment and Career Development Service, CESB.[3] Lodevico possesses a Career Service Executive Eligibility since November 29, 2001, as evidenced by the Certificate of Eligibility issued by the CSC.[4]

On June 30, 2010, the Office of the President (OP) issued Memorandum Circular No. 1 (MC 1), which declared all non-Career Executive Service positions vacant as of June 30, 2010 and extended the services of contractual employees whose contracts expire on June 30, 2010.[5]

On July 16, 2010, the OP promulgated the Implementing Guidelines of MC 1, which states that all non-Career Executive Service Officers (non-CESO) in all agencies of the Executive Branch shall remain in office and continue to perform their duties until July 31, 2010 or until their resignations have been accepted and/or their replacements have been appointed or designated, whichever comes first.[6]

Acting pursuant to MC 1 and its implementing guidelines, Chairman Abesamis of the CESB issued a Memorandum[7] which informed Lodevico that she shall only remain in office and continue to perform her duties and responsibilities until July 31, 2010.[8]

Meanwhile, Memorandum Circular No. 2 (MC 2), which extended the term stated under MC 1 to October 31, 2010, was

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[3] *Id.* at 68.

[4] *Id.* at 52.

[5] *Id.* at 12-13, 52.

[6] *Id.* at 13.

[7] *Id.* at 70.

[8] *Id.* at 52.

issued on July 29, 2010. The same circular provides that all non-CESO occupying Career Executive Service (CES) positions in all agencies of the Executive Branch shall remain in office and continue to perform their duties and discharge their responsibilities until October 31, 2010 or until their resignations have been accepted and/or until their respective replacements have been appointed or designated, whichever comes first, unless they are re-appointed in the meantime. However, any official whose service has been terminated or whose resignation has been accepted on/or before July 31, 2010, but whose replacement has not yet been appointed or designated shall be deemed separated from service as of the date of termination or acceptance of resignation.[9]

Lodevico filed her appeal on the Memorandum issued by Chairperson Abesamis before the CSC.

On September 21, 2010, CESB received a Notice from CSC, requiring it to file a comment.[10] On October 1, 2010, CESB filed its Comment,[11] assailing the jurisdiction of CSC to hear and decide the appeal.

On January 31, 2011, the CSC rendered the assailed Decision[12] which granted the appeal of Lodevico and declared null and void the termination of her services. The CSC ruled that CESB Chairman Abesamis has no power to terminate the services of Lodevico. As the latter was a presidential appointee, only the President has the authority to do so. Hence, the Memorandum issued by Chairman Abesamis is null and void. Also, the CSC pointed out that the services of a non-CESO occupying CES position in all agencies of the Executive Branch have been extended until October 31, 2010 pursuant to MC 2. The dispositive portion reads:

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

[10] *Id*. at 71.

[11] *Id*. at 72-91.

[12] *Id*. at 48-55.

WHEREFORE, the appeal of [Lodevico], Director III, [CESB] is **GRANTED**. The Memorandum dated July 29, 2010 of CESB [Chairman Abesamis], informing Lodevico that, pursuant to the provisions of [MC 1] and its Implementing Guidelines, and after a consensus arrived at by the members of the CES Governing Board in consultation with the CESB Executive Director, her service as CESB Director III is terminated effective July 31, 2010 is hereby declared **NULL and VOID**. Accordingly, Lodevico is reinstated to her former position as Director III and shall be paid her back salaries and other benefits corresponding to the period of her illegal termination.[13]

CESB filed an Omnibus Motion for Clarification and/or Reconsideration,[14] assailing the jurisdiction of CSC to issue the assailed decision.

In a Resolution[15] dated April 7, 2011, the CSC denied the motion for reconsideration. The *fallo* thereof states:

WHEREFORE, the motion for reconsideration of the [CESB] is hereby **DENIED**. Accordingly, the [CSC] Decision No. 11-0047 dated January 31, 2011, **STANDS**.[16]

Hence, this petition.

In their Comment, Lodevico and CSC mainly argue that the latter acted within the bounds of its authority in issuing the assailed decision as it has jurisdiction over her appeal. Also, they contend that the petitioners resorted to a wrong mode of appeal. Hence, the petition should be dismissed.

Issue

Is the dismissal of Lodevico as Director III, Recruitment and Career Development Services from the CESB, proper?

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[13] *Id*. at 55.

[14] *Id*. at 92-100.

[15] *Id*. at 61-64.

[16] *Id*. at 64.

Ruling of the Court

Procedurally, respondents question the impropriety of filing a petition for *certiorari* and prohibition under Rule 65 as the proper mode of appeal is *via* petition for review under Rule 43.

It is well-settled that the extraordinary remedies of *certiorari* and prohibition are resorted to only where (a) a tribunal, a board or an officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[17]

In this case, it is clear that the second requirement is absent as petition for review under Section 1[18] of Rule 43 is available to petitioners. However, there are exceptions to the aforementioned rule, namely: "(a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority."[19]

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[17] Sections 1 and 2, Rule 65 of the Rules of Court.

[18] Section 1. Scope. — **This Rule shall apply to appeals** from judgments or final orders of the Court of Tax Appeals and **from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the **Civil Service Commission**, Central Board of Assessment Appeals, Securities and Exchange Commission. Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis ours)

[19] *Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU*, 562 Phil. 743, 755 (2007).

In the case of *Leyte IV Electric Cooperative, Inc. v. Leyeco IV Employees Union-ALU*,[20] We relaxed the application of the rules of procedure to meet the ends of justice. In *Leyte IV*, the petitioners filed a petition for *certiorari* under Rule 65 instead of filing a petition for review under Rule 43, but We gave due course to the petition to accommodate the broader interest of justice.

In allowing the liberal application of procedural rules, We emphasized in the case of *Obut v. Court of Appeals, et al.*,[21] that placing the administration of justice in a straightjacket, *i.e.*, following technical rules on procedure would result into a poor kind of justice. We added that a too-rigid application of the pertinent provisions of the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration.[22] Moreover, in the case of *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*,[23] We denied the application of the technical rules to yield to substantive justice. In said case, We ruled that the rules of procedure should give way to strong considerations of substantive justice. Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration.[24] Likewise, in the case of *Uy v. Chua*,[25] We interpreted that "[t]he Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion."[26]

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[20] 62 Phil. 743 (2007).

[21] 162 Phil. 731 (1976).

[22] *Id*. at 744.

[23] 700 Phil. 575 (2012).

[24] *Id*. at 582, citing *Al-Amanah Islamic Investment Bank of the Phils. v. Celebrity Travel and Tours, Inc*., 479 Phil. 1041, 1052 (2004).

[25] 616 Phil. 768 (2009).

[26] *Id*. at 785.

Considering the foregoing and the circumstances obtaining in this case, We allow the application of liberality of the rules of procedure to give due course to the petition filed by petitioners as the broader interest of justice so requires.

Substantively, petitioners assert that CSC has no jurisdiction to resolve the appeal of Lodevico.

Article IX-B of the 1987 Constitution charged the CSC, as the central personnel agency of the Government, with the administration of the civil service.[27] Book V, Title I, Subtitle A, Chapter 3, Section 12 of the Administrative Code of 1987 provides for the powers and functions of the CSC, which, among others, include its power to decide and pass upon all civil service matters. On the other hand, CESB was specifically established to serve as the governing body of the CES and mandated to promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the CES.[28] "From its inception, the CESB was intended to be an autonomous entity, albeit administratively attached to respondent Commission."[29] As an attached agency, the decisions of the CESB are expressly subject to the CSC's review on appeal.[30]

As to petitioners' second contention, they aver that Lodevico's removal from service is justified in that her appointment as Director III, equivalent to Assistant Bureau Director, is not a permanent one. Hence, her removal from service by the CESB, following the orders of MC Nos. 1 and 2 issued by the President was valid and she was not entitled to security of tenure.

It must be noted that the President, thru the issuance of MC 1, effectively discharged all non-CESOs occupying CES positions

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[27] 1987 CONSTITUTION, Article IX-B, Section 1(1).

[28] Article IV, Part III of the Integrated Reorganization Plan as approved by P.D. No. 1 dated September 24, 1972.

[29] *Eugenio v. CSC*, 312 Phil. 1145, 1155 (1995).

[30] *Career Executive Service Board, et al. v. Civil Service Commission, et al.*, G.R. No. 197762, March 7, 2017.

in all agencies until July 31, 2010. MC 2 extended the term of their service until October 31, 2010. However, MC2 mentioned that those who have been terminated pursuant to the earlier Memorandum but whose replacement has not yet been appointed shall be deemed separated from service as of the date of termination.

Going into the issue, it is necessary to determine the nature of Lodevico's position.

The Civil Service Law classifies the positions in the civil service into career and non-career, to wit:

> The **career service** is characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure; while a **non-career position** is characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or limited to the duration of a particular project for which purpose employment was extended.[31] (Citations omitted and emphasis ours)

There are also three levels of positions in the career service, namely: (a) the first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies; (b) the second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and (c) **the third level shall cover positions in the Career Executive Service**.[32]

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[31] *Jocom v. Judge Regalado*, 278 Phil. 83, 93-94 (1991).

[32] Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 2, Section 8.

Under the third level, such positions in the **Career Executive Service** are further classified into Undersecretary, Assistant Secretary, Bureau Director, **Assistant Bureau Director**, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.[33]

As to employment status and security of tenure, appointment in the career service shall be either permanent or temporary.[34] Lack of civil service eligibility makes an appointment a temporary one and without a fixed and definite term and dependent entirely upon the pleasure of the appointing power.[35] On the other hand, the acquisition of security of tenure is governed by the rules and regulations promulgated by the CESB.

Sections 2 and 3, Article I, Circular No. 2 Series of 2003 issued by the CESB provide:

Section 2. Membership in the CES. Upon inclusion of his/her name in the Roster of CES Eligibles after the conferment of CES Eligiblity

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[33] Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 2, Section 7(3).

[34] Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 5, Section 27:

Sec. 27. *Employment Status*. — Appointment in the career service shall be permanent or temporary.

(1) *Permanent status*. A permanent appointment shall be issued to a person who meets all the requirements for the positions to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

(2) *Temporary appointment*. In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility: *Provided*, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

[35] *Province of Camarines Sur v. CA*, 316 Phil. 347, 351 (1995).

and compliance with the other requirements prescribed by the Board, a CES Eligible assigned to any CES position and appointed by the President to a CES Rank becomes a member of the CES.

Section 3. Original Appointment to CES Rank. Appointment to appropriate classes, based on ranks in the CES, shall be made by the President from a list of CES Eligibles recommended by the Board.

Only a CES Eligible assigned to a CES position may be appointed by the President to a CES Rank. The Entry Rank in the CES shall be CESO Rank VI regardless of the position to which a CES Eligible is assigned.

In sum, for an employee to attain a permanent status in his employment, he must first be a CES eligible. Such eligibility can be acquired by passing the requisite civil service examinations and obtaining passing grade to the same.[36] "At present, the CES eligibility examination process has four stages, namely: (1) Written Examination; (2) Assessment Center; (3) Performance Validation; and (4) Board Interview."[37] After completing and passing the examination process, said employee is entitled to conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Such conferment of eligibility is done by the CESB through a formal Board Resolution after an evaluation is done of the employee's performance in the four stages of the CES eligibility examinations.[38]

Conferment of a CES eligibility does not complete one's membership in the CES nor does it confer security of tenure. It is also necessary that an individual who was conferred CES eligibility be appointed to a CES rank. Such appointment is made by the President upon the recommendation of the CESB. Only after such process will the employees appointment in the service be considered as a permanent one, entitling him to security of tenure.[39]

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[36] *Home Insurance and Guaranty Corp. v. CSC*, 292-A Phil. 247, 254 (1993).

[37] *Señeres v. Sabido, et al.*, 772 Phil. 37, 62 (2015).

[38] *General v. Roco*, 403 Phil. 455, 459-460 (2001).

[39] *Id.* at 460.

In the CES ranking structure, there are recognized six ranks — the highest rank is that of a CESO I while the lowest is that of CESO VI.[40]

As clearly set forth in the foregoing provisions, two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit:

a) CES eligibility; and

b) Appointment to the appropriate CES rank.[41]

Here, Lodevico was appointed as Director III as evidenced by a Letter[42] dated May 14, 2008. The position of Director III, equivalent to Assistant Bureau Director, is considered as a Career Executive Service position, belonging to the third-level. Lodevico met the first requisite as she is a CES eligible, evidenced by a Certificate of Eligibility.[43] However, the second requisite is wanting because there was no evidence which proves that Lodevico was appointed to a CES rank.

Guilty of repetition, being CES eligible alone does not qualify her appointment as a permanent one, for there is a necessity for her appointment to an appropriate CES rank to attain security of tenure.

That being said, We consider Lodevico's appointment as mere temporary. Such being the case, her services may be terminated with or without cause as she merely serves at the pleasure of the appointing authority. "[T]he temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority."[44] Consequently, her removal from service based on MC Nos. 1

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[40] Section 1, Article I, Circular No. 2 Series of 2003 issued by the CESB.

[41] *Id*.

[42] *Rollo*, p. 68.

[43] *Id*. at 69.

[44] *CSC v. Engr. Darangina*, 542 Phil. 635, 639 (2007).

and 2, which discharged all non-CESO occupying CES positions in all agencies, was proper.

Thus, petitioners are correct in stating that mere appointment of Lodevico as Director III and her CES eligibility do not automatically mean that her appointment becomes a permanent one. It is necessary that she be appointed in an appropriate CES rank to convert her temporary appointment into a permanent one.

WHEREFORE, premises considered, the petition is **GRANTED.** The Decision dated January 31, 2011 and Resolution dated April 7, 2011 of the Civil Service Commission in CSC Decision No. 11-0047 are **REVERSED and SET ASIDE**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 205307. January 11, 2018]

PEOPLE OF THE PHILIPPINES, *plantiff-appellee, vs.* **EDUARDO GOLIDAN *y* COTO-ONG, FRANCIS NACIONALES *y* FERNANDEZ, and TEDDY OGSILA *y* TAHIL,** *accused.* **EDUARDO GOLIDAN *y* COTO-ONG, FRANCIS NACIONALES *y* FERNANDEZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE SUPREME COURT GENERALLY UPHOLDS THE FACTUAL FINDINGS OF THE TRIAL

COURTS WHEN AFFIRMED BY THE COURT OF APPEALS; APPLICATION IN CASE AT BAR.—As a general rule, this Court upholds factual findings of the RTC when affirmed by the Court of Appeals, as the appreciation of the evidence adduced by the parties is their primary responsibility. It is, moreover, the province of the lower court to determine the competency of a witness to testify. x x x In this case, the trial court found sufficient basis to consider the testimony of *CCC*, unique though it may have been because of her condition, to be valid. The court invited expert witnesses to testify on the nature of cerebral palsy and the capacity of one who has it, specifically *CCC*, to perceive events surrounding her and to express them. The trial court was able to see consistency in the child's testimony, specifically in her positive identification of the appellants.

2. ID.; ID.; RULE ON THE EXAMINATION OF A CHILD WITNESS (A.M. NO. 004-07-SC, DECEMBER 15, 2000); THE RULE WAS FORMULATED TO ALLOW CHILDREN TO GIVE RELIABLE AND COMPLETE EVIDENCE, MINIMIZE TRAUMA TO CHILDREN, ENCOURAGE THEM TO TESTIFY IN LEGAL PROCEEDINGS AND FACILITATE THE ASCERTAINMENT OF TRUTH.— The *Rule on the Examination of a Child Witness*, A.M. No. 004-07-SC, became effective on December 15, 2000. x x x The lower court had already decided this case as of August 18, 1999, so this Rule was not applied during trial. However, we are discussing its relevant provisions because of the flexibility given to the courts in examining child witnesses under this Rule. In fact, under Section 20, the court may allow leading questions in all stages of examination of a child if the same will further the interests of justice. This Court reiterated that the rule was formulated to allow children to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings and facilitate the ascertainment of truth. This Court recently explained the rationale behind this rule in *People v. Esugon*, where it was stated: That the witness is a child cannot be the sole reason for disqualification. The dismissiveness with which the testimonies of child witnesses were treated in the past has long been erased. Under the *Rule on Examination of a Child Witness* (A.M. No. 004-07-SC 15 December 2000), every child is now presumed qualified to be

a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competency. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child. x x x Furthermore, this Court has applied flexibility in the consideration of evidence in child abuse cases.

3. **CRIMINAL LAW; REVISED PENAL CODE; FELONIES; CONSPIRACY; CONSPIRACY NEED NOT BE PROVEN BY DIRECT EVIDENCE, FOR CONSPIRACY MAY BE INFERRED FROM THE ACTS OF THE ACCUSED IN ACCOMPLISHMENT OF A COMMON UNLAWFUL DESIGN.—**As the Court of Appeals stated, conspiracy need not be proven by direct evidence, for conspiracy may be inferred from the acts of the accused in accomplishment of a common unlawful design. The Court of Appeals held that there is no doubt that conspiracy was shown in the instant case from the concerted actions of the accused-appellants. The surviving victim testified regarding the specific acts perpetrated by the appellants against her and the other victims, which show a unity of purpose and sentiment, and a concerted effort on the part of the appellants to commit the gruesome crimes.

4. **ID.; ID.; ID.; DENIAL AND ALIBI; ALIBI AND DENIAL, IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, ARE NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW.—**The defense of denial and alibi, as held by the Court of Appeals, is weak compared to the positive identification of the appellants as the perpetrators. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. Where there is the least possibility of the presence of the accused at the crime scene, the alibi will not hold water. x x x Both the trial court and the Court of Appeals found the defense of denial and alibi to be insufficient to overthrow the prosecution's evidence against the appellants, who failed to prove that it was physically impossible for them to be at the scene of the crime when the incidents occurred.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.

A.C. Estrada & Associates Law Offices for accused-appellant Nacionales.

Atitiw & Angeles Law Offices for accused-appellant E. Golidan.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a petition for review of the April 25, 2012 **Decision**[1] of the Court of Appeals in **CA-G.R. CR.-H.C. No. 02430**, which affirmed with modification the August 18, 1999 **Decision**[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, in **Criminal Case Nos. 13971-R**, **13972-R** and **13973-R** finding appellants **Eduardo Golidan (Golidan), Francis Nacionales (Nacionales),** and **Teddy Ogsila (Ogsila)** guilty beyond reasonable doubt of the crimes of rape with homicide, murder, and frustrated murder.

Records show that on September 5, 1995 Assistant City Prosecutor Elmer M. Sagsago filed three separate Informations, approved by City Prosecutor Erdolfo V. Balajadia, before the Regional Trial Court (RTC) of Baguio City against appellants Golidan, Nacionales, Ogsila, and a certain "John Doe," for rape with homicide, murder, and frustrated murder of AAA[3], BBB, and CCC, respectively. The pertinent portions of said Informations are quoted below:

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[1] *Rollo*, pp. 2-53; penned by Associate Justice Elihu A. Ybañez with Associate Justices Normandie B. Pizarro and Ramon A. Cruz concurring.

[2] CA *rollo*, pp. 141-185; penned by Judge Antonio C. Reyes.

[3] The real names of the private complainant and those of her immediate family members 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 November 15, 2004 (Rule on Violence Against Women and their Children). See *People v. Cabalquinto,* 533 Phil. 703 (2006).

1. Rape With Homicide

That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, entered the house of AAA and by means of force, violence and intimidation, that is, by beating her on her head and different parts of her body, did then and there willfully, unlawfully, and feloniously lie and succeeded in having carnal knowledge of said AAA and on the occasion of said forcible carnal knowledge and by reason of the same force and violence applied on the person of AAA, the said AAA suffered intracranial hemorrhage as a result of skull fracture which directly resulted to her death.[4]

2. Murder

That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by means of treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and hit BBB, a one-year old baby boy, with a hard object on his head, thereby inflicting upon the latter: Intracranial hemorrhage as a result of skull fracture which directly caused his death.[5]

3. Frustrated Murder

That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, being then armed with solid object and with intent to kill and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and strike with a weapon CCC, a girl ten (10) years of age, thereby inflicting upon the latter severe injuries, which could have caused her death were it not for the timely medical at[t]endance extended to her, thus performing all the acts of execution which could have produced the crime of Murder as a consequence but which nevertheless did

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[4] *Id*. at 35.

[5] *Id*. at 36.

not produce it by reason of causes independent of the will of the accused, that is, the aforesaid timely medical assistance extended to CCC.[6]

In the August 18, 1999 Decision, the RTC quoted the undisputed facts from the People's Memorandum, which we reproduce below:

Based upon the evidence submitted in Court, both by the Prosecution and by the defense, certain facts and propositions are not disputed and may therefore be considered as admitted. These include the circumstances of the persons of the victim, the time and place of the commission of the crime, and those antecedent to the commission of the crime.

Thus, it is undisputed that the deceased BBB was the one-year-old son of DDD who is in turn the daughter of EEE. The baby BBB and his mother DDD live in a house some distance away from that of EEE. CCC, who was then 8 years old at the time of incident, is a granddaughter of EEE. CCC had been living with her grandmother since she was 2 years old. CCC suffers from cerebral palsy which affects her movements which is why her grandmother EEE hires a babysitter to watch over her. At the time of the incident, the baby sitter was one named AAA.

At about 7:30 in the morning of January 20, 1995, EEE left her house and walked to the house of her daughter DDD in order to fetch her grandson BBB. This was because DDD was then studying. She brought the baby BBB to her residence. At about 8:00 she went to work and left behind inside the house her two grandchildren, the baby BBB, CCC, and the baby sitter AAA.

DDD did not however go to school but studied her lessons. At past 10:00, DDD decided to proceed to her mother's house in order to breast feed her baby BBB. When she entered the house, she went straight to the sala and saw CCC lying on her side facing the wall of a room. CCC turned to her and tried to tell her something. It was then she saw, through the transparent curtain separating the bedroom from the sala, the exposed legs of AAA.

She entered the bedroom and saw AAA lying naked on her back. There was blood on the head and vagina of AAA and her nipples

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[6] *Id*. at 37.

were cut. Beside AAA was the baby BBB who was lying face down. When DDD turned him over, she saw his exposed brains and blood oozing from his nose. It was then that she screamed and ran out of the house to call for her husband.

She passed by the house of [appellant] Nacionales, located just 15 meters above the house of EEE. She was screaming and continued running until she found her husband and relayed what she saw. Her husband then ran towards the house of EEE with DDD following him. DDD was still screaming. When they reached the house, DDD continued screaming for help. Two of their neighbors whose houses were some 50 meters away arrived and they were those who called for the police who arrived around 11:00 A.M.

The responding policemen found and recovered a bottle of Coke litro and wooden ashtray from the bed where AAA and the baby BBB were found. Both were stained with blood. Human semen was also found at the tip of the bottle.

Autopsy was conducted on the bodies of AAA and BBB. The results of the autopsy on AAA showed that she suffered a total of 13 external injuries on her head and different parts of her body. Of the 13 injuries, it was determined that 10 were fatal. All were inflicted by a blunt instrument, such as a bottle of Coke litro. The cause of her death was determined to be [I]ntracranial Hemorrhage.

The autopsy further revealed that she was raped as seminal fluid was found inside the vaginal canal and that the one liter Coca-Cola bottle was forcibly jabbed inside her vagina. It was ascertained that the sexual intercourse could have occurred while she was still alive.

As for the baby BBB, he sustained a total of seven external injuries located on the face and head caused possibly by a blunt object or instrument. He died due to Intracranial [H]emorrhage as a result of skull fracture.

The child CCC was rushed to the hospital due to her own injuries. She suffered two external injuries on her head which were fatal. She was confined for 13 days and was discharged on [February] 2, 1995.[7]

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[7] *Id*. at 142-143.

EVIDENCE FOR THE PROSECUTION

DDD testified that at the time of the incident, the babysitter had only been hired for five days. Her mother, EEE, would regularly fetch her grandson BBB from DDD's house so that the babysitter could take care of him while DDD was in school. DDD's house in YYY, Baguio City is about 60 meters away from EEE's house. On the day of the incident, DDD thought of going to school but instead decided to study at home. At around 10:00 a.m., she dropped by EEE's house to check on her son, and that was when she discovered the crime.[8]

EEE, the grandmother of the victims BBB and CCC, corroborated DDD's testimony. EEE testified that before the incident, at around 7:30 in the morning of January 20, 1995, EEE went to DDD's house to fetch her grandson in order for the babysitter, AAA, to take care of him because DDD had to attend school. When EEE left her house for work, she saw four men in front of the house of the appellant Nacionales, who is her neighbor, with Edgar Loma-ang (Loma-ang), and the other appellant, Teddy Ogsila (Ogsila), who were drinking and laughing. At around noontime, her other grandson Domingo went to her workplace and informed her that AAA had been found dead. She rushed home to discover that her grandson BBB was also killed. She looked for CCC and was informed that the child had been brought to the hospital. When asked about the physical condition of CCC, EEE answered that CCC was impaired by polio and could not walk, but had found a way to be mobile by using her right hand to support her body and her legs and buttocks to move forward. EEE testified that prior to the incident, CCC could communicate with her through words and utterances. After the tragedy, however, CCC had to be brought to the Baguio General Hospital where she was confined for three weeks, and her condition had considerably changed. CCC could not move her body because her arms had been twisted, aside from being strangled and hit

[8] *Rollo*, p. 6.

on the head. EEE said she did not know the appellants until the police was able to piece together their investigation with the help of CCC, who was the lone eyewitness to the crimes.

EEE stated that she witnessed how CCC identified the persons who had killed and raped AAA, murdered BBB, and wounded her, on three occasions: February 10, 1995; February 21, 1995; and June 10, 1995. On February 10, 1995, CCC identified appellants Nacionales and Ogsila at the Baguio Police Station. On June 10, 1995, 13 photographs were presented to CCC at the Child and Family Services (CFS) and she was able to identify Nacionales, Ogsila, and Golidan. When asked what the appellants did, CCC answered, pointing to the picture of Golidan, *"paatong auntie"* and then pointing to the picture of Nacionales, *"pakpak bote coke pipit auntie"* and lastly, pointing to the picture of Ogsila, *"pakpak kayo ashtray baby."*[9]

Sharon Flores, a resident of YYY, Baguio City, testified that at about 10:00 in the morning of January 20, 1995, appellant Golidan peeped at their door and asked where her husband was. Golidan appeared to be drunk as his eyes were red, and he left after Sharon told him that her husband was not around. Sharon further testified that she heard loud music coming from the house of appellant Nacionales the night before the incident.[10]

Senior Police Officer (SPO) 3 Pablo Undalos (SPO3 Undalos) testified that when CCC saw appellant Nacionales at the police station on February 10, 1995, CCC mumbled the word "*uyong*" and pressed her head on her grandmother's abdomen. He observed that CCC showed fear and hatred against Nacionales. Ogsila was presented to CCC, and she had the same reaction and mumbled the same word. On February 21, 1995, the date scheduled for the second line-up, CCC tried to lift her right hand, trembling, and again mumbled the word "*uyong*" upon seeing the pictures of Nacionales and Ogsila.[11]

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[9] *Id*. at 9.

[10] *Id*.

[11] *Id*. at 10.

SPO3 Ray Ekid (SPO3 Ekid) of the Baguio City Police testified that on the same morning after the discovery of the incident, he responded to the incident after he received a call from the base operator. When he investigated the surrounding area, he knocked on the door of Nacionales and asked if the latter had heard any sound or commotion from the Bantiway's residence, and who was with him in the house. Nacionales answered *"wala po kaming naririnig*" and said that his father was with him. SPO3 Ekid testified that he observed that Nacionales smelled of liquor. SPO3 Ekid then saw Nacionales's father hanging clothes outside. SPO3 Ekid asked Nacionales's father if the latter heard any sound or commotion from his neighborhood and the father answered that he had heard shouts and a cry of a woman earlier.[12]

Dr. Francisco Hernandez, Jr. (Dr. Hernandez), a medical doctor specializing in neuro-surgery and the treatment of injuries or illnesses of the central nervous system, was presented as a prosecution witness regarding the frustrated murder case involving CCC. Dr. Hernandez testified that CCC had a glasgou-coma scale of eight, which meant a severe head injury; that he noted a large contusion hematoma in the left occipital area of the child, which could have caused CCC's death if not properly treated; and that he observed that when he first saw CCC on January 20, 1995, she was in a fearful state and was non-communicative.[13]

Dr. Vladimir Villaseñor (Dr. Villaseñor), the Medico-Legal Officer of the Philippine National Police Crime Laboratory who conducted the autopsy on the cadavers of AAA and BBB, testified that AAA sustained 13 external injuries, all of which were caused by a blunt instrument. There were multiple injuries on the head which caused her death. Her left kidney was likewise ruptured. Dr. Villaseñor also noted an extensive injury on the hymen of the victim which could have been caused by a large

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[12] *Id.* at 11.

[13] CA *rollo*, pp. 153-154.

object inserted into the hymen, like a one-liter *Coca-Cola* bottle. As there were no previous lacerations, it was confirmed that AAA was still a virgin when she was raped and killed. Regarding BBB, Dr. Villaseñor noted that the one-year-old victim had seven injuries on the head resulting to fractures in the skull and lacerations of the brain.[14]

Dr. Divina R. Martin Hernandez (Dr. Divina Hernandez), a neurologist, was presented as a prosecution witness to show CCC's competence to testify in court and on what the latter would be able to recall regarding the incident where she herself was a victim. She said that CCC was brought to her office by an aunt and a social worker for her to examine CCC's ability and adequacy to testify in court. Dr. Divina Hernandez said that cerebral palsy is a disease of the brain characterized by non-progressive motor impairment and that persons afflicted with this disease usually walk with an abnormality, but they are fairly intelligent, can perceive and make known their perception. Dr. Divina Hernandez conducted a neurological examination of CCC consisting of an evaluation of her capacity to talk and to identify common objects, a cerebral function test, an examination of her cranial nerves, and an examination of her motor and sensory system and other cerebral functions. Dr. Divina Hernandez said that "CCC can talk but with much difficulty; she has only the tendency to say the last syllables of words; she could express with very much difficulty (although) it takes her a long time to say the words; she can identify common objects in the clinic x x x; she can identify people around her like her social worker and she was able to recognize me."[15] Dr. Hernandez said that CCC recalled that she had a playmate, a young boy, and remembers that he was hit on the head and described it by saying "*napakpak sa ulo*," which are things and events which a child in CCC's condition would be incapable of concocting or manipulating.[16]

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[14] *Id*. at 154.

[15] *Id*. at 155-156.

[16] *Id*.

On February 10, 1995, at the Baguio Police Station, according to EEE, it was the first time that CCC identified the appellants Nacionales and Ogsila, when she was made to face them with the other suspects. SPO3 Undalos observed that the 10-year-old victim showed fear and hatred against Nacionales when she was made to face him, and mumbled *"uyong."* When Ogsila was turned to face CCC, she showed the same reaction, pressed herself against EEE's abdomen, and mumbled the same word. Loma-ang was also brought in front of CCC, who showed no reaction.[17]

On February 21, 1995, at the Baguio Police Station, CCC, for the second time, was asked to identify the people who entered their house on the day of the incident. The police presented five pictures to her, including those of Ogsila, Nacionales, and Loma-ang. Again, CCC positively identified Ogsila and Nacionales when the police showed their photos to the child. She tried to lift her right hand, trembling, and again mumbled *"uyong."* With respect to the remaining photos including Loma-ang, she showed no reaction.[18]

On June 10, 1995, at the CFS, once again, CCC was asked by SPO3 Ekid to identify the people who entered their house on January 20, 1995. City Councilor Richard Cariño, a lawyer and member of the Free Legal Assistance Group (FLAG), and Assistant Prosecutor Elizabeth Hernandez, were with him at that time. SPO3 Ekid presented 27 pictures to CCC, who pointed to the photographs of appellants Golidan, Nacionales, and Ogsila. SPO3 Ekid gathered and shuffled the pictures and when he asked CCC for the second time, she again pointed to the pictures of the appellants. SPO3 Ekid then showed CCC 10 pictures and the latter was able to identify the appellants Nacionales, Ogsila, and Golidan.[19]

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[17] *Rollo*, p. 10.

[18] *Id*.

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

DDD narrated that her niece, lone survivor CCC, pointed at the photographs of appellants Golidan, Nacionales, and Ogsila during the picture line up conducted at the CFS as the ones who entered EEE's house. At the CFS, CCC was shown more than 10 pictures pasted on a board and she was able to identify the appellants. DDD was also present during the line up at the Fiscal's Office.[20]

Atty. Cariño testified that he was present at the CFS on June 10, 1995 to help in the investigation of the case. When he tried to talk to CCC, it appeared that the child was able to comprehend and communicate audibly, albeit with a little stutter. She was asked the question "*itodom man no sinno ti nangpakpak kinka"* and one of her answers was "*pinakpak na ti ulok*,"[21] while mentioning the names of the victims. The third time she was asked to identify pictures which were pasted on a white board, CCC again pointed to the appellants.[22]

Assistant City Prosecutor Elmer Sagsago testified on the circumstances of the preliminary investigation he conducted on August 1, 1995. In the presence of appellants' lawyers, a line up consisting of 11 persons was constituted, after which CCC identified appellants Golidan, Ogsila, and Nacionales. Upon the request of defense counsel, a second line up was made, this time in a different order, and again CCC identified appellants as the ones who entered their house on January 20, 1995.[23]

Thus, CCC was called to testify in court, but because of her inability to communicate and move her muscles, the RTC ordered the Department of Social Welfare and Development, the Baguio General Hospital, and the Sacred Heart Hospital of the St. Louis University, through their respective psychiatric departments, to provide the RTC with a list of their experts from among

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[20] *Id*. at 7.

[21] CA *rollo*, p. 150.

[22] *Rollo*, p. 13.

[23] *Id*.

whom the parties shall choose someone to assist CCC in her testimony. From among the names submitted, the prosecution and defense agreed to engage the services of Dr. Marie Sheridan Milan and Dr. Elsie Caducoy of the Baguio General Hospital.[24]

On July 10, 1996, in open court, CCC identified appellants Ogsila, Nacionales, and Golidan from a line up composed of 10 persons, as the ones who entered their house on January 20, 1995. CCC pointed to appellant Nacionales as the one who struck her and AAA, and to appellant Ogsila as the one who struck one-year-old BBB. When asked who went on top of AAA, CCC pointed to appellant Golidan.[25]

EVIDENCE FOR THE DEFENSE:

1. Eduardo Golidan

According to Josephine Golidan, the wife of appellant Golidan, when she, with her two children, left for Tabuk, Kalinga on January 18, 1995, he stayed behind in Baguio to wait for the merchandise they were going to sell in Tabuk. On the following day, as narrated by Julia Golidan, his mother, appellant Golidan helped her tend their store at Lakandula St., Baguio City until January 22, 1995.

Appellant Golidan stated that on January 20, 1995, at about 7:00 in the morning, he left YYY to open the stall of his mother. For the entire day, he helped his mother and his aunt Virginia to sell their goods. The same happened until the morning of January 22, 1995, then, he left for Tabuk in the afternoon and arrived on January 23, 1995.

SPO3 Diosdado Danglose (SPO3 Danglose) testified that he was informed by Joel Colcoli (Colcoli) that he had seen a

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[24] CA *rollo*, p. 156.

[25] *Rollo*, p. 16.

man wearing blood-stained shoes riding a jeepney on January 22, 1995. On January 25, 1995, a certain Sharon Flores told SPO3 Danglose and other police officers that Golidan, who appeared to be drunk, passed by their house looking for her husband. Afterwards, SPO3 Danglose went to the house of the appellant's mother who confirmed that her son had gone to Tabuk to fetch his wife and children. The police officers planned to go to Tabuk to invite Golidan to their office; however, on January 26, 1995, at about 3:00 in the morning, Golidan arrived in Baguio City from Tabuk to get some stocks. He was informed by his sister that he is a suspect in the YYY case. At about 6:00 of the same morning, the appellant went to see SPO4 Joseph Supa (SPO4 Supa) together with his wife and mother. They arrived at the police station at 7:00 in the morning. The police officers asked Golidan to remove his shirt and pants and they found no scratches. In the afternoon of the same day, they brought the appellant to the Hospital for possible identification by the lone survivor, CCC; however, when he was presented in front of the child, she did not respond, just stared at them, and shook her head.[26]

On February 9, 1995, again, Golidan was presented to CCC at the police station, but the child said *"a-an"* and shook her head.[27]

2. Francis Nacionales

Appellant Nacionales testified that in the evening of January 19, 1995, he was at the Pitstop Restaurant on Assumption Road, Baguio City together with Renato Rosario (Rosario), Angeline Bautista (Bautista), and Edgar Loma-ang (Loma-ang). After an hour, they accompanied Loma-ang to the jeepney stop, then, the three of them went to the house of Nacionales. Bautista and Nacionales talked in the music room until the following morning. On January 20, 1995, at about 6:00 in the morning, Rosario and Bautista went home, then, at around 11:00 a.m.,

[26] *Id*. at 16-19.

[27] *Id*. at 17.

Nacionales was awakened by his stepsister, Natalia Obena, who asked for fare to go to the market. After a while, Loma-ang and Bautista arrived at the house of the appellant and after about ten to fifteen minutes, PO1 Ruben Porte (PO1 Porte) knocked at the door and asked Nacionales and Loma-ang to remove their t-shirts in order to look for scratches and blood stains, but found none. The two of them, with Bautista, went to the house of the Bantiways to see what happened.[28]

On February 9, 1995, at the police station, Nacionales with the other appellants were presented to CCC but there was no positive identification coming from the latter. In addition, as narrated by Loma-ang, EEE asked CCC, *"sino ti nag uyong dita?"* and the latter replied, *"haan."* On the following day, Loma-ang and Nacionales, for another time, was presented to CCC and again she said, *"haan"* which means *"no."*[29]

Teddy Ogsila

According to the testimony of appellant Ogsila, on January 19, 1995, he spent the evening drinking beer and playing darts with Philip Romero (Romero) and Melvin Gison (Gison) at the Junkyard Bar on Kisad Road, Baguio City. They went home at 10:00 the next morning as confirmed by Gison and corroborated by the appellant's brother, Pablito Ogsila, Jr., who was then working as a waiter in the said Bar.

On January 20, 1995, at about 10:00 in the morning, Jesus Gison, father of Melvin Gison, came knocking at the door of the house of the Ogsilas, looking for his son. Appellant Ogsila offered Jesus Gison a cup of coffee and woke Melvin up. After the Gisons left, Ogsila did his chores while Romero was at the room listening to music. Ogsila said he did not leave their house in the morning of January 20, 1995. On February 8,

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[28] *Id*. at 20. Nacionales's testimony was corroborated by Bautista, Remedios Nacionales, Natalia Obena, and Loma-Ang.

[29] *Id*. at 21-22.

1995, he went to YYY to get his shoes which Nacionales borrowed.

On February 9 and 10, 1995, Ogsila, with the other appellants and Loma-ang, were presented to the lone survivor at the police station. On both occasions, Cherry Mae did not identify them and uttered the words *"a-an."*[30]

On August 18, 1999, the RTC found appellants guilty beyond reasonable doubt, in a Judgment that contained the following dispositive portion:

> WHEREFORE, judgment is rendered finding the accused Francis Nacionales, Teddy Ogsila, and Eduardo Golidan **GUILTY** of the crimes as charged, and in:
>
> 1. Criminal Case No. 13971-R for Rape with Homicide, each is sentenced to suffer the penalty of death and to pay the amount of ₱50,000.00 each as moral damages and ₱75,000.00 each as indemnity to the heirs of the victim AAA;
>
> 2. Criminal Case No. 13972-R for Murder, each is sentenced to suffer the penalty of *reclusion perpetua* and each to indemnify the heirs of BBB in the amount of ₱100,000.00;
>
> 3. Criminal Case No. 13973-R for Frustrated Murder, each is sentenced to suffer an indeterminate penalty of ten (10) years of *prision correccional* to seventeen (17) years and four (4) months of *reclusion temporal* and each to pay the amount of ₱50,000.00 to the victim CCC.
>
> The accused Francis Nacionales, Teddy Ogsila, and Eduardo Golidan are **ORDERED** to be immediately transferred to the National Penitentiary in Muntinlupa City, Metro Manila.[31]

The case went on automatic review to this Court. The accused-appellant Ogsila filed his Brief on September 28, 2000, with the following assignment of errors:

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

[31] CA *rollo*, pp. 184-185.

I.

THE COURT A QUO ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION'S PRINCIPAL WITNESSES, NAMELY, CCC, SPO3 RAY EKID, SPO3 PABLO UNDALOS, AND DR. DIVINA R. MARTIN HERNANDEZ – MOST ESPECIALLY CCC, WHO WAS NOT EVEN COMPETENT TO TESTIFY;

II.

THE COURT A QUO CONVICTED ACCUSED OGSILA NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE BUT ON THE "WEAKNESS" OF HIS EVIDENCE;

III.

MOST IMPORTANTLY, THE COURT A QUO ERRED IN CONVICTING OGSILA DESPITE THE FACT THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT. [32]

Nacionales, for his part, alleged the following errors:

I.

THE LOWER COURT ERRED IN NOT HOLDING THAT FRANCIS NACIONALES WAS NOT AT THE SCENE OF THE CRIME ON JANUARY 20, 1995;

II.

THE LOWER COURT ERRED IN NOT HOLDING THAT FRANCIS NACIONALES WAS NOT IDENTIFIED ON SEVERAL OCCASIONS BY THE LONE SURVIVING WITNESS CCC WHEN HE WAS PRESENTED TO HER BY THE POLICE INVESTIGATORS OF BAGUIO CITY;

III.

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT FRANCIS NACIONALES ON THE GROUND OF REASONABLE DOUBT.[33]

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[32] *Id*. at 203.

[33] *Id*. at 351.

Golidan submitted the following assignment of errors on appeal:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSEDS (*sic*) BASED SOLELY ON THE UNCORROBORATED DOUBTFUL TESTIMONY OF A LONE ALLEGED WITNESS WHO, UNDER HER PHYSICAL CONDITION , MAY NOT QUALIFY AS A WITNESS UNDER THE REVISED RULES OF COURT;

II.

THE TRIAL COURT GRAVELY ERRED IN SUMMARILY CONCLUDING THAT EACH OF THE ACCUSED IS GUILTY OF ALL THE CHARGES WHERE THERE IS NO PROOF WHATSOEVER, DIRECT NOR CIRCUMSTANTIAL TO SUPPORT THE ALLEGATION OF CONSPIRACY;

III.

THE TRIAL COURT GRAVELY ERRED IN PROCEEDING TO RENDER A JUDGMENT OF CONVICTION IN THE MIDST OF ITS OWN PRONOUNCEMENTS OF DOUBT AND, IN THE PRESENCE OF INDUBITABLE PROOFS SHOWING THAT THE ACCUSEDS (SIC), ESPECIALLY EDUARDO GOLIDAN ARE INNOCENT;

IV.

THE TRIAL COURT GRAVELY ERRED IN NOT ADHERING TO THE TIME HONORED REQUIREMENT (IN CRIMINAL CASES) OF "PROOF BEYOND REASONABLE DOUBT" VIS-À-VIS THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE;

V.

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE FACTS THAT THE RIGHTS OF SUSPECT ACCUSED-APPELLANT EDUARDO GOLIDAN WAS NOT OBSERVED AND THAT, HE WAS NOT ASSISTED BY COUNSEL DURING THE INVESTIGATIONS.[34]

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[34] *Id*. at 417-418.

The Office of the Solicitor General (OSG), as the representative of the State on appeal, filed a consolidated brief for the appellee. The OSG argued that there is an existence of conspiracy, which is proven by the common design towards the accomplishment of the same unlawful purpose of the appellants. In this case, the appellants cooperated with each other in such a way as to achieve their criminal plan.

While the appellants invoked Sections 20 and 21 of Rule 130, contending that CCC is not a competent witness, the OSG countered that the prosecution was able to prove that CCC was a competent witness through the testimony of Dr. Divina Hernandez. Thus, the prosecution established that CCC is incapable of telling a lie and could not be influenced by others; that the lone survivor was not capable of concocting events or manipulating facts, as these would entail motive, which is something CCC could not have due to her condition.

Therefore, the OSG concluded that CCC was telling the truth when she positively identified the appellants. The OSG claimed that the appellants failed to show that the persons who had supposedly conditioned CCC's mind had an ulterior motive to pin them down, and so her testimony should be given full weight and credit. The OSG added that the reason why CCC failed to identify the appellants on January 26, 1995, February 9, 1995 and February 10, 1995 was because the child was still physically and mentally weak from the incident. The period from January 20, 1995 up to the aforementioned dates is not enough to let the victim recover from the injury inflicted by the perpetrators. On said dates, CCC was still very weak, could hardly move her body, and needed the assistance of her grandmother.[35]

The OSG alleged that the appellants' alibi cannot prevail over their positive identifications made by CCC because the former failed to adduce sufficient, satisfactory and convincing evidence that it was physically impossible for them to be at the crime scene.

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[35] *Id*. at 537.

On September 21, 2004, this Court transferred the instant case to the Court of Appeals through a resolution, which reads:

> Conformably with the decision promulgated on 7 July 2004 in G.R. Nos. 147678-87, entitled *The People of the Philippines vs. Efren Mateo y Garcia*, modifying the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment, as well as the resolution of the Supreme Court *en banc*, dated 19 September 1995, in "Internal Rules of the Supreme Court" in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VIII, Section 5 of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court, the Court Resolved to **TRANSFER** these cases to the Court of Appeals, for appropriate action and disposition.[36]

On April 25, 2012, the Court of Appeals rendered a decision **affirming** the Judgment of the RTC but with **modifications**. The dispositive portion of the Court of Appeals decision reads:

> **WHEREFORE,** in view of the foregoing premises, the instant appeal is hereby **AFFIRMED** with the following modifications:
>
> 1) In Criminal Case No. 13971-R, each is sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole. Appellants are ordered to pay, jointly and severally, the amount of Php 75,000.00 as moral damages, Php 100,000.00 as civil indemnity, and Php 50,000.00 as exemplary damages to the heirs of AAA;
>
> 2) In Criminal Case No. 13972-R, each is sentenced to suffer the penalty of *reclusion perpetua without the benefit of parole* and to pay jointly and severally the amount of Php 50,000.00 as civil indemnity, Php 50,000.00 as moral damages, and Php 30,000.00 as exemplary damages to the heirs of BBB;

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[36] *Id*. at 599.

3) In Criminal Case No. 13973-R, each is sentenced to suffer an indeterminate sentence of ten (10) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. Appellants are ordered to pay, jointly and severally, Php 40,000.00 as moral damages, Php 30,000.00 as exemplary damages, and Php 25,000.00 as temperate damages to CCC; and

4) Appellants are further ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* form the date of finality of this Decision.[37]

We agree with the ruling and reasoning of the Court of Appeals, subject to modifications of the penalties as provided by the latest jurisprudence, to be discussed below.

The Court of Appeals, at the outset, affirmed that the lone survivor, CCC, is a competent witness although she is suffering from cerebral palsy, citing the rule that any child can be a competent witness if he/she can perceive, and perceiving, can make known his/her perception to others and of relating truthfully facts respecting which he/she is examined. The Court of Appeals held that even if CCC has cerebral palsy, she can still perceive and make known her perception, as per Dr. Hernandez's explanation in her testimony, which is quoted below:

Q: You said that what you saw in CCC was typical of…?
A: Cerebral palsy, Sir.

Q: Will you please explain to us what kind of a sickness or diseases (sic) is this?
A: Cerebral palsy is a disease of the brain characterized by a non-progressive motor imperment (sic), non-progressive means to say it will not become worst and it is solely focused on the motor system movement, Sir.

x x x x x x x x x

Q: In other words, Dra. this (sic) patient's (sic) can still perceive and make known their perception?

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[37] *Rollo*, pp. 51-52.

A: Yes, Sir.

Q: This is brain damage which involves the motor nerves?
A: The motor system, Sir.

Q: And aside from the motor system the brain is functioning?
A: Yes, Sir.

Q: In other words, the damage of the brain is not total?
A: Yes, Sir"

x x x x x x x x x

"Q: You said that you made this examination, did you find out whether she has the ability to recall the events that happen (sic) in the past?
A: Yes, Sir.

Q: You know you've been told that this particular patient was the victim of violence, is that correct?
A: Yes, Sir.

Q: And in accordance with your examination, did you find out whether she can recall some events which happened when injuries were inflicted on her?
A: I only asked her if she had a playmate and she said she has a playmate a young boy, and where is he now because I did not like to get it from her really like to lead her into a question but I asked her whether she had a playmate and she said yes and where was your playmate now, he's not there anymore and what happen (sic) to him she called her baby "ading" and where is he now she told me that he was hit on the head, Sir.

Q: How did she tell you?
A: She told me "*napakpak sa ulo"* and she even gestured but that's all, I did not like to deal more or other things, Sir.

Q: In other words Dra it was obvious at the time that she could recall some incident that happened?
A: Yes, Sir.

Q: Now this patient CCC Dra in your opinion was she capable of concocting events or manipulating facts considering her mental condition?

A: No, Sir.[38]

The Court of Appeals found no compelling reason to overturn the RTC decision because there is no clear basis that the latter erred in finding that CCC is a competent witness. The Court of Appeals stressed that the trial judge is in the best position to determine the competence as well as the credibility of CCC as a witness since the trial judge has the unparalleled opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected in the record. On the allegation that CCC is mentally retarded as opined by Dr. Francisco Hernandez, the Court of Appeals held that this is insufficient reason to disqualify a witness, for a mental retardate who has the ability to make perceptions known to others can still be a competent witness.

Regarding appellants' allegations that CCC was not able to identify them in the initial stages of the investigation, the Court of Appeals stated that at the time of these initial confrontations at the hospital and at the police station, CCC had just survived from the incident where there were brutal killings and where she herself had sustained a fatal wound on her head. As such, the Court of Appeals noted that the condition of the child, being already afflicted with cerebral palsy, was aggravated by the head injuries inflicted on her, not to mention the state of shock and fear she might have been experiencing at that time. Thus, the Court of Appeals considered that the purported non-identification by child of the appellants at the initial stages of the investigation is of no moment and is not fatal to the prosecution's case.[39]

Furthermore, the Court of Appeals held that where there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against the accused or to falsely implicate him/her in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith

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

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

and credence. In the case at bar, there is no showing that the witnesses for the prosecution had any motive to testify falsely against the appellants.

Anent the issue of conspiracy, the Court of Appeals stated that for collective responsibility to be established, it is not necessary that conspiracy be proven by direct evidence or prior agreement to commit the crime nor is it essential that there be proof of previous agreement to commit a crime. Conspiracy may logically be inferred from acts and circumstances showing the existence of a common design to commit the offense charged. It is sufficient that the malefactors acted in concert pursuant to the same objective. Due to conspiracy, the act of one is the act of all.[40] Furthermore, conspiracy exists when, at the time of the commission of the offense, the malefactors had the same purpose and were united in their action.[41]

The Court of Appeals emphasized that the prohibition against custodial investigation conducted without the assistance of counsel does not extend to a person in a police line up. This particular stage of an investigation where a person is asked to stand in a police line up has been held to be outside the mantle of protection of the right to counsel because it involves a general inquiry into an unsolved crime and is purely investigatory in nature. It has been held that identification without the presence of counsel at a police line up does not preclude the admissibility of in-court identification.

As regards the appellants' defense of alibi, the Court of Appeals reasoned that the same crumbles in the face of the positive identification made by CCC. For alibi to prosper, it is not enough for the accused to prove that he/she was elsewhere when the crime was committed, but he/she must also demonstrate that it would be physically impossible for him/her to be at the scene of the crime at the time of its commission. In the case at bar, aside from the positive identification made by CCC,

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[40] Citing *People v. Pacaña,* 398 Phil. 869, 881 (2000).

[41] *People v. Hermosa*, 417 Phil. 132, 148 (2001).

several witnesses saw the appellants in the vicinity of YYY, Baguio City in the morning of January 20, 1995. Thus, it goes without saying that **it was <u>not</u> physically impossible for the appellants to be at the scene of the crime.**

We find and so hold that the above pronouncements of the Court of Appeals, which affirm the judgment of the Regional Trial Court, have basis both in fact and in law, and the assailed decision does not contain reversible error, contrary to the appellants' allegations.

As a general rule, this Court upholds factual findings of the RTC when affirmed by the Court of Appeals, as the appreciation of the evidence adduced by the parties is their primary responsibility. It is, moreover, the province of the lower court to determine the competency of a witness to testify.

In *People v. Magbitang*,[42] we held:

> *Secondly*, Magbitang's contention that CCC, being a child of tender age, was not a competent witness because his testimony was filled with inconsistencies and suffered from improbabilities was unfounded.
>
> Under the *Rules of Court*, a child may be a competent witness, unless the trial court determines upon proper showing that the child's mental maturity is such as to render him incapable of perceiving the facts respecting which he is to be examined and of relating the facts truthfully. The testimony of the child of sound mind with the capacity to perceive and make known the perception can be believed in the absence of any showing of an improper motive to testify. Once it is established that the child fully understands the character and nature of an oath, the testimony is given full credence. x x x. (Citations omitted.)

Regarding the evaluation of a witness's testimony, we have ruled in *People v. Hermosa*[43] in this wise:

> [T]he trial court's evaluation of the testimony of a witness is accorded the highest respect because of its direct opportunity to observe the

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[42] G.R. No. 175592, June 14, 2016, 793 SCRA 266, 273-274.

[43] *Supra* note 40 at 141-142.

witnesses on the stand and to determine if they are telling the truth or not. This opportunity enables the trial judge to detect better that thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. Thus, the trial judge's evaluation of the competence and credibility of a witness will not be disturbed on review, unless it is clear from the records that his judgment is erroneous. (Citations omitted.)

In this case, the trial court found sufficient basis to consider the testimony of CCC, unique though it may have been because of her condition, to be valid. The court invited expert witnesses to testify on the nature of cerebral palsy and the capacity of one who has it, specifically CCC, to perceive events surrounding her and to express them. The trial court was able to see consistency in the child's testimony, specifically in her positive identification of the appellants.

The appellants in *Hermosa* likewise impugned the testimony of the child witness on the ground that she did not immediately tag them as the culprits but the Court held that the failure to immediately reveal the identity of the perpetrator of a felony will not necessarily impair the credibility of a witness.[44]

The *Rule on the Examination of a Child Witness*, A.M. No. 004-07-SC, became effective on December 15, 2000. The first three sections of this Rule provide as follows:

SECTION 1. *Applicability of the Rule*. — Unless otherwise provided, this Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.

SECTION 2. *Objectives*. — The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.

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[44] *Id*. at 145.

SECTION 3. *Construction of the Rule*. — This Rule shall be liberally construed to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

The lower court had already decided this case as of August 18, 1999, so this Rule was not applied during trial. However, we are discussing its relevant provisions because of the flexibility given to the courts in examining child witnesses under this Rule. In fact, under Section 20, the court may allow leading questions in all stages of examination of a child if the same will further the interests of justice. This Court reiterated that the rule was formulated to allow children to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings and facilitate the ascertainment of truth.[45]

This Court recently explained the rationale behind this rule in *People v. Esugon*,[46] where it was stated:

That the witness is a child cannot be the sole reason for disqualification. The dismissiveness with which the testimonies of child witnesses were treated in the past has long been erased. Under the *Rule on Examination of a Child Witness* (A.M. No. 004-07-SC 15 December 2000), every child is now presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competency. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child.

The assessment of the credibility of witnesses is within the province of the trial court. All questions bearing on the credibility of witnesses are best addressed by the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office.

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[45] *People v. Ilogon,* G.R. No. 206294, June 29, 2016, 795 SCRA 201, 211.

[46] 761 Phil. 300, 311 (2015). See also *People v. Rama*, 403 Phil. 155, 174-175 (2001); *People v. Gajo*, 384 Phil. 347, 356 (2000).

The trial judge has the unique advantage of actually examining the real and testimonial evidence, particularly the demeanor of the witnesses. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, like when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more stringently applied if the appellate court has concurred with the trial court. (Citations omitted.)

Furthermore, this Court has applied flexibility in the consideration of evidence in child abuse cases. As we observed in *Razon, Jr. v. Tagitis*:[47]

Section 28 of the Rule on Examination of a Child Witness is expressly recognized as an exception to the hearsay rule. This Rule allows the admission of the hearsay testimony of a child describing any act or attempted act of sexual abuse in any criminal or non-criminal proceeding, subject to certain prerequisites and the right of cross-examination by the adverse party. The admission of the statement is determined by the court in light of specified subjective and objective considerations that provide sufficient indicia of reliability of the child witness. These requisites for admission find their counterpart in the present case under the above-described conditions for the exercise of flexibility in the consideration of evidence, including hearsay evidence, in extrajudicial killings and enforced disappearance cases. (Citations omitted.)

The above pronouncement may also be found in *People v. Santos*,[48] where the Court held:

The trend in procedural law is to give a wide latitude to the courts in exercising control over the questioning of a child witness. Under Sections 19 to 21 of the Rules on Examination of a Child Witness, child witnesses may testify in a narrative form and *leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice*. It must be borne in mind

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[47] 621 Phil. 536, 616-617 (2009).

[48] 532 Phil. 752, 764 (2006), citing *People v. Gaudia*, 467 Phil. 1025, 1039 (2004).

that the offended party in this case is a *6-year old* minor who was barely *five* when she was sexually assaulted. As a child of such tender years not yet exposed to the ways of the world, she could not have fully understood the enormity of the bestial act committed on her person. Indeed —

> Studies show that children, particularly very young children, make the "perfect victims." They naturally follow the authority of adults as the socialization process teaches children that adults are to be respected. The child's age and developmental level will govern how much she comprehends about the abuse and therefore how much it affects her. If the child is too young to understand what has happened to her, the effects will be minimized because she has no comprehension of the consequences. ***Certainly, children have more problems in providing accounts of events because they do not understand everything they experience***. They do not have enough life experiences from which to draw upon in making sense of what they see, hear, taste, smell and feel. ***Moreover, they have a limited vocabulary***. x x x. (Citations omitted.)

We likewise affirm the finding of conspiracy. As the Court of Appeals stated, conspiracy need not be proven by direct evidence, for conspiracy may be inferred from the acts of the accused in accomplishment of a common unlawful design.[49] The Court of Appeals held that there is no doubt that conspiracy was shown in the instant case from the concerted actions of the accused-appellants. The surviving victim testified regarding the specific acts perpetrated by the appellants against her and the other victims, which show a unity of purpose and sentiment, and a concerted effort on the part of the appellants to commit the gruesome crimes.

The defense of denial and alibi, as held by the Court of Appeals, is weak compared to the positive identification of the appellants as the perpetrators.[50] Alibi and denial, if not substantiated by clear and convincing evidence, are negative

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[49] *People v. Bermas*, 369 Phil. 191, 232 (1999).

[50] *People v. Bagsit,* 456 Phil. 623, 632 (2003).

and self-serving evidence undeserving of weight in law.[51] Where there is the least possibility of the presence of the accused at the crime scene, the alibi will not hold water.[52] In this matter, the Court has consistently ruled as follows:

> The Court has considered the defense of denial and alibi put up by the accused, but finds them relatively weak and insufficient to overcome the positive and categorical identification of the accused as perpetrators. The rule is that the defense of denial, when unsubstantiated by clear and convincing evidence, is negative and self-serving and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[53] (Citations omitted.)

Both the trial court and the Court of Appeals found the defense of denial and alibi to be insufficient to overthrow the prosecution's evidence against the appellants, who failed to prove that it was physically impossible for them to be at the scene of the crime when the incidents occurred.

Applying prevailing jurisprudence which has increased the amount of awards for damages in criminal cases to show not only the Court's, but all of society's outrage over such crimes and wastage of lives,[54] we hereby modify the Court of Appeals decision as follows:

1. In Criminal Case No. 13971-R for Rape with Homicide, where the penalty imposed is death but reduced to *reclusion perpetua*, without eligibility for parole, because of Republic Act No. 9346, in addition to the Php100,000.00 civil indemnity awarded by the Court of Appeals, each appellant is sentenced to pay jointly and severally to the heirs of AAA: the amounts of

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[51] *Esqueda v. People,* 607 Phil. 480, 497 (2009).

[52] *Lumanog v. People,* 644 Phil. 296, 404 (2010).

[53] *People v. Teñoso*, 637 Phil. 595, 610 (2010).

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

Php100,000.00 as moral damages and Php100,000.00 as exemplary damages;

2. In Criminal Case No. 13972-R for Murder, each appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay jointly and severally the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and Php75,000.00 as exemplary damages plus temperate damages of Php50,000.00 to the heirs of BBB; and

3. In Criminal Case No. 13973-R, for Frustrated Murder, each appellant is sentenced to suffer an indeterminate sentence of ten (10) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. Each appellant is ordered to pay, jointly and severally, Php50,000.00 as civil indemnity, and the amounts of Php50,000.00 as moral damages and Php50,000.00 as exemplary damages to CCC.

WHEREFORE, for want of merit, this petition is **DISMISSED.** The decision of the Court of Appeals dated April 25, 2012 in **CA-G.R. CR-H.C. No. 02430**, which affirmed with modification the August 18, 1999 **Judgment** of the Regional Trial Court (RTC), Branch 61, Baguio City, in **Criminal Case Nos. 13971-R**, **13972-R**, and **13973-R** finding accused-appellants **Eduardo Golidan (Golidan),** and **Francis Nacionales (Nacionales)** and **Teddy Ogsila (Ogsila) GUILTY** beyond reasonable doubt of the crimes of rape with homicide, murder, and frustrated murder, is **AFFIRMED WITH MODIFICATION as to the above-mentioned amount of monetary awards.**

SO ORDERED.

Sereno, C.J. (Chairperson), Peralta,[*] *del Castillo,* and *Tijam, JJ.,* concur.

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[*] Per Raffle dated January 8, 2018.

FIRST DIVISION

[G.R. No. 210610. January 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARILOU HILARIO *y* DIANA and LALAINE GUADAYO *y* ROYO,** *accused.* **MARILOU HILARIO *y* DIANA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; WHEN THE COURT OF APPEALS IMPOSED A PENALTY OF *RECLUSION PERPETUA* OR LIFE IMPRISONMENT, AN ACCUSED MAY EITHER FILE A NOTICE OF APPEAL UNDER RULE 124, SECTION 13 (C) OF THE RULES OF COURT OR FILE A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; DISTINGUISHED.— [T]he Court establishes that an appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority. The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. When the Court of Appeals imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Rule 124, Section 13(c) of the Rules of Court to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT GENERALLY DESISTS FROM DISTURBING THE CONCLUSIONS OF THE TRIAL COURT; EXCEPTIONS; PRESENT IN CASE AT BAR.— The rule that this Court generally desists from disturbing the conclusions of the trial court on the credibility of witnesses will not apply where the evidence of record fails to support or substantiate the findings of fact and conclusions of the lower court; or where the lower court overlooked certain facts of

substance and value that, if considered, would affect the outcome of the case; or where the disputed decision is based on a misapprehension of facts. All of these exceptional circumstances are availing in the present case. x x x PO1 de Sagun's testimony – consisting of generalizations which lacked material details, riddled with inconsistencies, and uncorroborated – failed to establish the elements of the offense charged with proof beyond reasonable doubt. x x x The lack of specific details on the planning and conduct of the buy-bust operation on January 22, 2008 in Brgy. Maguihan casts serious doubts that it actually took place and/or that the police officers carried out the same in the regular performance of their official duties. x x x Furthermore, the prosecution failed to present during the trial the *corpus delicti*. There were material inconsistencies between PO1 de Sagun's testimony vis-à-vis the object and documentary evidence submitted by the prosecution itself which rendered highly questionable whether the dangerous drug presented before the RTC during trial was actually the same as that seized from Hilario during the buy-bust operation.

3. **ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE PROSECUTION BEARS THE BURDEN TO OVERCOME THE PRESUMPTION OF INNOCENCE OF THE ACCUSED, FAILURE OF PROSECUTION TO DISCHARGE THIS BURDEN, THE ACCUSED DESERVES A JUDGMENT OF ACQUITTAL; APPLICATION IN CASE AT BAR.—** It is fundamental in the Constitution and basic in the Rules of Court that the accused in a criminal case enjoys the presumption of innocence until proven guilty. Likewise, it is well-established in jurisprudence that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense. The evidence for the prosecution were insufficient in material details and fraught with discrepancies and contradictions. PO1 de Sagun himself, who claimed to have seized, marked, and kept custody of the sachet of *shabu* seized from Hilario, could not positively

identify which between the two sachets of *shabu* he was presented with at the trial, marked as "NBS-1" and "NBS-2," was the one he actually seized from Hilario. Absent proof beyond reasonable doubt, the Court cannot merely rely on the presumption that PO1 de Sagun regularly performed his official duties.

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

LEONARDO-DE CASTRO, *J.*:

This is an appeal filed by accused-appellant Marilou D. Hilario (Hilario) of the Decision[1] dated July 18, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05244, affirming with modification the Decision[2] dated August 23, 2011 of the Regional Trial Court (RTC) of Lemery, Batangas, Branch 5 in Criminal (Crim.) Case Nos. 10-2008, 11-2008, and 13-2008. In its assailed Decision, the appellate court found Hilario guilty of illegal sale of dangerous drugs, in violation of Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Act of 2002; but acquitted Hilario and her co-accused Lalaine R. Guadayo (Guadayo) of illegal possession of dangerous drugs, penalized under Article II, Section 11 of Republic Act No. 9165. The RTC had previously convicted Hilario and Guadayo of all charges against them.

On January 25, 2008, three Informations were filed before the RTC against Hilario and Guadayo, to wit:

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[1] *Rollo*, pp. 2-21; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon concurring.

[2] CA *rollo*, pp. 12-17; penned by Executive Judge Eutiquio L. Quitain.

Docket No.	Accused	Charge
Crim. Case No. 10-2008	Hilario	Illegal Sale of Dangerous Drugs (Article II, Section 5 of R.A. No. 9165)
Crim. Case No. 11-2008	Hilario	Illegal Possession of Dangerous Drugs (Article II, Section 11 of R.A. No. 9165)
Crim. Case No. 13-2008	Guadayo	Illegal Possession of Dangerous Drugs (Article II, Section 11 of R.A. No. 9165)

The Information in Crim. Case No. 10-2008 accused Hilario of illegal sale of dangerous drugs, allegedly committed as follows:

That on or about the 22nd day of January, 2008, at about 11:00 o'clock in the evening, at Barangay Maguihan, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver and give away one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as "shabu", weighing 0.04 gram, referred to as specimen A (NBS-1) in Chemistry Report No. BD-012-08, a dangerous drug.[3]

Hilario was also charged with illegal possession of dangerous drugs under the Information in Crim. Case No. 11-2008, thus:

That on or about the 22nd day of January, 2008, at about 11:00 o'clock in the evening, at Barangay Maguihan, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in her possession, custody and control one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as "shabu", weighing 0.03 gram, referred to as specimen B (NBS-2) in Chemistry Report No. BD-012-08, a dangerous drug.[4]

The Information in Crim. Case No. 13-2008 was similarly worded to that in Crim. Case No. 11-2008, except that it incriminated Guadayo for illegal possession of "one (1) small

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[3] Records (Crim. Case No. 10-2008), p. 24.

[4] *Id.* (Crim. Case No. 11-2008), p. 1.

heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as 'shabu,' weighing 0.04 gram, a dangerous drug."[5]

When arraigned on April 29, 2008, Hilario and Guadayo pleaded not guilty to the charges against them.[6]

The prosecution presented a lone witness, Police Officer (PO) 1 Nemesio Brotonel de Sagun (de Sagun) of the Philippine National Police (PNP), then assigned in Lemery, Batangas. PO1 de Sagun testified that on January 22, 2008, at around 11:00 in the evening, he was with PO2 Arnold Magpantay (Magpantay) and PO1 Melvin Cabungcal (Cabungcal) in Sitio Bagong Barrio, Barangay (Brgy.) Maguihan, Lemery, Batangas, to conduct surveillance and a buy-bust operation. PO1 de Sagun, in civilian clothes, acted as poseur-buyer and was able to buy *shabu* for ₱500.00 from Hilario. Upon consummation of the sale, PO1 de Sagun personally arrested Hilario and marked the ₱500.00-bill he paid Hilario as "NBS-1" and the *shabu* Hilario sold to him as "NBS-2." After the arrest, PO1 de Sagun brought Hilario to the Lemery police station and turned over custody of Hilario to the investigator-on-duty, but PO1 de Sagun could not recall the name of said investigator. PO1 de Sagun also claimed that he prepared an inventory of the seized items in the presence of "Ma'm Orlina" and Sims Garcia, representatives from the Department of Justice (DOJ) and the media, respectively. PO1 de Sagun then brought the seized items to the Batangas Provincial Crime Laboratory Office for examination, and according to him, the submitted specimen tested positive for *shabu*.[7]

PO1 de Sagun further recounted that during the buy-bust operation, Guadayo ran away, so PO2 Magpantay had to chase after her. When PO2 Magpantay subsequently caught up with Guadayo, he recovered and confiscated from her another sachet of *shabu*. PO1 de Sagun, though, admitted that he was not

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[5] *Id*. (Crim. Case No. 13-2008), p. 1.

[6] *Id*. (Crim. Case No. 10-2008), p. 39.

[7] TSN, November 12, 2008.

personally present when PO2 Magpantay seized the sachet of *shabu* from Guadayo.

During PO1 de Sagun's direct examination, a brown sealed envelope was presented, and when opened, it contained two heat-sealed transparent sachets of *shabu*. When questioned as to why there were two sachets of *shabu*, PO1 De Sagun maintained that he confiscated only one sachet from Hilario, and suggested that the other sachet was the one seized by PO2 Magpantay from Guadayo. Between the two sachets of *shabu*, PO1 de Sagun identified the sachet marked "NBS-1" as the one which he confiscated from Hilario.[8]

When PO1 de Sagun was subjected to cross-examination, he reiterated that he had marked the ₱500.00-bill used in the buy-bust operation as "NBS-1" and the sachet of *shabu* bought from Hilario as "NBS-2." When pressed further by the defense counsel on the fact that he identified the sachet of *shabu* marked as "NBS-1" as the one he seized from Hilario, PO1 de Sagun confirmed the apparent discrepancies in his testimony.[9]

Also in the course of PO1 de Sagun's cross-examination, he attested that he, PO2 Magpantay, and PO1 Cabungcal went to Brgy. Maguihan on January 22, 2008 based on information gathered from concerned citizens that sale of dangerous drugs was rampant in the area; they prepared a pre-operation report but he did not have a copy of the same with him at the trial; they did not know nor did they conduct a surveillance of Hilario and Guadayo prior to January 22, 2008; and when they went to Brgy. Maguihan, they were not certain of the subject of their buy-bust operation.

The prosecution additionally submitted as evidence the *Magkalakip na Sinumpaang Salaysay* dated January 22, 2008 of PO1 de Sagun and PO2 Magpantay; Chemistry Report No. BD-012-08 dated January 23, 2008 issued by Police Chief Inspector (P/CInsp.) Jupri Caballegan Delantar, Forensic

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

[9] TSN, August 4, 2009, pp. 4-5.

Chemical Officer, of the Batangas Provincial Crime Laboratory Office, PNP; the sachet of *shabu* with marking "NBS-1;" and photocopy of the ₱500.00-bill with Serial No. 665579 and marking "NBS-1." Chemistry Report No. BD-012-08 stated that two specimens were seized from Hilario, *i.e.*, Specimens A (NBS1) and B (NBS-2), weighing 0.04 gram and 0.03 gram, respectively, which both tested positive for Methamphetamine Hydrochloride, a dangerous drug.

For its part, the defense called Hilario[10] and Guadayo[11] to the witness stand. Hilario used to live in Tondo, Manila, but their house was demolished, so she and her family moved to Brgy. Maguihan in Lemery, Batangas in March 2007. Guadayo lived with and served as a babysitter for Hilario's sister-in-law.

According to the combined narrative of Hilario and Guadayo, on January 22, 2008, at about 10:00 in the evening, they were both at Hilario's house. Hilario was tending to her sick 12-year-old daughter, and Guadayo was there to help Hilario with the laundry. A neighbor, Feliciano Anuran (Anuran), had just arrived to borrow a DVD, when three police officers entered Hilario's house. Among the police officers, Hilario already knew PO1 de Sagun at that time because the latter frequented their place. The police officers demanded that Hilario show them the money and *shabu*. Hilario replied that she did not have any money and *shabu*. Without presenting any warrant, the police officers, particularly, PO1 de Sagun, then searched Hilario's house, but found nothing. At this point, Anuran ran out of the house and was chased by the police officers. When the police officers returned, they invited Hilario and Guadayo to the police station to answer some of the police officers' questions. When Hilario further inquired as to the reason for the invitation, the police officers told her to just go with them. The police officers brought Hilario, Guadayo, and even Hilario's sick daughter to the police station, and after only a short stay

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[10] TSN, March 8, 2010.

[11] TSN, February 8, 2011.

at an office in the police station, and without actually being asked any questions, all three were put in jail. On January 23, 2008, Hilario and Guadayo were subjected to a drug test, and on January 24, 2008, they were brought to Batangas City for inquest proceedings.

On August 23, 2011, the RTC promulgated its Decision, finding Hilario and Guadayo guilty of all the charges against them. The RTC highlighted that this was a case of a buy-bust operation and adjudged that the prosecution was able to prove all the elements of the offenses charged, to wit, the prosecution witness, PO1 de Sagun, testified on how the buy-bust transaction took place and properly identified the poseur-buyer and seller, plus the illegal drug was presented as evidence in court. The RTC sentenced Hilario and Guadayo as follows:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
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> 1. In Criminal Case No. 10-2008, accused Marilou Hilario *y* Diana, is hereby found guilty beyond reasonable doubt for violating Sec. 5 of Republic Act 9165 and is hereby sentenced to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00);
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> 2. In Criminal Case No. 11-2008, accused Marilou Hilario *y* Diana, is hereby found guilty beyond reasonable doubt for violating Sec. 11 of Republic Act 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment;
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> 3. In Criminal Case No. 13-2008, accused Lalaine Guadayo *y* Royo, is hereby found guilty beyond reasonable doubt for violating Sec. 11 of Republic Act 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment.[12]

The Motion for Reconsideration of Hilario and Guadayo was denied for lack of merit by the RTC in an Order[13] dated

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[12] CA *rollo*, p. 17.

[13] Records (Crim. Case No. 10-2008), pp. 251-252.

September 26, 2011. Hilario and Guadayo filed a Notice of Appeal,[14] which the RTC granted in an Order[15] dated October 5, 2011.

The appeal of Hilario and Guadayo before the Court of Appeals was docketed as CA-G.R. CR.-H.C. No. 05244.

In its Decision dated July 18, 2013, the Court of Appeals partially granted the appeal.

The Court of Appeals affirmed the conviction of Hilario for illegal sale of dangerous drugs in Crim. Case No. 10-2008, finding PO1 de Sagun's testimony on the completed buy-bust operation credible. It was amply proven by PO1 de Sagun's testimony that a sale of *shabu* transpired between Hilario as the seller and PO1 de Sagun as the poseur-buyer. The appellate court also cited the presumption of regularity in PO1 de Sagun's performance of his official duties; the absence of proof of ill motive on PO1 de Sagun's part to falsely impute a serious crime against Hilario; and substantial compliance with the procedure on custody of evidence in drug cases since PO1 de Sagun took custody of the sachet of shabu seized from Hilario and personally delivered the same to the crime laboratory for examination, wherein it was tested positive for *shabu*.

The Court of Appeals though, in the same Decision, acquitted Hilario in Crim. Case No. 11-2008 and Guadayo in Crim. Case No. 13-2008, for the following reasons:

Criminal Case No. 11-2008

On the other hand, this Court disagrees with the trial court in finding accused-appellant Hilario guilty for violation of Section 11 of R.A. No. 9165.

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In prosecution for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an

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[14] CA *rollo*, pp. 18-19.

[15] *Id.* at 20.

object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.

Significantly, in the present case, only one sachet of shabu was confiscated from accused-appellant [Hilario], the one subject of the sale. No evidence was shown that she was further apprehended in possession of another quantity of prohibited drugs not covered by or included in the sale. As correctly argued by the plaintiff-appellee, the accused cannot be convicted for possession of the prohibited drugs she sold because possession of dangerous drugs is generally inherent in the crime of sale.

In People v. Posada, the Supreme Court ruled that possession of prohibited or dangerous drugs is absorbed in the sale thereof, citing the case of People v. Lacerna x x x.

x x x x x x x x x

To reiterate, only one (1) shabu sold by accused-appellant, Hilario was established. There was no other evidence that another shabu was found in her possession, not covered by the sale and probably intended for a different purpose like another sale or for her own use was proven. Accordingly, she cannot be convicted separately for illegal possession and for illegal sale because in this particular case possession is absorbed in the act of sale thereof.

Criminal Case No. 13-2008

Anent, accused-appellant, Guadayo, this Court is convinced that the trial court erred in finding the accused guilty for violation of Section 11 of R.A. No. 9165.

The prosecution was able to establish that appellant Guadayo was in possession of a sachet of shabu as testified to by PO1 De Sagun who recounted that PO1 Magpantay pursued and arrested Guadayo x x x.

x x x x x x x x x

Unfortunately, the record is bereft of proof on the chain of custody of the shabu taken from appellant Guadayo. PO1 De Sagun did not state that the sachet of shabu was handed to him by PO1 Magpantay after it was confiscated from appellant Guadayo. The chain of custody rule requires that the testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered

in evidence. Notably, in this case, the prosecution failed to put on witness stand PO1 Magpantay who allegedly ran after appellant Guadayo and seized the shabu.

Corollary thereto, there was a break in the chain of custody because no mention was made as to what happened to the substance from the time it was seized from the appellant [Guadayo], how it got to the laboratory and how it was kept before being offered in evidence.

More importantly, no shabu allegedly seized from appellant, Guadayo was identified before the trial court.

As aptly held by the Supreme Court in *Malillin v. People*:

> The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.

Likewise, the Supreme Court made an enlightening disquisition on this matter in *People v. Doria*, viz.:

> Given the high concern for the due recording of the authorized movements and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of and recovered during the illegal sale is material in every prosecution for the illegal sale of dangerous drugs. Without such dangerous drugs being presented as evidence, the State does not establish the corpus delicti, which, literally translated from Latin, refers to the body of the crime, or the actual commission by someone of the particular offense charged.

With crucial portions of the chain of custody not clearly accounted for and the alleged shabu confiscated from appellant Guadayo not clearly established, reasonable doubt is thus created as to her guilt. Appellant, Guadayo is therefore entitled to an acquittal for violation of Section 11 of Article II of R.A. No. 9165.[16]

Ultimately, the Court of Appeals decreed:

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[16] *Rollo*, pp. 15-19.

WHEREFORE, premises considered, this Court **PARTIALLY GRANTS** the instant appeal. The assailed Decision of RTC of Lemery, Batangas, (Branch 5) dated 23 August 2011 is MODIFIED as follows;

1. Appellant Hilario is hereby **ACQUITTED** in Criminal Case No. 11-2008 for violation of Section 11 of RA No. 9165 as being considered absorbed in the commission of Section 5 of RA No. 9165 under Criminal Case No. 10-2008; and

2. Appellant Guadayo is hereby **ACQUITTED** in Criminal Case No. 13-2008 for violation of Section 11 of R.A. No. 9165 on reasonable doubt and is ordered immediately **RELEASED** from detention, unless she is confined for any other lawful case.

Other aspects of the Decision are hereby **AFFIRMED**.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.[17]

Hilario's Notice of Appeal was given due course by the appellate court in a Resolution[18] dated August 13, 2013.

In a Resolution[19] dated February 19, 2014, this Court required the parties to file their respective Supplemental Briefs if they so desire. Both parties manifested that they are no longer filing a Supplemental Brief.[20]

In her Brief filed before the Court of Appeals, Hilario argued that the prosecution failed to establish the elements of illegal sale of dangerous drugs, penalized under Article II, Section 5 of Republic Act No. 9165. Hilario contended that PO1 de Sagun only made a blanket declaration that as poseur-buyer, he was able to buy *shabu* from Hilario and his testimony lacked clear and complete details of the supposed buy-bust operation. Hilario likewise averred that the identity of the *shabu* supposedly bought

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[17] *Id*. at 20.

[18] CA *rollo*, p. 185.

[19] *Rollo*, p. 27.

[20] *Id*. at 28-31; 36-39.

and confiscated from Hilario was not established with certainty by the prosecution, pointing out that PO1 de Sagun's confusion as to the markings affixed on the seized item was apparent. Thus, Hilario asserted that serious doubts arose as to whether the sachet of suspected *shabu* submitted for laboratory examination were the same as that purportedly bought and confiscated from her.

There is merit in this appeal.

At the outset, the Court establishes that an appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority. The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. When the Court of Appeals imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Rule 124, Section 13(c) of the Rules of Court to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.[21]

In this case, the Court of Appeals affirmed the RTC judgment finding Hilario guilty of illegal sale of dangerous drugs and imposing upon her the sentence of *reclusion perpetua.* Hilario filed a Notice of Appeal with the appellate court in accordance with Rule 122, Section 3(e), in relation to Rule 124, Section 13(c), of the Rules of Court, which provide:

Rule 122
APPEAL

x x x x x x x x x

SEC. 3. *How appeal taken.* –

x x x x x x x x x

[21] *Dungo v. People*, 762 Phil. 630, 652 (2015).

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

Rule 124
PROCEDURE IN THE COURT
OF APPEALS

x x x x x x x x x

SEC. 13. *Certification or appeal of case to the Supreme Court.* – x x x

x x x x x x x x x

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

Therefore, Hilario's appeal opens the entire case for review by the Court on any question, whether or not the questions were raised by Hilario as accused-appellant and whether they are questions of fact or mixed questions of fact and law.

Undeniably, Hilario challenges the sufficiency of evidence to support her conviction for illegal sale of dangerous drugs. The RTC and the Court of Appeals gave total faith and credence to the testimony of PO1 de Sagun, the sole prosecution witness.

The rule that this Court generally desists from disturbing the conclusions of the trial court on the credibility of witnesses will not apply where the evidence of record fails to support or substantiate the findings of fact and conclusions of the lower court; or where the lower court overlooked certain facts of substance and value that, if considered, would affect the outcome of the case; or where the disputed decision is based on a misapprehension of facts.[22] All of these exceptional circumstances are availing in the present case.

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[22] *People v. Godoy*, 321 Phil. 279, 322 (1995).

In *People v. Ismael,*[23] the Court pronounced:

> To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. 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.
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> x x x x x x x x x
>
> In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed." (Citations omitted.)

PO1 de Sagun's testimony – consisting of generalizations which lacked material details, riddled with inconsistencies, and uncorroborated – failed to establish the elements of the offense charged with proof beyond reasonable doubt.

PO1 de Sagun described the alleged buy-bust operation only in general terms, thus:

> Q Will you please tell the Honorable Court why did your group arrest accused Marilou Hilario on January 22, 2008 at about 11 o'clock in the evening?
> A Through the buy-bust operation we conducted I was able to buy shabu from her, sir.
>
> Q Alright in other words you pretended yourself to buy shabu. Were you able to buy shabu from the said accused?
> A Yes, sir.
>
> Q How much shabu did you buy [from] Marilou Hilario?
> A Five hundred (₱500.00) pesos only, sir.

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[23] G.R. No. 208093, February 20, 2017.

Q After buying shabu from the accused in the amount of five hundred pesos (₱500.00), what happened next?
A We immediately arrested the person, sir.

Q Were you in uniform on that time when you conducted the buy- bust operation?
A No sir, we were in civilian.

Q So after buying shabu you arrested the accused?
A Yes, sir.

Q Were you alone or together with other police officers in arresting the accused?
A I was with PO1 Cabungcal, sir.

Q Who actually among you arrested accused Marilou Hilario?
A I, sir.[24]

It's a generic narrative of any buy-bust operation, offering no distinctive detail except for Hilario's name as alleged seller. PO1 de Sagun failed to describe how he came to know that Hilario was selling *shabu*; where Hilario was and what she was doing that time; how he approached her and asked to buy *shabu* from her; how they came to agree on the purchase price for the *shabu*; where Hilario got the sachet of *shabu* she handed to him; and what his pre-arranged signal was to show the other police officers that the sale had been consummated and Hilario could already be arrested – details which police officers who carried out legit buy-bust operations should be able to provide readily and completely.

When pressed for details during his cross-examination, PO1 de Sagun was unable to give enlightening answers –

Q Prior to the conduct of the buy-bust operation, can you tell us what are the preparations you made?
A We prepared a pre-operation report, ma'am.

Q What is the basis of your pre-operation report?
A Due to the sale of the illegal drugs, ma'am.

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[24] TSN, November 12, 2008, pp. 4-5.

Q You mean to tell us because of the alleged information that there was a rampant selling of illegal drugs?
A Yes, ma'am.

Q By the way Mr. witness did you conduct surveillance against Marilou Hilario and Lalaine Guadayo prior to January 22, 2008?
A No, ma'am.

Q By the way, do you know this Marilou Hilario on January 22, 2008 or before that day?
A No, ma'am.

Q How about accused Lalaine Guadayo?
A No, ma'am.

Q So, that was the first time that you saw on January 22, 2008 these Marilou Hilario and Lalaine Guadayo?
A Yes, ma'am.

x x x x x x x x x

Q Do you have a copy of your pre-operation report?
A I have no copy of the pre-operation report, ma'am.[25]

So according to PO1 de Sagun, he and his fellow police officers conducted a buy-bust operation in Brgy. Maguihan based on information from unnamed source/s that selling of drugs was rampant in the area; they prepared a pre-operation report which was not produced in court; they went to Brgy. Maguihan without a specific target/subject; they did not conduct any surveillance prior to the buy-bust operation on January 22, 2008; and they did not know Hilario or Guadayo prior to the buy-bust operation and the arrest of the two. How then were the police officers able to identify Hilario or Guadayo, from all the other residents of Brgy. Maguihan, as the ones selling drugs in Brgy. Maguihan and who would be the subject of their buy-bust operation?

The lack of specific details on the planning and conduct of the buy-bust operation on January 22, 2008 in Brgy. Maguihan casts serious doubts that it actually took place and/or that the

[25] TSN, August 4, 2009, pp. 3-5.

police officers carried out the same in the regular performance of their official duties. Relevant herein is the following discourse of the Court on buy-bust operations in *People v. Ong*:[26]

> A buy-bust operation is a form of entrapment, which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law. It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. Its opposite is instigation or inducement, wherein the police or its agent lures the accused into committing the offense in order to prosecute him. Instigation is deemed contrary to public policy and considered an absolutory cause.
>
> **To determine whether there was a valid entrapment or whether proper procedures were undertaken in effecting the buy-bust operation, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately laid out through relevant, material and competent evidence. For, the courts could not merely rely on but must apply with studied restraint the presumption of regularity in the performance of official duty by law enforcement agents. This presumption should not by itself prevail over the presumption of innocence and the constitutionally protected rights of the individual.** It is the duty of courts to preserve the purity of their own temple from the prostitution of the criminal law through lawless enforcement. Courts should not allow themselves to be used as instruments of abuse and injustice lest innocent persons are made to suffer the unusually severe penalties for drug offenses.
>
> **In *People v. Doria*, we stressed the *"objective" test* in buy-bust operations. We ruled that in such operations, the prosecution must present a *complete picture* detailing the transaction, which "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. We emphasized that the manner by which the initial contact was made, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug must be the subject of strict scrutiny**

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[26] 476 Phil. 553, 571-573 (2004).

by courts to *insure that law-abiding citizens are not unlawfully induced to commit an offense.*"

In the case at bar, the prosecution evidence about the buy-bust operation is incomplete. The confidential informant who had sole knowledge of how the alleged illegal sale of *shabu* started and how it was perfected was not presented as a witness. His testimony was given instead by SPO1 Gonzales who had no personal knowledge of the same. On this score, SPO1 Gonzales' testimony is hearsay and possesses no probative value unless it can be shown that the same falls within the exception to the hearsay rule. To impart probative value to these hearsay statements and convict the appellant solely on this basis would be to render nugatory his constitutional *right to confront the witness* against him, in this case the informant, and to examine him for his truthfulness. As the prosecution failed to prove all the material details of the buy-bust operation, its claim that there was a valid entrapment of the appellants must fail. (Emphases supplied, citations omitted.)

Furthermore, the prosecution failed to present during the trial the *corpus delicti.* There were material inconsistencies between PO1 de Sagun's testimony vis-à-vis the object and documentary evidence submitted by the prosecution itself which rendered highly questionable whether the dangerous drug presented before the RTC during trial was actually the same as that seized from Hilario during the buy-bust operation.

During his direct examination, PO1 de Sagun recalled the chain of custody of the items seized from Hilario during the buy-bust operation, thus:

Q After buying shabu from the accused in the amount of five hundred pesos (₱500.00), what happened next?
A We immediately arrested the person, sir.

x x x x x x x x x

Q Who actually among you arrested accused Marilou Hilario?
A I, sir.

Q After arresting the accused, what did you do next, if any?
A **We placed the markings "NBS-1" to the marked money and in the alleged shabu, "NBS-2"**, sir.

Q You mean to tell before the Court that immediately after the arrest of the accused you placed markings on the money used in buying shabu and the shabu itself?
A Yes, sir.

Q In the place where the accused was arrested?
A Yes, sir.

Q Who actually placed the marking in the shabu?
A I, sir.

Q What marking did you place in the money you used in buying shabu?
A "NBS-1", sir.

Q What was the denomination of the money you used in buying shabu?
A A five hundred (₱500.00) peso bill, sir.

Q What about in the shabu you obtained from the accused in buying the same, what marking did you place?
A "NBS-2", sir.

x x x x x x x x x

Q You stated earlier, you marked the sachet of shabu you bought from the accused. If the same sachet of shabu will be shown to you, will you be able to identify or recognize the same?
A Yes, sir.

Q Why will you be able to identify the shabu you bought from the accused during the buy-bust operation?
A Yes, because of the marking, sir.

x x x x x x x x x

Q What did you do with the shabu you bought from the accused in this case?
A We brought them to the Crime Laboratory, for examination, sir.

Q Do you know what was the result of the laboratory examination of the specimen pertaining to this case?
A It gives positive result, sir.[27] (Emphases supplied.)

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[27] TSN, November 12, 2008, pp. 5-8.

However, when the public prosecutor opened the brown sealed envelope purportedly containing the dangerous drugs seized from Hilario, there were two sachets of *shabu* inside, marked as "NBS-1" and "NBS-2." Upon further questioning, PO1 de Sagun testified:

FISCAL PEREZ

Q How many sachets of shabu have you taken from the accused aside from the one you bought from the accused?
A Only one, sir.

Q I will ask you, you pretended to buy shabu from the accused as in fact you were able to buy shabu?
A Yes, sir.

Q The shabu you bought you marked in evidence as "NBS"?
A Yes, sir.

x x x x x x x x x

FISCAL PEREZ

Q Can you please explain why there are two (2) sachets of shabu here?
A I bought only one (1) sachet, sir.

COURT

Q What about the other one?
A PO1 Magpantay ran after one Lalaine, your Honor.

Q The other sachet of shabu was allegedly taken from one Lalaine?
A Yes, Your Honor.

FISCAL PEREZ

Q That's why a case was filed against that Lalaine?
A Yes, sir.

Q So, you were present, who is the police officer who confiscated the sachet of shabu from Lalaine?
A PO2 Magpantay, sir.

Q Were you not present when PO2 Magpantay took the shabu from Lalaine?
A Yes, sir.

COURT

Q Were you present?
A No, Your Honor.

Q You were not certain whether Magpantay is present?
A Yes, sir.

FISCAL PEREZ

Q So, in other words you were not present when Magpantay took the shabu from Lalaine?
A Yes, sir.

x x x x x x x x x

Q I am showing you sachets of suspected shabu, will you please tell the Honorable Court which among the two (2) sachets of shabu you bought from Marilou Hilario?
A The one with marking "NBS-1", sir.

Q Why did you say that "NBS-1 is the sachet of shabu you bought from Marilou?
A Because of the marking, sir.

Q What marking is that?
A NBS-1, sir.

COURT

Q What is that NBS stands for?
A Nemesio Brotonel de Sagun, Your Honor.[28] (Emphases supplied.)

PO1 de Sagun himself admitted the discrepancies during his cross-examination:

Q And you likewise stated that you were able to buy shabu from accused Marilou Hilario?
A Yes, ma'am.

Q You likewise stated that marked money was marked as NBS-1?
A Yes, ma'am.

Q And that suspected shabu which you allegedly bought from accused Marilou Hilario was marked as NBS-2?

[28] *Id.* at 10-13.

A Yes, ma'am.

Q But when the Public Prosecutor presented to you the alleged shabu which you allegedly bought from the accused which you identified because of the marking NBS-1, right?

A Yes, ma'am.

Q So, there was a discrepancy with your marking because you stated before, the marked money was marked as NBS-1 and the shabu which you allegedly bought from accused Marilou Hilario was already marked as NBS-1, right?

A Yes, ma'am.[29]

PO1 de Sagun was insistent that he seized only one sachet of *shabu* from Hilario; and that he marked the ₱500.00-bill used in the buy-bust operation as "NBS-1" and the sachet of *shabu* from Hilario as "NBS-2." Yet, confronted with two sachets of *shabu*, marked as "NBS-1" and "NBS-2," he identified the sachet marked as "NBS-1" as the one he bought from Hilario.

PO1 de Sagun could not explain how there were two sachets of *shabu* even though he testified that the items seized from the buy-bust operation were in his custody the entire time from the arrest of Hilario, until their inventory at the police station, and finally, until the delivery of the suspected *shabu* to the crime laboratory for examination. The prosecution claimed that the other sachet of *shabu* was the one seized by PO2 Magpantay from Guadayo.

The Court is not persuaded.

First, from the very beginning, the prosecution charged Hilario before the RTC through two separate Informations: (a) Crim. Case No. 10-2008 for illegal sale of dangerous drugs, which involved a sachet of *shabu* weighing 0.04 gram, referred to as "specimen A (NBS-1);" and (b) Crim. Case No. 11-2008 for illegal possession of dangerous drugs, which involved a sachet of *shabu* weighing 0.03 gram, referred to as "specimen B (NBS-2)." However, the prosecution changed its theory before the Court of Appeals, stating in its Brief for the Appellee that only one

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[29] TSN, August 4, 2009, pp. 4-5.

sachet of *shabu* was confiscated from Hilario and agreeing in the acquittal of Hilario in Crim. Case No. 11-2008 for the reason that she "cannot be convicted for possession of the prohibited drugs she sold because possession of dangerous drugs is generally inherent in the crime of sale of illegal drugs. Conviction for both crimes is not feasible."[30] Meanwhile, the Information in Crim. Case No. 13-2008 for illegal possession of dangerous drugs against Guadayo involved a sachet of *shabu* weighing 0.04 gram.

Second, the documentary evidence of the prosecution, particularly, (a) the Inventories[31] of the items seized, dated January 22, 2008, prepared by PO1 de Sagun and witnessed by Mrs. Lorna Orlina and Simplico "Sims" Garcia, representatives of the DOJ and the media, respectively; (b) the Laboratory Examination Requests[32] dated January 23, 2008 for the specimens seized, prepared by Police Superintendent Gaudencio Del Valle Pucyutan; and (c) Chemistry Report Nos. BD-012-08 and BD-013-08[33] dated January 23, 2008, issued by P/CInsp. Delantar, all consistently state that there were two sachets of *shabu* from Hilario marked as "NBS-1" (weighing 0.04 gram) and "NBS-2" (weighing 0.03 gram) and one sachet of *shabu* from Guadayo marked as "AAM-1."

Third, PO2 Magpantay did not testify before the RTC. PO1 de Sagun conceded that he was not present when PO2 Magpantay supposedly apprehended Guadayo and seized one sachet of *shabu* from her possession, so PO1 de Sagun's testimony on said matters are hearsay.

And *finally*, the two sachets of *shabu* presented before the RTC were marked with "NBS," the initials of PO1 de Sagun. It makes no sense that the sachet of shabu taken by PO2 Magpantay from Guadayo be marked with PO1 de Sagun's initials. As the documentary evidence of the prosecution itself

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[30] CA *rollo*, p. 141.

[31] Records (Crim. Case No. 10-2008), pp. 16-17.

[32] *Id.* at 12-13.

[33] *Id.* at 4, 6.

showed, the sachet of *shabu* supposedly seized from Guadayo was appropriately marked "AAM-1," presumably, PO2 Magpantay's initials.

Hence, it could not be said that one of the two sachets of *shabu* presented against Hilario during the trial before the RTC was purportedly seized from Guadayo.

Clearly, the identity and integrity of the sachet of *shabu* allegedly seized by PO1 de Sagun from Hilario were not preserved, despite PO1 de Sagun's assertion that he had been in possession of the said sachet from its seizure from Hilario until its turnover to the crime laboratory. The prosecution failed to establish the identity of the *corpus delicti,* much less, the identity of the *corpus delicti* with moral certainty. When there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no crime of illegal possession or illegal sale of a prohibited drug. The prosecution's failure to prove that the specimen allegedly seized from Hilario was the same one presented in court is fatal to its case.[34]

It is fundamental in the Constitution[35] and basic in the Rules of Court[36] that the accused in a criminal case enjoys the

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[34] *People v. Balibay,* 742 Phil. 746, 755 (2014).

[35] Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[36] Rule 133, Section 2 of the Rules of Court provides:

Sec. 2. *Proof beyond reasonable doubt.* – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty

presumption of innocence until proven guilty. Likewise, it is well-established in jurisprudence that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict.[37] In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.[38]

The evidence for the prosecution were insufficient in material details and fraught with discrepancies and contradictions. PO1 de Sagun himself, who claimed to have seized, marked, and kept custody of the sachet of *shabu* seized from Hilario, could not positively identify which between the two sachets of *shabu* he was presented with at the trial, marked as "NBS-1" and "NBS-2," was the one he actually seized from Hilario. Absent proof beyond reasonable doubt, the Court cannot merely rely on the presumption that PO1 de Sagun regularly performed his official duties.

As the Court declared in *Mallillin v. People*,[39] the presumption of regularity is merely just that – a mere presumption disputable by contrary proof and which, when challenged by the evidence, cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. The lack of conclusive identification of the illegal drugs allegedly seized from Hilario in this case strongly militates against a finding of guilt.

Also worth reproducing hereunder is the declaration of the Court in *People v. Pagaduan*[40] that:

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only is required, or that degree of proof which produces conviction in an unprejudiced mind.

[37] *De la Riva v. People*, 769 Phil. 872, 884-885 (2015).

[38] *People v. Bagano*, 260 Phil. 797, 811 (1990).

[39] 576 Phil. 576, 593 (2008).

[40] 641 Phil. 432, 450-451 (2010).

We are not unmindful of the pernicious effects of drugs in our society; they are lingering maladies that destroy families and relationships, and engender crimes. The Court is one with all the agencies concerned in pursuing an intensive and unrelenting campaign against this social dilemma. Regardless of how much we want to curb this menace, we cannot disregard the protection provided by the Constitution, most particularly the presumption of innocence bestowed on the appellant. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. If the prosecution has not proved, in the first place, all the elements of the crime charged, which in this case is the *corpus delicti*, then the appellant deserves no less than an acquittal.

WHEREFORE, premises considered, the Decision dated July 18, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05244 is **REVERSED** and **SET ASIDE**. Accused-appellant Marilou D. Hilario is **ACQUITTED** of the charge of illegal sale of dangerous drugs, under Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED** immediately **RELEASED** from detention unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women for immediate implementation and to report the action she has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Leonen, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 212448. January 11, 2018]

AAA,[*] *petitioner, vs.* **BBB,**[*] *respondent.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; PROPERLY FILED BEFORE THE LAPSE OF THE EXTENSION GIVEN BY THE COURT IN CASE AT BAR.— It must be stated beforehand that BBB is plainly mistaken in asserting that the instant petition was belatedly filed. The date erroneously perceived by BBB as the date of AAA's Motion for Extension was filed — June 2, 2014 — refers to the date of receipt by the Division Clerk of Court and not the date when the said motion was lodged before this Court. The motion was in fact filed on May 27, 2014, well within the period that AAA had under the Rules of Court to file the intended petition. Thus, considering the timeliness of the motion, this Court in a Resolution dated June 9, 2014, granted AAA an additional period of thirty (30) days or until June 26, 2014 to file a petition for review. In AAA's motion for extension of time, it was mentioned that she was awaiting the OSG's response to her Letter dated May 26, 2014 requesting for representation. Since, the OSG was unresponsive to her plea for assistance in filing the intended petition, AAA filed the present petition in her own name before the lapse of the extension given her by this Court or on June 25, 2014.

2. ID.; ID.; TO SERVE SUBSTANTIAL JUSTICE, FILING OF THE PETITION RAISING ONLY QUESTION OF LAW IS

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[*] Section 44 of Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004) requires the confidentiality of all records pertaining to cases of violence against women and their children. Per said section, all public officers and employees are prohibited from publishing or causing to be published in any format the name and other identifying information of a victim or an immediate family member. The penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand pesos (₱500,000.00) shall be imposed upon those who violate provision. Pursuant thereto, in the courts' promulgation of decisions, final resolutions and/or final orders, the names of women and children victims shall be replaced by fictitious initials, and their personal circumstances or any information, which tend to identify them, shall likewise not be disclosed.

ALLOWED EVEN WITH THE ABSENCE OF THE OFFICE OF THE SOLICITOR GENERAL'S PARTICIPATION.— We find that under the circumstances, the ends of substantial justice will be better served by entertaining the petition if only to resolve the question of law lodged before this Court. In *Morillo v. People of the Philippines, et al*., where the Court entertained a Rule 45 petition which raised only a question of law filed by the private offended party in the absence of the OSG's participation, we recalled the instances when the Court permitted an offended party to file an appeal without the intervention of the OSG. One such instance is when the interest of substantial justice so requires.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); PSYCHOLOGICAL VIOLENCE UNDER SECTION 5 (i) THEREOF; ELEMENTS; WHAT THE LAW CRIMINALIZES IS THE PSYCHOLOGICAL VIOLENCE CAUSING MENTAL OR EMOTIONAL SUFFERING ON THE WIFE.— As jurisdiction of a court over the criminal ease is determined by the allegations in the complaint or information, threshing out the essential elements of psychological abuse under R.A. No. 9262 is crucial. In *Dinamling v. People*, this Court already had occasion to enumerate the elements of psychological violence under Section 5(i) of R.A. No. 9262, as follows: x x x (1) The offended party is a woman and/or her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;(3) **The offender causes on the woman and/or child mental or emotional anguish**; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions. x x x x It bears emphasis that **Section 5(i) penalizes some forms of psychological violence** that are inflicted on victims who are women and children. Other forms of psychological violence, as well as physical, sexual and economic violence, are addressed and penalized in other sub- parts of Section 5. x x x Contrary to the interpretation of the RTC, what R.A. No. 9262 criminalizes is not the marital infidelity *per se* but the psychological violence causing mental or emotional suffering on the wife.

4. ID.; ID.; THE ACTS OF VIOLENCE AGAINST WOMEN AND THEIR CHILDREN MAY MANIFEST AS TRANSITORY OR CONTINUING CRIMES; AS SUCH, THE COURT WHEREIN ANY OF THE CRIME'S ESSENTIAL AND MATERIAL ACTS HAVE BEEN COMMITTED MAINTAINS JURISDICTION TO TRY THE CASE TO THE EXCLUSION OF OTHERS; CASE AT BAR.—What may be gleaned from Section 7 of R.A. No. 9262 is that the law contemplates that acts of violence against women and their children may manifest as transitory or continuing crimes; meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Thus, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.It is necessary, for Philippine courts to have jurisdiction when the abusive conduct or act of violence under Section 5(i) of R.A. No. 9262 in relation to Section 3(a), Paragraph (C) was committed outside Philippine territory, that the victim be a resident of the place where the complaint is filed in view of the anguish suffered being a material element of the offense. In the present scenario, the offended wife and children of respondent husband are residents of Pasig City since March of 2010. Hence, the RTC of Pasig City may exercise jurisdiction over the case. x x x What this case concerns itself is simply whether or not a complaint for psychological abuse under R.A. No. 9262 may even be filed within the Philippines if the illicit relationship is conducted abroad. We say that even if the alleged extra-marital affair causing the offended wife mental and emotional anguish is committed abroad, the same does not place a prosecution under R.A. No. 9262 absolutely beyond the reach of Philippine courts.

APPEARANCES OF COUNSEL

Sobreviñas Hayudini Navarro & San Juan for petitioner.
Victor H. Volfango for respondent.

D E C I S I O N

TIJAM, *J.*:

May Philippine courts exercise jurisdiction over an offense constituting psychological violence under Republic Act (R.A.) No. 9262,[1] otherwise known as the Anti-Violence Against Women and their Children Act of 2004, committed through marital infidelity, when the alleged illicit relationship occurred or is occurring outside the country?

The above question is addressed to this Court in the present Petition[2] for the issuance of a writ of *certiorari* under Rule 45 of the Rules of Court, to nullify the Resolutions dated February 24, 2014[3] and May 2, 2014[4] of the Regional Trial Court (RTC) of Pasig City, Branch 158, in Criminal Case No. 146468. The assailed resolutions granted the motion to quash the Information[5] which charged respondent BBB under Section 5(i) of R.A. No. 9262, committed as follows:

> On or about April 19, 2011, in Pasig City, and within the jurisdiction of this Honorable Court, [BBB], being then legally married to [AAA], caused herein [AAA] mental and emotional anguish by having an illicit relationship with a certain Lisel Mok as confirmed by his photograph with his purported paramour Lisel Mok and her children and the e-mailed letter by his mother mentioning about the said relationship, to the damage and prejudice of [AAA], in violation of the aforecited law.
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> Contrary to law.

We briefly recount the antecedents.

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[1] AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES. Approved on March 8, 2004.

[2] *Rollo*, pp. 19-45.

[3] Rendered by Presiding Judge Maria Rowena Modesto-San Pedro; *id*. at 49-52.

[4] *Id*. at 53.

[5] *Id*. at 4 and 26.

Petitioner AAA and BBB were married on August 1, 2006 in Quezon City. Their union produced two children: CCC was born on March 4, 2007 and DDD on October 1, 2009.[6]

In May of 2007, BBB started working in Singapore as a chef, where he acquired permanent resident status in September of 2008. This petition nonetheless indicates his address to be in Quezon City where his parents reside and where AAA also resided from the time they were married until March of 2010, when AAA and their children moved back to her parents' house in Pasig City.[7]

AAA claimed, albeit not reflected in the Information, that BBB sent little to no financial support, and only sporadically. This allegedly compelled her to fly extra hours and take on additional jobs to augment her income as a flight attendant. There were also allegations of virtual abandonment, mistreatment of her and their son CCC, and physical and sexual violence. To make matters worse, BBB supposedly started having an affair with a Singaporean woman named Lisel Mok with whom he allegedly has been living in Singapore. Things came to a head on April 19, 2011 when AAA and BBB had a violent altercation at a hotel room in Singapore during her visit with their kids.[8] As can be gathered from the earlier cited Information, despite the claims of varied forms of abuses, the investigating prosecutor found sufficient basis to charge BBB with causing AAA mental and emotional anguish through his alleged marital infidelity.[9]

The Information having been filed, a warrant of arrest was issued against BBB. AAA was also able to secure a Hold-Departure Order against BBB who continued to evade the warrant of arrest. Consequently, the case was archived.[10]

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[6] *Id*. at 57.

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

[8] *Id*. at 58-59.

[9] *Id*. at 26.

[10] *Id*. at 27.

On November 6, 2013, an Entry of Appearance as Counsel for the Accused With Omnibus Motion to Revive Case, Quash Information, Lift Hold Departure Order and Warrant of Arrest[11] was filed on behalf of BBB. Granting the motion to quash on the ground of lack of jurisdiction and thereby dismissing the case, the trial court reasoned:

> Here, while the Court maintains its 28 October 2011 ruling that probable cause exists in this case and that [BBB] is probably guilty of the crime charged, considering, however, his subsequent clear showing that the acts complained of him had occurred in Singapore, dismissal of this case is proper since the Court enjoys no jurisdiction over the offense charged, it having transpired outside the territorial jurisdiction of this Court.
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> x x x x x x x x x
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> The Court is not convinced by the prosecution's argument that since [AAA] has been suffering from mental and emotional anguish "wherever she goes", jurisdiction over the offense attaches to this Court notwithstanding that the acts resulting in said suffering had happened outside of the Philippines. To the mind of the Court, with it noting that there is still as yet no jurisprudence on this score considering that ***Republic Act 9262*** is relatively a new law, the act itself which had caused a woman to suffer mental or emotional anguish must have occurred within the territorial limits of the Court for it to enjoy jurisdiction over the offense. This amply explains the use of the emphatic word "causing" in the provisions of ***Section 5(i), above***, which denotes the bringing about or into existence of something. Hence, the mental or emotional anguish suffered by a woman must have been brought about or into existence by a criminal act which must logically have occurred within the territorial limits of the Court for jurisdiction over the offense to attach to it. To rule otherwise would violate or render nugatory one of the basic characteristics of our criminal laws – territoriality.
>
> In the listing provided in the law itself – "repeated verbal and emotional abuse, and denial of financial support or custody of minor children of (sic) access to the woman's child/children" – it becomes clear that there must be an act which causes the "mental or emotional

[11] *Id*. at 49.

anguish, public ridicule or humiliation", and it is such act which partakes of a criminal nature. Here, such act was the alleged maintenance of "an illicit relationship with a certain Liesel Mok" – which has been conceded to have been committed in Singapore.

Granting, without conceding, that the law presents ambiguities as written, quashal of the Information must still be ordered following the underlying fundamental principle that all doubts must be resolved in favor of [BBB]. At best, the Court draws the attention of Congress to the arguments on jurisdiction spawned by the law.[12] (Emphasis in the original)

Aggrieved by the denial of the prosecution's motion for reconsideration of the dismissal of the case, AAA sought direct recourse to this Court via the instant petition on a pure question of law. AAA posits that R.A. No. 9262 is in danger of becoming transmogrified into a weak, wobbly, and worthless law because with the court *a quo*'s ruling, it is as if husbands of Filipino women have been given license to enter into extra-marital affairs without fear of any consequence, as long as they are carried out abroad. In the main, AAA argues that mental and emotional anguish is an essential element of the offense charged against BBB, which is experienced by her wherever she goes, and not only in Singapore where the extra-marital affair takes place; thus, the RTC of Pasig City where she resides can take cognizance of the case.

In support of her theory, AAA draws attention to Section 7 of R.A. No. 9262, which provides:

Sec. 7. *Venue* – The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime **or any of its elements** was committed at the option of the complainant. (Emphasis ours)

As to the ambiguity in the law hypothetically referred to in the assailed order, AAA directs us to:

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[12] *Id*. at 50-51.

Section 4. *Construction*.— This Act shall be liberally construed to promote the protection and safety of victims of violence against women and their children.

In his Comment[13] filed on January 20, 2015, BBB contends that the grant of the motion to quash is in effect an acquittal; that only the civil aspect of a criminal case may be appealed by the private offended party; and that this petition should be dismissed outright for having been brought before this Court by AAA instead of the Office of the Solicitor General (OSG) as counsel for the People in appellate proceedings. BBB furthermore avers that the petition was belatedly filed.

We tackle first the threshold issue of whether or not this Court should entertain the petition.

It must be stated beforehand that BBB is plainly mistaken in asserting that the instant petition was belatedly filed. The date erroneously perceived by BBB as the date of AAA's Motion for Extension[14] was filed – June 2, 2014 – refers to the date of receipt by the Division Clerk of Court and not the date when the said motion was lodged before this Court. The motion was in fact filed on May 27, 2014, well within the period that AAA had under the Rules of Court to file the intended petition. Thus, considering the timeliness of the motion, this Court in a Resolution[15] dated June 9, 2014, granted AAA an additional period of thirty (30) days or until June 26, 2014 to file a petition for review.

In AAA's motion for extension of time, it was mentioned that she was awaiting the OSG's response to her Letter[16] dated May 26, 2014 requesting for representation. Since, the OSG was unresponsive to her plea for assistance in filing the intended petition, AAA filed the present petition in her own name before

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[13] *Id*. at 154-160.

[14] *Id*. at 3-6.

[15] *Id*. at 17-A.

[16] *Id*. at 15-17.

the lapse of the extension given her by this Court or on June 25, 2014.

We find that under the circumstances, the ends of substantial justice will be better served by entertaining the petition if only to resolve the question of law lodged before this Court. In *Morillo v. People of the Philippines, et al.*,[17] where the Court entertained a Rule 45 petition which raised only a question of law filed by the private offended party in the absence of the OSG's participation, we recalled the instances when the Court permitted an offended party to file an appeal without the intervention of the OSG. One such instance is when the interest of substantial justice so requires.[18]

Morillo,[19] also differentiated between dismissal and acquittal, thus:

Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond a reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc. The only case in which the word dismissal is commonly but not correctly used, instead of the proper term acquittal, is when, after the prosecution has presented all its evidence, the defendant moves for the dismissal and the court dismisses the case on the ground that the evidence fails to show beyond a reasonable doubt that the defendant is guilty; for in such case the dismissal is in reality an acquittal because the case is decided on the merits. **If the prosecution fails to prove that the offense was committed within the territorial jurisdiction of the court and the case is dismissed, the dismissal is not an acquittal, inasmuch as if it were so the defendant could not be again prosecuted before the court of competent jurisdiction; and it is elemental that in such case,**

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[17] 775 Phil. 192 (2015).

[18] *Id*. at 215-216.

[19] *Morillo v. People, et al.*, *supra*.

the defendant may again be prosecuted for the same offense before a court of competent jurisdiction.[20] (Citation omitted and emphasis in the original)

The grant of BBB's motion to quash may not therefore be viewed as an acquittal, which in limited instances may only be repudiated by a petition for *certiorari* under Rule 65 upon showing grave abuse of discretion lest the accused would be twice placed in jeopardy.[21]

Indubitably, "the Rules do not prohibit any of the parties from filing a Rule 45 Petition with this Court, in case only questions of law are raised or involved."[22] "There is a question of law when the issue does not call for an examination of the probative value of the evidence presented or of the truth or falsehood of the facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter."[23]

Further, the question of whether or not the RTC has jurisdiction in view of the peculiar provisions of R.A. No. 9262 is a question of law. Thus, in *Morillo*,[24] the Court reiterated that:

> [T]he jurisdiction of the court is determined by the averments of the complaint or Information, in relation to the law prevailing at the time of the filing of the complaint or Information, and the penalty provided by law for the crime charged at the time of its commission. Thus, when a case involves a proper interpretation of the rules and jurisprudence with respect to the jurisdiction of courts to entertain complaints filed therewith, it deals with a question of law that can be properly brought to this Court under Rule 45.[25] (Citations omitted)

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[20] *Id*. at 212, citing *People v. Salico*, 84 Phil. 722, 732-733 (1949).

[21] *Id*. at 211.

[22] *Del Socorro v. Van Wilsem*, 749 Phil. 823, 832 (2014), citing *Rep. of the Phils., et al. v. Sunvar Realty Development Corp.*, 688 Phil. 616, 630 (2012).

[23] *Id*. at 832.

[24] *Morillo v. People, et al.*, *supra*.

[25] *Id*. at 214.

We are not called upon in this case to determine the truth or falsity of the charge against BBB, much less weigh the evidence, especially as the case had not even proceeded to a full-blown trial on the merits. The issue for resolution concerns the correct application of law and jurisprudence on a given set of circumstances, *i.e.*, whether or not Philippine courts are deprived of territorial jurisdiction over a criminal charge of psychological abuse under R.A. No. 9262 when committed through marital infidelity and the alleged illicit relationship took place outside the Philippines.

The novelty of the issue was even recognized by the RTC when it opined that there is still as yet no jurisprudence on this score, prompting it to quash the Information even as it maintained its earlier October 28, 2011 ruling that probable cause exists in the case.[26] Calling the attention of Congress to the arguments on jurisdiction spawned by the law,[27] the RTC furnished copies of the assailed order to the House of Representatives and the Philippine Senate through the Committee on Youth, Women and Public Relations, as well as the Committee on Justice and Human Rights.[28]

The issue acquires special significance when viewed against the present economic reality that a great number of Filipino families have at least one parent working overseas. In April to September 2016, the number of overseas Filipino workers who worked abroad was estimated at 2.2 million, 97.5 percent of which were comprised of overseas contract workers or those with existing work contract while 2.5 percent worked overseas without contract.[29] It is thus necessary to clarify how R.A. No. 9262 should be applied in a question of territorial jurisdiction over a case of psychological abuse brought against the husband

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[26] *Rollo*, p. 50.

[27] *Id*. at 51.

[28] *Id*. at 52.

[29] <https://psa.gov.ph/content/total-number-ofws-estimated-22-million-results-2016-survey-overseas-filipinos> (visited October 30, 2017).

when such is allegedly caused by marital infidelity carried on abroad.

Ruling of the Court

There is merit in the petition.

"Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common."[30] In this regard, Section 3 of R.A. No. 9262 made it a point to encompass in a non-limiting manner the various forms of violence that may be committed against women and their children:

> **Sec. 3.** *Definition of Terms.* — As used in this Act,
>
> (a) "*Violence against women and their children*" refers to **any act or a series of acts** committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, **which result in or is likely to result in** physical, sexual, **psychological harm or suffering**, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:
>
> A. "*Physical Violence*" refers to acts that include bodily or physical harm;
>
> B. "*Sexual violence*" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
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> x x x x x x x x x
>
> C. "***Psychological violence***" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and **marital infidelity**. It includes causing or allowing the victim to witness the physical, sexual or

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[30] *Garcia v. Judge Drilon, et al.*, 712 Phil. 44, 94 (2013).

psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. "*Economic abuse*" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

x x x x x x x x x

As jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information, threshing out the essential elements of psychological abuse under R.A. No. 9262 is crucial. In *Dinamling v. People*,[31] this Court already had occasion to enumerate the elements of psychological violence under Section 5(i) of R.A. No. 9262, as follows:

Section 5. *Acts of Violence Against Women and Their Children*. – The crime of violence against women and their children is committed through any of the following acts:

x x x x x x x x x

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, **including, but not limited to**, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman's child/children.

From the aforequoted Section 5(i), in relation to other sections of R[.]A[.] No. 9262, the elements of the crime are derived as follows:

(1) The offended party is a woman *and/or* her child or children;

(2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;

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[31] 761 Phil. 356 (2015).

3) The offender causes on the woman and/or child mental or emotional anguish; and

(4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.

x x x x x x x x x

It bears emphasis that **Section 5(i) penalizes some forms of psychological violence** that are inflicted on victims who are women and children. Other forms of psychological violence, as well as physical, sexual and economic violence, are addressed and penalized in other sub-parts of Section 5.

x x x x x x x x x

Psychological violence is an element of violation of Section 5(i) just like the mental or emotional anguish caused on the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party. x x x.[32] (Citations omitted and emphasis ours)

Contrary to the interpretation of the RTC, what R.A. No. 9262 criminalizes is not the marital infidelity *per se* but the psychological violence causing mental or emotional suffering on the wife. Otherwise stated, it is the violence inflicted under the said circumstances that the law seeks to outlaw. Marital infidelity as cited in the law is only one of the various acts by which psychological violence may be committed. Moreover, depending on the circumstances of the spouses and for a myriad of reasons, the illicit relationship may or may not even be causing mental or emotional anguish on the wife. Thus, the mental or emotional suffering of the victim is an essential and distinct element in the commission of the offense.

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[32] *Id*. at 372-376.

In criminal cases, venue is jurisdictional. Thus, in *Treñas v. People*,[33] the Court explained that:

> **The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction**. 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 should have taken 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 shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction**.[34] (Emphasis in the original)

In Section 7 of R.A. No. 9262, venue undoubtedly pertains to jurisdiction. As correctly pointed out by AAA, Section 7 provides that the case may be filed where the crime or any of its elements was committed at the option of the complainant. While the psychological violence as the means employed by the perpetrator is certainly an indispensable element of the offense, equally essential also is the element of mental or emotional anguish which is personal to the complainant. The resulting mental or emotional anguish is analogous to the indispensable element of damage in a prosecution for estafa, *viz*:

> The circumstance that the deceitful manipulations or false pretenses employed by the accused, as shown in the vouchers, might have been perpetrated in Quezon City does not preclude the institution of the criminal action in Mandaluyong where the damage was consummated. Deceit and damage are the basic elements of estafa.

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[33] 680 Phil. 368 (2012).

[34] *Id*. at 380, citing *Isip v. People*, 552 Phil. 786, 801-802 (2007).

The estafa involved in this case appears to be a transitory or continuing offense. It could be filed either in Quezon City or in Rizal. The theory is that a person charged with a transitory offense may be tried in any jurisdiction where the offense is in part committed. In transitory or continuing offenses in which some acts material and essential to the crime and requisite to its consummation occur in one province and some in another, the court of either province has jurisdiction to try the case, it being understood that the first court taking cognizance of the case will exclude the others x x x[.][35]

What may be gleaned from Section 7 of R.A. No. 9262 is that the law contemplates that acts of violence against women and their children may manifest as transitory or continuing crimes; meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Thus, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.[36]

It is necessary, for Philippine courts to have jurisdiction when the abusive conduct or act of violence under Section 5(i) of R.A. No. 9262 in relation to Section 3(a), Paragraph (C) was committed outside Philippine territory, that the victim be a resident of the place where the complaint is filed in view of the anguish suffered being a material element of the offense. In the present scenario, the offended wife and children of respondent husband are residents of Pasig City since March of 2010. Hence, the RTC of Pasig City may exercise jurisdiction over the case.

Certainly, the act causing psychological violence which under the information relates to BBB's marital infidelity must be proven by probable cause for the purpose of formally charging the

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[35] *Tuzon v. Judge Cruz*, 160 Phil. 925, 929 (1975).

[36] *Morillo v. People*, *supra* note 17, at 206.

husband, and to establish the same beyond reasonable doubt for purposes of conviction. It likewise remains imperative to acquire jurisdiction over the husband. What this case concerns itself is simply whether or not a complaint for psychological abuse under R.A. No. 9262 may even be filed within the Philippines if the illicit relationship is conducted abroad. We say that even if the alleged extra-marital affair causing the offended wife mental and emotional anguish is committed abroad, the same does not place a prosecution under R.A. No. 9262 absolutely beyond the reach of Philippine courts.

IN VIEW OF THE FOREGOING, the petition is **GRANTED.** The Resolutions dated February 24, 2014 and May 2, 2014 of the Regional Trial Court of Pasig City, Branch 158, in Criminal Case No. 146468 are **SET ASIDE.** Accordingly, the Information filed in Criminal Case No. 146468 is ordered **REINSTATED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 212472. January 11, 2018]

SPECIFIED CONTRACTORS & DEVELOPMENT, INC., AND SPOUSES ARCHITECT ENRIQUE O. OLONAN AND CECILIA R. OLONAN, *petitioners, vs.* **JOSE A. POBOCAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTION FOR SPECIFIC PERFORMANCE WITH DAMAGES; WHERE

THE CRUX OF THE CONTROVERSY IS EXISTENCE OR NON-EXISTENCE OF THE ALLLEGED ORAL CONTRACT FROM WHICH WOULD FLOW ONE OF THE PARTY'S ALLEGED RIGHT TO COMPEL THE OTHER PARTY TO EXECUTE DEEDS OF CONVEYANCE, THE ACTION IS A PERSONAL ACTION FOR SPECIFIC PERFORMANCE.— What determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought. In his complaint, respondent claimed that petitioners promised to convey to him the subject units to entice him to stay with their company. From this, respondent prayed that petitioners be compelled to perform their part of the alleged oral agreement. The objective of the suit is to compel petitioners to perform an act, specifically, to execute written instruments pursuant to a previous oral contract. Notably, the respondent does not claim ownership of, nor title to, the subject properties. Not all actions involving real property are real actions. x x x Similarly, that the end result would be the transfer of the subject units to respondent's name in the event that his suit is decided in his favor is "an anticipated consequence and beyond the cause for which the action [for specific performance with damages] was instituted." Had respondent's action proceeded to trial, the crux of the controversy would have been the existence or non-existence of the alleged oral contract from which would flow respondent's alleged right to compel petitioners to execute deeds of conveyance. The transfer of property sought by respondent is but incidental to or an offshoot of the determination of whether or not there is indeed, to begin with, an agreement to convey the properties in exchange for services rendered. x x x It is axiomatic that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein. We therefore find that respondent correctly designated his complaint as one for specific performance consistent with his allegations and prayer therein.

2. ID.: ID.; JURISDICTION; WHILE THE LACK OF JURISDICTION OF A COURT MAY BE RAISED AT ANY STAGE OF AN ACTION, NEVERTHELESS, THE PARTY RAISING SUCH QUESTION MAY BE ESTOPPED IF HE

HAS ACTIVELY TAKEN PART IN THE VERY PROCEEDINGS WHICH HE QUESTIONS AND OBJECTS TO THE COURT'S JURISDICTION BECAUSE THE JUDGMENT OR ORDER RENDERED IS ADVERSE TO HIM; CASE AT BAR.— While the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him. In this case, petitioners' Motion to Dismiss, Reply to the opposition on the motion, and Sur-rejoinder only invoked the defenses of statute of frauds and prescription before the RTC. It was only after the CA reversed the RTC's grant of the motion to dismiss that petitioners raised for the first time the issue of jurisdiction in their Motion for Reconsideration. Clearly, petitioners are estopped from raising this issue after actively taking part in the proceedings before the RTC, obtaining a favorable ruling, and then making an issue of it only after the CA reversed the RTC's order.

3. CIVIL LAW; PRESCRIPTION OF ACTIONS; THE PRESCRIPTIVE PERIOD OF SIX YEARS FOR A PERSONAL ACTION BASED UPON AN ORAL CONTRACT APPLIES IN THE CASE AT BAR.— As the Court has ascertained that the present suit is essentially for specific performance – a personal action – over which the court *a quo* had jurisdiction, it was therefore erroneous for it to have treated the complaint as a real action which prescribes after 30 years under Article 1141 of the New Civil Code. In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages. Real actions, on the other hand, are those affecting title to or possession of real property, or interest therein. As a personal action based upon an oral contract, Article 1145 providing a prescriptive period of six years applies in this case instead. The shorter period provided by law to institute an action based on an oral contract is due to the frailty of human memory. Nothing prevented the parties from reducing the alleged oral agreement into writing, stipulating the same in a contract of employment or partnership, or even mentioning the same in an office memorandum early on. x x x Respondent argued that the prescriptive period should

not be counted from 1994 because the condominium units were not yet in existence at that time, and that the obligation would have arisen after the units were completed and ready for occupancy. Article 1347 of the New Civil Code is, however, clear that future things may be the object of a contract. This is the reason why real estate developers engage in pre-selling activities. But even if we were to entertain respondent's view, his right of action would still be barred by the statute of limitations. Condominium Certificate of Title (CCT) No. N-18347 for Unit 708 of Xavierville Square Condominium, copy of which was annexed to the complaint, was issued on September 11, 1997 or more than 13 years before respondent's March 14, 2011 demand letter. CCT No. CT-613 for Unit 208 of Sunrise Holiday Mansion Building I, also annexed to the complaint, was issued on March 12, 1996 or 14 years before respondent's March 14, 2011 demand letter. Indubitably, in view of the instant suit for specific performance being a personal action founded upon an oral contract which must be brought within six years from the accrual of the right, prescription had already set in.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.
Roberto C. Bermejo for respondent.

D E C I S I O N

TIJAM, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 urges this Court to reverse and set aside the November 27, 2013 Decision[2] and April 28, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 99994, and to affirm instead the

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[1] *Rollo*, pp. 11-38.

[2] *Id*. at 52-58, penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes.

[3] *Id*. at 61-62.

June 4, 2012 Order[4] of the Regional Trial Court (RTC) of Quezon City, Branch 92, in Civil Case No. Q-11-70338. The court *a quo* had granted the Motion to Dismiss[5] of Specified Contractors & Development Inc. (Specified Contractors), and Spouses Architect Enrique O. Olonan and Cecilia R. Olonan (collectively referred to as petitioners), thereby dismissing the action for specific performance filed by respondent Jose A. Pobocan. The dismissal of the case was subsequently set aside by the CA in the assailed decision and resolution.

It is undisputed that respondent was in the employ of Specified Contractors until his retirement sometime in March 2011. His last position was president of Specified Contractors and its subsidiary, Starland Properties Inc., as well as executive assistant of its other subsidiaries and affiliates.

Architect Olonan allegedly[6] agreed to give respondent one (1) unit for every building Specified Contractors were able to construct as part of respondent's compensation package to entice him to stay with the company. Two (2) of these projects that Specified Contractors and respondent were able to build were the Xavierville Square Condominium in Quezon City and the Sunrise Holiday Mansion Bldg. I in Alfonso, Cavite. Pursuant to the alleged oral agreement, Specified Contractors supposedly ceded, assigned and transferred Unit 708 of Xavierville Square Condominium and Unit 208 of Sunrise Holiday Mansion Bldg. I (subject units) in favor of respondent.

In a March 14, 2011 letter[7] addressed to petitioner Architect Enrique Olonan as chairman of Specified Contractors, respondent requested the execution of Deeds of Assignment or Deeds of Sale over the subject units in his favor, along with various other benefits, in view of his impending retirement on March 19, 2011.

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[4] *Id.* at 168-174, penned by Presiding Judge Eleuterio L. Bathan.

[5] *Id.* at 77-83.

[6] *Infra*.

[7] *Rollo*, pp. 74-75.

When respondent's demand was unheeded, he filed a Complaint[8] on November 21, 2011 before the RTC of Quezon City praying that petitioners be ordered to execute and deliver the appropriate deeds of conveyance and to pay moral and exemplary damages, as well as attorney's fees.

On January 17, 2012, petitioners, instead of filing an answer, interposed a Motion to Dismiss[9] denying the existence of the alleged oral agreement. They argued that, even assuming *arguendo* that there was such an oral agreement, the alleged contract is unenforceable for being in violation of the statute of frauds, nor was there any written document, note or memorandum showing that the subject units have in fact been ceded, assigned or transferred to respondent. Moreover, assuming again that said agreement existed, the cause of action had long prescribed because the alleged agreements were supposedly entered into in 1994 and 1999 as indicated in respondent's March 14, 2011 demand letter, *supra,* annexed to the complaint.

The RTC, in granting[10] the motion, dismissed the respondent's complaint in its June 4, 2012 Order. While the RTC disagreed with petitioners that the action had already prescribed under Articles 1144[11] and 1145[12] of the New Civil Code, by reasoning that the complaint is in the nature of a real action which prescribes

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[8] *Id*. at 67-69.

[9] *Id*. at 77-83.

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

[11] **ART. 1144**. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[12] **ART. 1145**. The following actions must be commenced within six years:

(1) Upon an oral contract;

(2) Upon a quasi-contract.

after 30 years conformably with Article 1141,[13] it nonetheless agreed that the alleged agreement should have been put into writing, and that such written note, memorandum or agreement should have been attached as actionable documents to respondent's complaint.

On appeal, the CA reversed[14] the RTC's June 4, 2012 Order, reasoning that the dismissal of respondent's complaint, anchored on the violation of the statute of frauds, is unwarranted since the rule applies only to executory and not to completed or partially consummated contracts. According to the CA, there was allegedly partial performance of the alleged obligation based on: (1) the respondent's possession of the subject units; (2) the respondent's payment of condominium dues and realty tax for Unit 708 Xavierville Square Condominium; (3) the endorsement by petitioners of furniture/equipment for Unit 208 Sunrise Holiday Mansion I; and (4) that shares on the rental from Unit 208 Sunrise Holiday Mansion I were allegedly received by the respondent and deducted from his monthly balance on the furniture/equipment account.

Petitioners countered that while there is no dispute that respondent had been occupying Unit 708 – previously Unit 803 – of Xavierville Square Condominium, this was merely out of tolerance in view of respondent's then position as president of the company and without surrender of ownership. Petitioners also insisted that Unit 208 of Sunrise Holiday Mansion I continues to be under their possession and control. Thus, finding that the motion to dismiss was predicated on disputable grounds, the CA declared in its assailed decision that a trial on the merits is necessary to determine once and for all the nature of the respondent's possession of the subject units.

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[13] **ART. 1141**. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

[14] *Rollo*, at p. 58.

Aggrieved, petitioners sought reconsideration of the CA decision, but were unsuccessful. Hence, the present petition raising three issues:

1. Whether or not the RTC had jurisdiction over the respondent's complaint considering that the allegations therein invoked a right over the subject condominium units as part of his compensation package, thus a claim arising out of an employer-employee relationship cognizable by the labor arbiter;[15]
2. Whether or not the respondent's cause of action had already prescribed;[16] and
3. Whether or not the action was barred by the statute of frauds.[17]

Resolution of the foregoing issues calls for an examination of the allegations in the complaint and the nature of the action instituted by respondent. As will be discussed later, there is merit in petitioners' insistence that respondent's right of action was already barred by the statute of limitations.

What determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.[18] In his complaint, respondent claimed that petitioners promised to convey to him the subject units to entice him to stay with their company. From this, respondent prayed that petitioners be compelled to perform their part of the alleged oral agreement. The objective of the suit is to compel petitioners to perform an act, specifically, to execute written instruments pursuant to a previous oral contract. Notably, the respondent does not claim ownership of, nor title to, the subject properties.

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[15] *Id*. at 21-23.

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

[17] *Id*. at 33.

[18] *Nilo Padre v. Fructosa Badillo, Fedila Badillo, Presentacion Caballes, et al*., 655 Phil. 52, 64 (2011).

Not all actions involving real property are real actions. In *Spouses Saraza, et al. v. Francisco,*[19] it was clarified that:

> x x x Although the end result of the respondent's claim was the transfer of the subject property to his name, the suit was still essentially for specific performance, a personal action, because it sought Fernando's execution of a deed of absolute sale based on a contract which he had previously made.

Similarly, that the end result would be the transfer of the subject units to respondent's name in the event that his suit is decided in his favor is "an anticipated consequence and beyond the cause for which the action [for specific performance with damages] was instituted."[20] Had respondent's action proceeded to trial, the crux of the controversy would have been the existence or non-existence of the alleged oral contract from which would flow respondent's alleged right to compel petitioners to execute deeds of conveyance. The transfer of property sought by respondent is but incidental to or an offshoot of the determination of whether or not there is indeed, to begin with, an agreement to convey the properties in exchange for services rendered.

Cabutihan v. Landcenter Construction & Development Corporation[21] explains thus:

> A close scrutiny of *National Steel* and *Ruiz* reveals that the prayers for the execution of a Deed of Sale were not in any way connected to a contract, like the Undertaking in this case. Hence, even if there were prayers for the execution of a deed of sale, the actions filed in the said cases were not for specific performance.
>
> In the present case, petitioner seeks payment of her services in accordance with the undertaking the parties signed.

It is axiomatic that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective

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[19] 722 Phil. 346, 357 (2013).

[20] *Id*.

[21] 432 Phil. 927, 938 (2002).

of whether the plaintiff is entitled to all or some of the claims asserted therein.[22] We therefore find that respondent correctly designated his complaint as one for specific performance consistent with his allegations and prayer therein. Accordingly, respondent's suit is one that is incapable of pecuniary estimation and indeed cognizable by the RTC of Quezon City where both parties reside. As stated in *Surviving Heirs of Alfredo R. Bautista v. Lindo:*[23]

> Settled jurisprudence considers some civil actions as incapable of pecuniary estimation, viz:
>
> 1. Actions for specific performance;

While the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.[24] In this case, petitioners' Motion to Dismiss, Reply[25] to the opposition on the motion, and Sur-rejoinder[26] only invoked the defenses of statute of frauds and prescription before the RTC. It was only after the CA reversed the RTC's grant of the motion to dismiss that petitioners raised for the first time the issue of jurisdiction in their Motion for Reconsideration.[27] Clearly, petitioners are estopped from raising this issue after actively taking part in the proceedings before the RTC, obtaining a favorable ruling, and then making an issue of it only after the CA reversed the RTC's order.

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[22] *Russell v. Vestil*, 364 Phil. 392, 401 (1999).

[23] 728 Phil. 630, 638 (2014).

[24] *National Steel Corporation v. Court of Appeals*, 362 Phil. 150, 160 (1999).

[25] *Rollo,* pp. 88-94.

[26] *Id*. at 116-121.

[27] *Id*. at 196-206.

Even if this Court were to entertain the petitioners' belated assertion that jurisdiction belongs to the labor arbiter as this case involves a claim arising from an employer-employee relationship, reliance by petitioners on *Domondon v. NLRC*[28] is misplaced. In *Domondon*, the existence of the agreement on the transfer of car-ownership was not in issue but rather, the entitlement of a former employee to his entire monetary claims against a former employer, considering that the said employee had not paid the balance of the purchase price of a company car which the employee opted to retain. In the present case, the existence of the alleged oral agreement, from which would flow the right to compel performance, is in issue.

As the Court has ascertained that the present suit is essentially for specific performance – a personal action – over which the court *a quo* had jurisdiction, it was therefore erroneous for it to have treated the complaint as a real action which prescribes after 30 years under Article 1141 of the New Civil Code. In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages.[29] Real actions, on the other hand, are those affecting title to or possession of real property, or interest therein.[30] As a personal action based upon an oral contract, Article 1145 providing a prescriptive period of six years applies in this case instead. The shorter period provided by law to institute an action based on an oral contract is due to the frailty of human memory. Nothing prevented the parties from reducing the alleged oral agreement into writing, stipulating the same in a contract of employment or partnership, or even mentioning the same in an office memorandum early on.

While the respondent's complaint was ingeniously silent as to when the alleged oral agreement came about, his March 14, 2011 demand letter annexed to his complaint categorically cites

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[28] 508 Phil. 541 (2005).

[29] *Marcos-Araneta, et al. v. Court of Appeals, et al.*, 585 Phil. 58 (2008).

[30] *Id*.

the year 1994 as when he and Architect Olonan allegedly had an oral agreement to become "industrial partners" for which he would be given a unit from every building they constructed. From this, Unit 208 of Sunrise Holiday Mansion I was allegedly assigned to him. Then he went on to cite his resignation in October of 1997 and his re-employment with the company on December 1, 1999 for which he was allegedly given Unit 803 of the Xavierville Square Condominium, substituted later on by Unit 708 thereof.

The complaint for specific performance was instituted on November 21, 2011, or 17 years from the oral agreement of 1994 and almost 12 years after the December 1, 1999 oral agreement. Thus, the respondent's action upon an oral contract was filed beyond the six-year period within which he should have instituted the same.

Respondent argued that the prescriptive period should not be counted from 1994 because the condominium units were not yet in existence at that time, and that the obligation would have arisen after the units were completed and ready for occupancy. Article 1347[31] of the New Civil Code is, however, clear that future things may be the object of a contract. This is the reason why real estate developers engage in pre-selling activities. But even if we were to entertain respondent's view, his right of action would still be barred by the statute of limitations.

Condominium Certificate of Title (CCT) No. N-18347[32] for Unit 708 of Xavierville Square Condominium, copy of which was annexed to the complaint, was issued on September 11, 1997 or more than 13 years before respondent's March 14, 2011 demand letter. CCT No. CT-613[33] for Unit 208 of Sunrise Holiday Mansion Building I, also annexed to the complaint,

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[31] **ART. 1347**. All things which are not outside the commerce of men, including future things, may be the object of a contract.

[32] *Rollo*, p. 70.

[33] *Id.* at 71.

was issued on March 12, 1996 or 14 years before respondent's March 14, 2011 demand letter. Indubitably, in view of the instant suit for specific performance being a personal action founded upon an oral contract which must be brought within six years from the accrual of the right, prescription had already set in.

Inasmuch as the complaint should have been dismissed by the RTC on the ground of prescription, which fact is apparent from the complaint and its annexes, it is no longer necessary to delve into the applicability of the statute of frauds.

WHEREFORE, the petition is **GRANTED.** Accordingly, the Court of Appeals' November 27, 2013 Decision and April 28, 2014 Resolution in CA-G.R. CV No. 99994 are **REVERSED** and **SET ASIDE.** We sustain the dismissal of Civil Case No. Q-11-70338, but on the ground that the action for specific performance had already prescribed.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 214291. January 11, 2018]

AMERICAN POWER CONVERSION CORPORATION; AMERICAN POWER CONVERSION SINGAPORE PTE. LTD.; AMERICAN POWER CONVERSION (A.P.C.), B.V.; AMERICAN POWER CONVERSION (PHILS.) B.V.; DAVID W. PLUMER, JR.; GEORGE KONG; and ALICIA HENDY, *petitioners, vs.* **JASON YU LIM,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; REDUNDANCY, AS A GROUND; REDUNDANCY IS AN AUTHORIZED CAUSE FOR THE TERMINATION OF EMPLOYMENT; REQUISITES.—** Settled is the fact that redundancy is an authorized cause for the termination of employment, as provided by Article 283 of the Labor Code. Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly established.

2. **ID.; ID.; ID.; ID.; IT IS NOT ENOUGH FOR A COMPANY TO DECLARE A POSITION TO BE REDUNDANT, IT MUST PRODUCE ADEQUATE PROOF OF SUCH REDUNDANCY TO JUSTIFY THE DISMISSAL OF THE AFFECTED EMPLOYEES; CASE AT BAR.—** Likewise, settled is the fact that the declaration of redundant positions is a management prerogative, an exercise of business judgment by the employer. It is however not enough for a company to merely declare that positions have become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees. x x x A company's exercise of its management prerogatives is not absolute. It cannot exercise its prerogative in a cruel, repressive, or despotic manner. x x x. Employment to the common man is his very life and blood, which must be protected against concocted causes to legitimize an otherwise irregular termination of employment. In the present case, it appeared from the records that the redundancy program was not in existence. Circumstances obtaining therein never [point] to the fact of a restructuring being carried out by the company. The respondents dismally

failed to convince this Court that the organizational chart and self-serving affidavits presented are sufficient proof of the existence of redundancy. It must be remembered that the employer bears the burden of proving the cause or causes for termination. Its failure to do so would necessarily lead to a judgment of illegal dismissal.

3. ID.; ID.; LABOR RELATIONS; ELEMENTS TO BE CONSIDERED TO DETERMINE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP; ESTABLISHED IN CASE AT BAR.— To determine the existence of an employer-employee relationship, four elements generally need to be considered, namely: (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. These elements or indicators comprise the so-called 'four-fold' test of employment relationship. x x x From the above, it would seem that all of the petitioners are for all practical purposes respondent's employers. He was selected and engaged by APCC. His salaries and benefits were paid by APCP BV. And he is under the supervision and control of APCS and APC Japan. But of course, there is no such thing in legitimate employment arrangements. This bizarre labor relation was made possible and necessary only by the petitioners' common objective: to enable APCC to skirt the law. For all legal purposes, APCC is respondent's employer. Therefore, this Court declares the subject redundancy scheme a sham, the same being an integral part of petitioners' illegitimate scheme to defraud the public – including respondent – and the State. It is null and void for being contrary to law and public policy as it is in furtherance of an illegal scheme perpetrated by APCC with the aid of its co-petitioners. *Quae ab initio non valent, ex post facto convalescere non possunt*. Things that are invalid from the beginning are not made valid by a subsequent act. x x x For all purposes beneficial to respondent, all the petitioners should be considered as his employers since they all benefited from his industry and used him in their elaborate scheme and to further their aim – evading the regulatory processes of this country. And from a labor standpoint, they are all guilty of violating the Labor Code as a result of their concerted acts of fraud and misrepresentation upon the respondent, using him and placing him in a precarious position without risk to themselves, and thus deliberately disregarding their fundamental obligation to afford protection

to labor and insure the safety of their employees. For this gross violation of the fundamental policy of the Labor Code, petitioners must be held liable to pay backwages, damages, and attorney's fees.

4. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; MONEY CLAIMS; BACKWAGES IS NOT THE PRINCIPAL CAUSE OF ACTION IN AN ILLEGAL DISMISSAL CASE BUT THE UNLAWFUL DEPRIVATION OF ONE'S EMPLOYMENT COMMITTED BY THE EMPLOYER IN VIOLATION OF THE RIGHT OF AN EMPLOYEE.— It is true that the 'backwages' sought by an illegally dismissed employee may be considered, by reason of its practical effect, as a 'money claim.' However, it is not the principal cause of action in an illegal dismissal case but the unlawful deprivation of one's employment committed by the employer in violation of the right of an employee. Backwages is merely one of the reliefs which an illegally dismissed employee prays the labor arbiter and the NLRC to render in his favor as a consequence of the unlawful act committed by the employer. The award thereof is not private compensation or damages but is in furtherance and effectuation of the public objectives of the Labor Code. Even though the practical effect is the enrichment of the individual, the award of backwages is not in redress of a private right, but rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code.

5. ID.; ID.; ID.; ID.; REINSTATEMENT TO FORMER POSITION IN THE COMPANY CANNOT BE SUSTAINED DUE TO STRAINED RELATIONS WITH EMPLOYER; CASE AT BAR.— With the view taken of the case, it cannot be said that respondent may still be reinstated to his former position, on account of strained relations. Besides, the Court shall endeavor to determine the respective accountabilities of petitioners by way of taxes and other possible liabilities proceeding from the manner that they conducted business all these years. Hendy's admission in her December 9, 2005 letter to respondent about APCC's use of the latter's private bank account with which to conduct its business and operations is certainly revealing, just as telling as the evidence on record which suggests that APCC generated substantial revenue from its Philippine operations. For this purpose, respondent's

cooperation might be required by the authorities. As a potential witness to the activities of petitioners, his security and safety may not be guaranteed if he continues to work for the petitioners – not to mention that any investigation into the matter might be jeopardized by his continued association with petitioners.

6. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-CONTRACTS; PRINCIPLE OF UNJUST ENRICHMENT; TWO CONDITIONS TO GIVE RISE TO UNJUST ENRICHMENT.— Under Article 2142 of the Civil Code, "[c]ertain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another." There is unjust enrichment 'when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.' The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. x x x

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioners.

Lara Uy Santos Tayag & Danganan Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the April 23, 2014 Decision[2] of the Court of Appeals (CA) in

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[1] *Rollo*, Vol. I, pp. 16-59.

[2] *Id*. at 61-78; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Amelita G. Tolentino and Ricardo R. Rosario.

CA-G.R. SP No. 110142 setting aside the June 17, 2008 Decision[3] and June 10, 2009 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002807-07 and reinstating the July 27, 2007 Decision[5] of the Labor Arbiter, as well as the CA's September 11, 2014 Resolution[6] denying petitioners' Motion for Reconsideration.[7]

Factual Antecedents

On July 1, 1998, respondent Jason Yu Lim was hired to serve as the Country Manager of American Power Conversion Philippine Sales Office, which was not registered with the Securities and Exchange Commission (SEC) but whose function then was to act as a liaison office for American Power Conversion Corporation (APCC) – an American corporation – and provide sales, marketing, and service support to the local distributor and consumers of APCC in the Philippines. APCC is engaged in designing, developing, manufacturing and marketing of power protection and management solutions for computer, communication, and electronic applications.

The only SEC-registered corporation then was American Power Conversion (Phils.), Inc. (APCPI) with manufacturing and production facilities in Cavite and Laguna.

Since American Power Conversion Philippine Sales Office was unregistered but doing business in the country, respondent was included in the list of employees and payroll of APCPI. He was also instructed to create a petty cash fund using his own personal bank account to answer for the day-to-day

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[3] *Id*. at 232-255; penned by Commissioner Nieves E. Vivar-De Castro and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiguerra.

[4] *Id*. at 257-259.

[5] *Id*. at 260-277; penned by Labor Arbiter Thelma M. Concepcion.

[6] *Id*. at 105-106; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Ricardo R. Rosario.

[7] *Id*. at 79-103.

operations of American Power Conversion Philippine Sales Office.

In 2002, American Power Conversion (Phils.) B.V. (APCP BV) was established in the country and it acquired APCPI and continued the latter's business here.

In November, 2004, respondent was promoted as Regional Manager for APC North ASEAN, a division of APC ASEAN. As Regional Manager for APC North ASEAN, he handled sales and marketing operations for Thailand, the Philippines, Vietnam, Myanmar, Cambodia, Laos, and Guam, and reported directly to Larry Truong (Truong), Country General Manager for the entire APC ASEAN and officer of APCC. Truong was not connected in any way with APCP BV – which, per its SEC registration, is licensed to engage only in the manufacture of computer-related products.[8]

In an electronic mail (e-mail) message,[9] Truong announced respondent's appointment together with the appointment of David Shao (Shao) as Regional Manager for South ASEAN, which covered Singapore, Malaysia, Indonesia, and Brunei. Truong noted respondent's "steady and principled leadership" since he "joined APC Philippines in 1998" that "doubled x x x revenue x x x despite the fact that the country economy has improved little since the Financial Crisis."[10]

In 2005, Truong was replaced by petitioner George Kong (Kong).

During their stint with Kong, respondent and Shao supposedly discovered irregularities committed by Kong, which sometime in late August, 2005 they reported to Leanne Cunnold (Cunnold), General Manager for APC-South and Kong's immediate superior. Cunnold took up the matter with petitioner Alicia Hendy (Hendy), Human Resource Director for APCP BV. Respondent and Shao

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[8] *Id*. at 315.

[9] *Id*. at 325.

[10] *Id*.

also took the matter directly to David Plumer (Plumer), Vice President for Asia Pacific of APC Japan,[11] who advised them to discuss the matter directly with Kong.

Upon being apprised of the issues against him, Kong on September 8, 2005 sent three e-mail messages[12] to respondent and the other six members of the sales and marketing team indicating his displeasure and that he took the matter quite personally. In the last of his e-mail messages, he remarked – "and finally, thank you for the 7 knives in my back."[13]

On September 30, 2005, Kong and Hendy met with Shao, where the latter was asked to resign; when he refused, he was right then and there terminated from employment with immediate effect.[14] The Letter of Termination[15] handed to him did not specify any reason why he was being fired from work, and was written on the official stationery of American Power Conversion Singapore Pte. Ltd. (APCS) and signed by its Human Resource Manager, Samantha Phang (Phang).

Thereafter, Kong arrived in the country and met with respondent on October 17, 2005, where he informed the latter of a supposed company restructuring which rendered his position as Regional Manager for North ASEAN redundant. Respondent was furnished by the Human Resource Manager of APCP BV Maximo del Ponso, Jr. (del Ponso) with a Termination Letter[16] of even date, which stated among others that –

Dear Jason:

In response to the changing directions of the business, and pursuant to the need to align and streamline the APAC Sales organization, we advise that management has decided to reconfigure APAC Sales

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[11] *Rollo*, Vol. IV, p. 2066.

[12] *Rollo*, Vol. I, pp. 326-328.

[13] *Id*. at 326.

[14] *Id*. at 329-334.

[15] *Id*. at 334.

[16] *Id*. at 335.

function and as a result of such, we declare the position of Regional Manager – North ASEAN is [sic] redundant. Accordingly, we regret to inform you of your last working day with us is effective close of business day 17 November, 2005. Until said date, you will no longer be required to go to work other than the period required by management for the turn-over.

x x x x x x x x x

On December 8, 2005, respondent's counsel proceeded to the Department of Labor and Employment (DOLE) to verify if petitioners gave the requisite notice of termination due to redundancy. In a Certification,[17] the DOLE through National Capital Region Assistant Regional Director Ma. Celeste M. Valderrama confirmed that there was no record on file – from September 1, 2005 up to November 30, 2005 – of a notice of termination filed by any of the petitioners.

Respondent was paid severance pay, but in a written demand,[18] he sought reinstatement, the payment of backwages and allowances/benefits, and damages for his claimed malicious and illegal termination. In a written reply[19] by APCC's counsel, petitioners refused to accede, thus:

Dear Atty. Marigomen
Mr. Jason Yu Lim

We write on behalf of our client American Power Conversion Corporation ('APCC') and respond to your letter x x x.

x x x Mr. Lim was lawfully terminated on the ground of redundancy. Moreover, **APCC** complied with the procedure for termination x x x and paid Mr. Lim his separation pay in accordance with law.

x x x x x x x x x

In view of the foregoing, **APCC** is unable to accede to your demands. (Emphasis supplied)

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[17] *Id*. at 336.

[18] *Id*. at 356-359.

[19] *Id*. at 360-361.

Likewise, in a December 9, 2005 letter[20] to respondent, APCP BV through Hendy acknowledged to respondent that should he be questioned about the use by APCC of his private bank account, petitioners will "offer the fullest possible accounting of its [APCC] past actions."

Ruling of the Labor Arbiter

Respondent filed a labor case against the petitioners for illegal dismissal and recovery of money claims. In his Position Paper[21] and other pleadings, respondent claimed that he was illegally dismissed by petitioners using a fabricated and contrived restructuring/reorganization/redundancy program; that in truth, his dismissal was motivated by bad faith and malice out of Kong's desire to retaliate after he questioned Kong's irregularities; the petitioners conspired and acted together to illegally remove respondent from his position through a fabricated redundancy; that in effecting the purported redundancy program, petitioners did not comply with the requirements laid down by the Labor Code, particularly the giving of notice to the DOLE, which thus renders the dismissal null and void; and that by acting with malice and bad faith, petitioners are liable to respondent for moral and exemplary damages and attorney's fees. Thus, respondent prayed for reinstatement with full backwages, allowances and other benefits; or in the alternative, additional separation pay at the rate of three months salary for every year of service; damages in the amount of US$1,500,000.00 for petitioners' malice, bad faith, and for subjecting respondent to the threat of criminal and civil prosecution as a result of petitioners' illegal acts of evading taxes, non-registration with the SEC, and for using respondent as their dummy; and attorney's fees and costs of suit.

In their joint Position Paper[22] and other pleadings, petitioners claimed essentially that respondent should have impleaded only APCP BV, as it is with the latter that respondent entered into

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[20] *Id*. at 338.

[21] *Id*. at 283-314.

[22] *Id*. at 367-397.

an employment contract; that the complaint against the other petitioners should thus be dismissed; that when Plumer was appointed Vice President for APC Asia Pacific operations in August, 2005, a reorganization/restructuring of the APC Asia Pacific sales organization was undertaken, in that its operations were divided into 1) Enterprise Sales – which shall be responsible for selling directly to customers, and 2) Transactional Sales – which shall be tasked to handle distributions, network, and channels accounts; that for this reason, there was a need to abolish the positions of Regional Manager – North ASEAN and Regional Manager – South ASEAN because they were no longer aligned with the new business model – and in their stead, the positions of Enterprise Sales Manager and Transactional Business Manager were created; that these two new positions required a different set of functions including job description, qualifications, and experience, which respondent did not possess; that in fact, two new employees with the requisite qualifications have been appointed to these two new positions; that in effecting the redundancy program, they complied with the requirements of law; that on October 6, 2005, APCP BV's del Ponso sent to DOLE Region IV at Calamba, Laguna a written notice[23] of the redundancy program to be implemented, but it did not contain the number and names of workers intended to be terminated from work, including that of respondent's; that respondent's dismissal was thus for cause; that respondent is not entitled to his monetary claims on account of his valid dismissal due to redundancy; that reinstatement is no longer feasible since his former position has been abolished; that respondent is not entitled to the rest of his claims; and that the individual officers named in the complaint cannot be held personally liable as they acted in their official capacity and without bad faith or malice. Thus, they prayed for the dismissal of respondent's complaint.

Ruling of the Labor Arbiter

On July 27, 2007, the Labor Arbiter rendered her Decision in favor of respondent, stating thus:

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[23] *Id*. at 430.

From the conflicting statement of facts and evidence adduced by [the] parties in support of their respective assertions, the issues for resolution by this Office are whether or not complainant was illegally dismissed, and whether or not he is entitled to his monetary claims.

At the outset, it must be stressed that in cases of termination of an employee, it is the employer who has the burden of proving that the termination x x x is for a valid or authorized cause x x x.

Further, a rule deeply entrenched in our jurisdiction is that 'in order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes enumerated in Art. 282 of the Labor Code, and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself. x x x

As also provided *under Art. 283 of the Labor Code, as amended, redundancy, among other grounds, is an authorized cause for termination of an employment*. x x x the Supreme Court held that redundancy exists when the service capability of the work force is in excess of what is reasonably needed to meet the demands of the enterprise. A redundant position is one rendered superfluous by any number of factors, such as over hiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company, or phasing out of a service activity previously undertaken by the business. x x x

x x x [T]he Supreme Court held that redundancy may be proven by a 'new staffing pattern, feasibility studies/proposal on the viability of newly created positions, job description and approval by the management of the restructuring.' In the instant case, we find respondents did not present any of the foregoing evidence to establish the supposed restructuring and/or redundancy. There was also no evidence showing the approval of the said restructuring and/or redundancy by the directors and officers of respondent APC BV. What was submitted on record were the affidavits and memoranda of the managers of respondent company on the alleged plans for restructuring which the Supreme Court held not sufficient to substantially prove the existence of a restructuring or redundancy. Moreover, in the previous reorganization of APC ASEAN in January 2005, Country Managers and Regional Managers, complainant actively participated in the formation of the new structure for the APC ASEAN. The same tedious process of reorganization was however not undertaken by respondents APCC in the supposed decision to abolish

the position of the ASEAN Regional Managers, thus rendering suspect the assertion of redundancy. Also significant to consider is the point raised by complainant that up to present, respondent APCC has not yet announced any reconfiguration, reorganization, or restructuring in APC ASEAN despite the effected termination if only to validate the alleged reorganization. The statement of Mr. Tzeng Kwan Chin, the APC Country Sales Manager for Malaysia, corroborates this point of the complainant.

We also noted that after respondents terminated complainant and Mr. Shao as Regional Managers, the company hired two (2) new employees to perform basically the same functions of complainant and that of Mr. Shao, which is to market and promote APC products x x x, which factor also belies the claim of redundancy. The hiring of two (2) new employees, albeit differently titled, merely effected substitution of complainant and Mr. Shao. The same substitution suggest [sic] that vacated posts of Regional Managers is [sic] necessary in the operations of respondent APCC which necessitated the performance thereof by the newly hired employees. We are thus persuaded [that] the obtaining circumstances does [sic] not help support respondent APCC's claim of redundancy. With the abolition of the Regional Manager position, there should have been a merger of functions and not the hiring of replacements.

It is not disputed that management is vested with the power and prerogative to decide whether to undergo a reorganization to improve the business x x x. However, said power and prerogative is [sic] not absolute. The Constitution and the Labor Code safeguards [sic] the right of the employees to their job and their income. Hence, the guaranteed right to security of tenure of employees and their protection against dismissal, except for a just or authorized cause.

In the absence of a clear showing of redundancy, we are inclined to give credence to the assertion that respondents thru the initiative of respondent Kong was motivated to dismiss complainant from the company because of the latter's report on the former's violations of the APCC's Code of Ethics. Evidently, the termination of complainant was not due to redundancy but a retaliatory action in the guise of redundancy for purposes of dismissing the complainant from the service. The said action is clearly an exercise of management prerogative in bad faith. It may be true that investigation was conducted on the reported breach of the Code of Ethics by respondent Kong,

the lack of transparency on the results thereof, however, prevents us from giving credence to said assertion.

Moreover, it is also noticeable that only complainant and Mr. Shao (who complained about respondent Kong's unethical conduct) were removed on account of the supposed reorganization. The five (5) other persons named in respondent Kong's angry e-mails were not dismissed in connection with said reorganization since they did not join complainant and Mr. Shao in their report on respondent Kong's unethical conduct, as against respondents' contention that no such retaliatory action was undertaken by them as shown by the fact that five others also in the e-mails were not included in the said reorganization.

It also did not escape our notice that Mr. Shao, who previously held the position of Regional Manager for South Asean, was terminated 'without cause' rather than due to redundancy. We are not persuaded by respondents' explanation that Singapore law allows dismissal without cause and hence no longer deemed necessary to indicate the same reason of redundancy/reorganization for Mr. Shao's termination. To the contrary, we are inclined to believe that having expressly stated that termination was 'without cause,' it only infers that there was actually no valid reason for the latter's termination. Granting arguendo the same is allowed under Singapore law, the said circumstances nevertheless infer that termination of Mr. Shao, as well as complainant was not due to reorganization.

Furthermore, under Article 283 of the Labor Code, it is provided that in cases of termination for redundancy, the employer must serve a written notice to the workers and the DOLE at least one (1) month before the intended date thereof.

In the instant case, respondents failed to comply with the requirement of written notice to the DOLE as evidenced by the Certification from said Office that there is no record on its file from 01 September 2005 to 30 November 2005 reporting the termination of complainant for redundancy x x x [F]ailure to comply with the mandatory procedural requirements taints the dismissal with illegality. We also do not find the notice to DOLE adduced by respondents applicable to complainant since the latter was not specifically named therein apart from the fact that said notice as pointed out by complainant, appears to have been previously submitted to DOLE by reorganization of the human resources department of APC BV Cavite and not that of the Regional Managers of APCC.

Thus, on the basis of the foregoing findings and pursuant to Article 279 of the Labor Code, we find complainant entitled to reinstatement without loss of seniority rights, and other privileges as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement less the amount already paid to him representing separation pay and other benefits due to redundancy.

Further finding the claim of redundancy to have been merely a guise to terminate complainant, abuse of management prerogative is established against respondent APCC which entitles complainant to moral damages in the amount of ₱2,000,000.00. Also, the award is justified due to respondent APCC's failure to register APC Philippines Sales in accordance with Philippine laws including the respondents' use of the personal bank account of complainant exposing him to the threat of criminal, civil, and/or administrative liabilities x x x To serve as a lesson to similarly minded respondents x x x, we find the award of exemplary damages in the amount of ₱2,000,000.00 proper x x x.

It appearing further that respondent George Kong of APC Singapore Pte. Ltd., Alicia Hendy, and David Plumer, who are both officials of respondent APCC to have participated, directly or indirectly, in the contrived redundancy/reorganization that led to the dismissal of complainant, we find said officers to be jointly and severally liable with respondents APCC to the adjudged monetary award to the complainant.

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding the termination of complainant unlawful. Accordingly, respondents American Power Conversion Corporation (APCC), American Power Conversion Singapore Pte. Ltd., American Power Conversion (APC) B.V., American Power Conversion (Phils.) Inc., George Kong, Alicia Hendy, and David Plumer are held jointly and severally liable as follows:

1. To pay complainant full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time compensation was unlawfully withheld up to the time of actual reinstatement less the amount already received by him from the respondents as separation package, to wit:

MONTHLY RATE ————————————————		₱ 191,666.67
Add: 1. ½ of 13th Month Pay of ₱175,694.44	- ₱14,641.20	
2. Car Maintenance Allowance	- 15,000.00	
3. Communication Allowance	- 5,000.00	
4. Medical Benefit (EENT & Dental[)]	- 800.00	
5. Fuel [Subsidies]	- 4,000.00	
6. Executive Parking Benefit	- 3,500.00	
7. Broadband Internet Charges	- 3,000.00	₱45,941.20
TOTAL MONTHLY COMPENSATION		₱ 237,607.87
BACKWAGES (Partial Only) November 17, 2005 - July 17, 2007 or 20 months x ₱237,607.87		₱4,752,157.31
Less Amount already received		₱ 2,055,867.64
Net Backwages		₱ 2,696,289.67

2. To reimburse allowable expenses, to wit:

a. 50% car insurance for 2006	23,892.00
b. 50% car insurance, paid in March 2007	13,244.50
c. car registration for 2006	8,635.00
T O T A L	₱45,771.50

3. To reinstate complainant to his previous or similar position without loss of seniority rights.

4. To pay complainant moral damages in the amount of ₱2,000,000.00 and exemplary damages in the amount of ₱2,000,000.00.

5. To pay complainant ten (10%) percent attorney's fees of the total judgment award on [sic] the amount of ₱274,206.11.

All other claims are hereby ordered dismissed for lack of merit.

SO ORDERED.[24] (Citations omitted)

Ruling of the National Labor Relations Commission

Petitioners appealed before the NLRC. On June 17, 2008, the NLRC issued its Decision containing the following pronouncement:

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[24] *Id*. at 270-277.

After a careful review of the evidence submitted by the parties and the laws and the rules applicable to the instant case, We decide to grant the Appeal and rule in favor of Respondents/Appellants.

The Labor Arbiter failed to take into consideration that the restructuring implemented by APC was organizational, meaning it affected not only APC (Philippines) B.V. but also APC ASEAN and APC Asia Pacific. The Labor Arbiter failed to take into consideration the APC ASEAN organizational chart presented by respondents, which showed that APC's ASEAN organization was divided into Enterprise Sales and Transactional Sales (from the former grouping based on territorial boundaries), consistent with the organizational changes in the APC Asia Pacific sales organization (Respondents/Appellants' Position Paper, Annex "7"). Respondents/Appellants also presented the organizational chart of APC (Philippines) B.V. after August 2005, which showed that the ASEAN restructuring resulted in direct reporting lines from the Philippines to the ASEAN Enterprise Sales and ASEAN Transactional Business Managers (Respondents' Position Paper, Annex "11"). This change in reporting lines rendered Complainant/Appellee's position as Regional Manager – North ASEAN redundant.

Further, it appears from the records that the ASEAN restructuring was conceived as early as 1 August 2005 upon Respondent/Appellant Plumer's appointment as VP for Asia Pacific. As soon as Mr. Plumer assumed office, he proposed that the organizational structure of Asia Pacific be divided on the basis of customer needs: (1) Enterprise Sales, covering direct selling to customers, and (2) Transactional Sales, covering distributions, network, and channel accounts. This plan to reorganize was thus conceived even before Complainant/Appellee reported, on 29 August 2005, individual Respondent/Appellant Kong's "unexplained" use of company funds. This negates Complainant/Appellee's theory that his dismissal was a purely retaliatory act orchestrated by Respondent/Appellant Kong. Considering the complexity of the Asia Pacific and ASEAN reorganization, we are inclined to hold that it is only by pure happenstance that the restructuring was implemented at a time when Complainant/Appellee's personal troubles with individual respondent Kong began.

x x x x x x x x x

In the instant case, Complainant/Appellee's dismissal may have been preceded by an unpleasant exchange between him and his superior respondent Kong, which Complainant/Appellee claims is the reason

why he was illegally dismissed. As in the case of *International Harvester Macleod*, however, Complainant/Appellee's theory as to the cause of his separation merely constitutes surmise and speculation. The fact that five other persons, against whom Kong's 'angry emails' were also directed, were not dismissed from APC negates Complainant/ Appellee's theory that he is being persecuted for 'whistle-blowing.' That x x x Kong may have had a personal misunderstanding with Complainant/Appellee does not necessarily mean that it was the reason why Complainant/Appellee's position was abolished. Personal matters between the company's employees cannot, by themselves, invalidate an otherwise valid reorganization nor cause prejudice to the company's *bona fide* business interests.

In any case, the findings of the Labor Arbiter on the supposed absence of evidence to justify a declaration of redundancy in this case are contrary to the records.

First, a brief reading of the Job Description for the positions of Enterprise Sales Manager and Transactional Sales Manager x x x negate[s] the Labor Arbiter's ruling that the two employees hired by the company are mere replacements of Complainant/Appellee. These positions involved a different set of functions than Complainant/ Appellee's position of Regional Manager – North ASEAN. Complainant/Appellee also failed to deny that he did not possess the requisite qualifications, experience and contacts for these two new positions. Hence, the hiring of individuals to occupy these two did not invalidate the redundancy implemented by APC.

The insistence of the Labor Arbiter in the Decision on appeal upon a merger of functions rather than the hiring of new persons is tantamount to a substitution of the Arbiter's judgment for the Company's judgment as regards the characterization of the necessity of Complainant/ Appellee's services. It would have been contrary to the very interests of APC if Complainant/Appellee was retained as ASEAN Enterprise Sales Manager or Transactional Business Manager, when he is clearly unqualified for either position.

x x x x x x x x x

Hence, the creation by the company of the new positions of Enterprise Sales Manager and Transactional Business Manager, which rendered unnecessary Complainant/Appellee's position as North ASEAN Regional Manager must be respected.

Second, we find that contrary to the findings of the Labor Arbiter, Complainant/Appellee had knowledge of the redundancy. In the e-mail dated 16 September 2005 to then Asia Pacific South General Manager Cunnold x x x, and in Complainant/Appellee's discussion with Mr. Kong on or about 18 October 2005 x x x, it is evident that Complainant/Appellee knew for some time that changes were underway in APC's organizational structure. APC was likewise transparent about the organization to APC (Philippines) B.V.'s employees. In a meeting on 18 October 2005, individual Respondent/Appellant Kong briefed the Philippine employees about the abolition of the Regional Manager – North ASEAN and the Regional Manager – South ASEAN positions and the dismissal of Complainant/Appellee on the ground of redundancy as a result of the reorganization x x x.

We rule that the circumstances cited by the Labor Arbiter in the appealed Decision do not, under pertinent law and jurisprudence, negate the validity of the company's redundancy program. In dismissals due to redundancy, the Labor Code merely requires written notice to the affected employee and to the DOLE, and payment of separation pay thus:

x x x x x x x x x

There is no law or jurisprudence that requires a showing of the 'approval of the restructuring or redundancy by the directors and officers' of a company x x x. There is likewise no law requiring that prior consultation be made with an enterprise's employees before any reorganization may be effected x x x. There is, moreover, no law requiring the making of an announcement as regards the reorganization of an enterprise x x x. The Labor Code again only categorically requires that notice be given to the affected employee/s. It does not require the giving of notice to persons not otherwise affected by the redundancy, such as, for instance, the company's other employees. As a rule, the characterization of the services of an employee who was terminated for redundancy is an exercise of the business judgment of the employer. The wisdom or soundness of such characterization or decision is not subject to the discretionary review by the Labor Arbiter, the NLRC and the Courts thereafter x x x. To require the employer to make prior consultation, with its employees, amounts to subjecting the company's business decision to the discretionary review of its employees. This dilutes the company's prerogative as an employer, to run its business as it sees fit.

Employers cannot be unduly burdened by extra-legal requirements imposed upon them by the courts, such as those imposed in the Decision on Appeal, *i.e.* prior consultation with employees, company-wide announcement, board resolution, etc. **The basic requirements of due process demand that employers be informed definitively of what the law requires**. Otherwise, employers will forever be at the mercy of quasi-judicial tribunals. The basic requirements of due process demand that an employer's compliance with labor laws be not made dependent on a matter as fluid as judicial legislation, as in the many requirements laid down by the Labor Arbiter in the Assailed Decision.

Finally on this point, Complainant/Appellee's status as an executive officer must be considered in evaluating the exercise of the company's prerogative to declare his position redundant. Under pertinent jurisprudence, the Company retained a wider latitude of discretion in determining whether Complainant/Appellee's employment should be sustained. In *Almodiel v. NLRC*, x x x the Supreme Court ruled:

> *'Considering further that petitioner herein held a position which was definitely managerial in character, Raytheon had a broad latitude of discretion in abolishing his position. An employer has a much wider discretion in terminating employment relationship of managerial personnel compared to rank and file employees. The reason obviously is that officers in such key positions perform not only functions which by nature require the employer's full trust and confidence but also functions that spell the success or failure of an enterprise.'*

The Labor Code requires that employees separated on the ground of redundancy be given notice of their separation at least thirty (30) days before the effective date thereof. A notice of the separation must likewise be given to the DOLE, to give the latter the opportunity to determine whether economic causes exist that justify the termination of the worker's employment, x x x.

In the instant case, we find that although Respondents/Appellants gave the requisite 30-day notice to Complainant/Appellee x x x, Respondents/Appellants failed to comply with the procedural requirement of giving notice to the DOLE 30 days before the effective date of Complainant/Appellee's separation. The notice referred to by Respondents/Appellants x x x does not specifically include Complainant/Appellee's name. It thus cannot be considered as sufficient compliance with the notice requirement laid down by the Labor Code.

The prevailing rule is that a dismissal is not to be declared illegal simply because the employer failed to comply with the requirements of procedural due process. x x x

x x x x x x x x x

Complainant/Appellee's claims for backwages and reinstatement must be denied in view of our finding above that Complainant/Appellee was dismissed for authorized cause. It is settled that backwages and reinstatement are merely legal consequences of a finding that the employee was indeed illegally dismissed x x x. These reliefs cannot be awarded to a separated employee absent a finding of illegal dismissal.

x x x x x x x x x

We find the Labor Arbiter's award of moral and exemplary damages, and attorney's fees in favor of Complainant/Appellee unwarranted. We find merit in Respondents/Appellees' argument that the reasons cited by the Labor Arbiter in the Decision, which purport to justify an award of damages in the instant case, are speculative. x x x

x x x x x x x x x

The Labor Arbiter's award of Two Million Pesos x x x by way of moral damages and another Two Million Pesos x x x by way of exemplary damages is too large an amount by any standard. x x x

x x x x x x x x x

We finally find it irregular for the Labor Arbiter to award specific items and amounts in the Decision, such as Complainant/Appellee's car maintenance allowance, communication allowance, executive parking benefit, etc., when no mention of said items or their amounts was made by either party in the records of the case. This is contrary to the constitutional proscription against decisions rendered without bases in fact x x x

x x x x x x x x x

There is no reason to hold individual Respondents/Appellants liable in the instant case considering that whatever acts were committed by them were done in the performance of their official functions, without malice or bad faith. x x x

Since Our jurisdiction is limited to those cases where an employment relationship exists between the parties, Respondents/Appellants APCC, APC Singapore Pte. Ltd., and APC (Phils.) Inc. cannot be held liable under the complaint. These entities, although related to Complainant/Appellee's employer APC (Philippines) B.V., maintain separate corporate personalities from the latter. They cannot be considered Complainant/Appellee's employer on the basis of [sic] alone of their affiliation with APC (Philippines) B.V. x x x:

x x x x x x x x x

WHEREFORE, the Appeal is GRANTED and the Decision dated 27 July 2007 in NLRC NCR Case No. 00-05-03722-06 is REVERSED and SET ASIDE. Respondents/Appellants are, however, directed to pay Complainant/Appellee Php30,000.00 in nominal damages for failure to comply with the notice requirement under the Labor Code.

SO ORDERED.[25] (Emphasis in the original)

Respondent moved for reconsideration, but the NLRC stood its ground.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[26] before the CA, respondent questioned the above NLRC dispositions and prayed for the reinstatement of the Labor Arbiter's Decision.

On April 23, 2014, the CA rendered the assailed Decision granting the petition, decreeing thus:

The present controversy revolves on the issue of whether or not the dismissal of the petitioner on the ground of redundancy is tenable.

The petitioner mainly contends that respondents dismally failed to prove that the dismissal was valid; that contrary to the claims of respondents, there was no restructuring to effect a redundancy of his position but it is just a make-believe redundancy to cover up for the illegality of his dismissal; that his dismissal was a retaliatory act to the complaint that he filed questioning the unethical conduct of

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[25] *Id*. at 240-254.

[26] *Id*. at 113-230.

his former immediate superior, George Kong; that respondents failed to notify DOLE of his termination as required under the Labor Code.

On the other hand, respondents claim that the dismissal of the petitioner due to redundancy is a management prerogative which cannot be interfered with; that contrary to the claim of the petitioner, the restructuring effected by the company is legitimate and in accordance with the needs of the company; that notices as required by law have been strictly complied with.

x x x x x x x x x

Settled is the fact that redundancy is an authorized cause for the termination of employment, as provided by Article 283 of the Labor Code.

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly established.

Likewise, settled is the fact that the declaration of redundant positions is a management prerogative, an exercise of business judgment by the employer.

It is however not enough for a company to merely declare that positions have become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees. In *Panlileo v. NLRC*, the High Court said that the following evidence may be proffered to substantiate redundancy: 'the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring.' In another case, it was held that the company sufficiently established the fact of redundancy through 'affidavits executed by the officers of the respondent PLDT, explaining the reasons and necessities for the implementation of the redundancy program.'

As found out by the Labor Arbiter which we look with favor: *'In the instant case, we find (that) respondent did not present any of the foregoing evidence to establish the supposed restructuring and/or redundancy. There was also no evidence showing the approval of the said restructuring and/or redundancy by the directors and officers of respondent APC B.V. What was submitted on record were the affidavits and memoranda of the managers of respondent company on the alleged plans for restructuring which the Supreme Court held not sufficient to substantially prove the existence of a restructuring or redundancy. Moreover, in the previous reorganization of APC ASEAN in January 2005, Country Managers and Regional Managers actively participated in the formation of the new structure for the APC ASEAN. The same tedious process of reorganization was however not undertaken by respondents APCC in the supposed decision to abolish the position of the ASEAN Regional Managers, thus rendering suspect the assertion of redundancy. Also significant to consider is the point raised by complainant that up to present, respondent APCC has not announced any reconfiguration, reorganization, or restructuring in APC ASEAN despite the effected termination if only to validate the alleged reorganization.'*

A company's exercise of its management prerogatives is not absolute. It cannot exercise its prerogative in a cruel, repressive, or despotic manner. x x x. Employment to the common man is his very life and blood, which must be protected against concocted causes to legitimize an otherwise irregular termination of employment.

In the present case, it appeared from the records that the redundancy program was not in existence. Circumstances obtaining therein never [point] to the fact of a restructuring being carried out by the company. The respondents dismally failed to convince this Court that the organizational chart and self-serving affidavits presented are sufficient proof of the existence of redundancy.

It must be remembered that the employer bears the burden of proving the cause or causes for termination. Its failure to do so would necessarily lead to a judgment of illegal dismissal.

The pieces of evidence presented did not justify the reorganization that led to redundant positions as claimed by the respondent. Moreover, records also show that the written notice to the Department of Labor and Employment (DOLE), as required by Article 283 of the Labor Code, was not complied with.

The Labor Arbiter in her Decision said: *'x x x respondents failed to comply with the requirement of written notice to the DOLE as evidenced by the Certification from said Office that there is no record on its file from 01 September 2005 to 30 November 2005 reporting the termination of complainant for redundancy. Failure to comply with the mandatory procedural requirements taints the dismissal with illegality. We also do not find the notice to DOLE adduced by respondents applicable to complainant since the latter was not specifically named therein apart from the fact that said notice as pointed out by complainant, appears to have been previously submitted to DOLE by reorganization of the human resources [sic] department of APC BV Cavite and not that of the Regional Managers of APCC.'*

Again, it bears stressing that substantial evidence is the [quantum] of evidence required to establish a fact in cases before administrative and quasi-judicial bodies. Substantial evidence, as amply explained in numerous cases, is that amount of 'relevant evidence which a reasonable mind might accept as adequate to support a conclusion.'

We find this substantial evidence wanting in the present case.

Clearly the foregoing circumstances support the illegal dismissal of the complainant, as aptly ruled by the Labor Arbiter.

In balancing the interest between labor and capital, the prudent recourse in termination cases is to safeguard the prized security of tenure of employees and to require employers to present the best evidence obtainable, especially so because in most cases, the documents or proof needed to resolve the validity of the termination, are in the possession of employers. A contrary ruling would encourage employers to utilize redundancy as a means of dismissing employees when no valid grounds for termination are shown by simply invoking a feigned or unsubstantiated redundancy program.

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. x x x. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. x x x. The grant of separation pay was

a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages.

On a final note, respondents have raised the issue of this Court's taking cognizance of this petition for certiorari questioning therein the grounds posed for the filing of the petition.

We find this misplaced and without merit.

The petition is mainly grounded on alleged grave abuse of discretion amounting to lack or excess of jurisdiction allegedly committed by NLRC, although some errors in judgment have surfaced as well.

The extent of judicial review by certiorari of decisions or resolutions of the NLRC, as exercised previously by the Supreme Court and now by the Court of Appeals, is described in *Zarate, Jr. v. Olegario*, thus –

> 'The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.'

Was NLRC guilty of such grave abuse of discretion?

We say yes.

The Court of Appeals, therefore, can grant the petition for certiorari if it finds that the NLRC in its assailed decision or resolution, committed

grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy.

And this is amplified in AMA case where the Supreme Court held that:

'x x x x x x x x x

> In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC.'

Thus, pursuant to law and jurisprudence, Our taking cognizance of the present case is in order.

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly the assailed Decision of the NLRC is **REVERSED** and **SET ASIDE** and the decision of the Labor Arbiter is hereby **REINSTATED** with the **MODIFICATION** that if reinstatement is no longer possible, petitioner should be paid full backwages reckoned from the date of his illegal dismissal up to the time that this Decision becomes final and executory, separation pay equivalent to one month's salary for every year of service less the amount already received by him from the respondent as separation package and moral and exemplary damages in the amount of Php100,000.00 each.

Accordingly the case is remanded to the Labor Arbiter for the computation of the award.

SO ORDERED.[27] (Emphasis in the original)

Petitioners filed a motion for reconsideration, but the CA denied the same *via* its September 11, 2014 Resolution. Hence, the instant Petition.

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[27] *Id*. at 70-78.

In a January 11, 2016 Resolution,[28] the Court resolved to give due course to the Petition.

Issue

Petitioners raise the following issues for resolution:

I.

THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LAW AND LEGAL PRECEDENTS WHEN IT EXERCISED ITS *CERTIORARI* POWER ABSENT ANY FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

A. The Court of Appeals exercised its *certiorari* jurisdiction without a finding that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction.

B. The Court of Appeals erred in granting respondent's CA Petition, even when respondent failed to raise any ground which would justify the exercise of the Court of Appeals' *certiorari* jurisdiction.

C. In any event, the Court of Appeals should have dismissed the CA Petition outright for being a mere rehash of respondent Lim's arguments before the NLRC.

II.

THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LEGAL PRECEDENT WHEN IT REVISITED AND REVERSED THE FACTUAL FINDINGS OF THE NLRC SOLELY ON THE GROUND THAT THERE SUPPOSEDLY IS A DIVERGENCE OF VIEWS BETWEEN THE LABOR ARBITER AND THE NLRC.

III.

IN ANY EVENT, THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, AND THE COURT OF APPEALS' FACTUAL FINDINGS WERE UNSUPPORTED BY EVIDENCE

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[28] *Rollo*, Vol. IV, pp. 2055-2056.

AND ITS CONCLUSIONS CONTRARY TO LAW AND EXISTING JURISPRUDENCE.

A. The NLRC's finding that respondent Lim was validly dismissed due to redundancy is substantially supported by evidence on record.

B. The NLRC's findings on the existence of redundancy are correct. The Court of Appeals misapplied and/or misconstrued this Honorable Court's rulings in *San Miguel v. Del Rosario* and *Panlilio v. NLRC* regarding the evidence that may prove redundancy.

C. Petitioners have presented evidence sufficient to prove redundancy, even if measured against the standards set by the Court of Appeals.

   (i) New staffing pattern proved redundancy.

   (ii) Restructuring/reorganization resulted from a series of proposals and prior extensive feasibility studies.

   (iii) Job descriptions provided adequate basis to conclude that the new positions were different from the abolished ones.

   (iv) Approval by the management of the restructuring/ reorganization.

D. Petitioners complied with the requirement to notify the DOLE. In any event, respondent Lim's dismissal due to redundancy cannot be rendered illegal even assuming *arguendo* that Petitioners failed to strictly comply with such requirement.[29]

Petitioners' Arguments

In their Petition and Reply[30] seeking reversal of the assailed CA dispositions and, in lieu thereof, the reinstatement of the June 17, 2008 NLRC Decision, petitioners essentially argue that the CA erred in finding that the NLRC committed grave abuse of discretion; that it failed to explain how the NLRC's findings could have amounted to grave abuse of discretion so

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[29] *Rollo*, Vol. I, pp. 31-33.

[30] *Rollo*, Vol. IV, pp. 1968-1987.

patent and gross as to amount to an evasion of positive duty or virtual refusal to perform a duty enjoined by law; that respondent failed to raise any ground which would justify the CA's exercise of its *certiorari* jurisdiction; that the NLRC's finding that respondent was validly dismissed for redundancy is substantially supported by the evidence adduced; that contrary to the CA's pronouncement, redundancy may be proved by evidence other than a new staffing pattern, feasibility studies/proposals on the viability of newly created positions, job descriptions, and approval of the redundancy scheme by management; that they presented sufficient evidence to prove the necessity of dismissing respondent on account of redundancy, such as a new staffing pattern/organizational chart, series of proposals/meetings/ extensive study, new job descriptions for the new positions, and approval by management of the scheme; and that the requirements of Article 283 of the Labor Code[31] were substantially complied with, although failure to comply therewith does not render the dismissal illegal or ineffectual.

Respondent's Arguments

In his Comment[32] to the Petition, respondent insists that petitioners' redundancy scheme was a sham as it was contrived

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[31] ART. 283. *Closure of establishment and reduction of personnel.*— The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least 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 (½) 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.

[32] *Rollo*, Vol. IV, pp. 1751-1816.

with the sole aim to discharge him from employment; that petitioners did not comply with the notice requirement under the Labor Code; that he remained an employee of APCC, and was only an APCP BV employee on paper; that upon his termination, he was immediately replaced by another employee who held the same position, although his title was changed; that the documentary evidence adduced by petitioners to prove their sham redundancy scheme were fabricated; that in deciding the case the way it did, the NLRC committed grave abuse of discretion; and that the CA was correct in granting his Petition for *Certiorari*. Thus, he prays for denial of the instant Petition.

Our Ruling

The Court denies the Petition.

The CA committed no error in taking cognizance of respondent's Petition for *Certiorari*. As will be shown below, the NLRC committed an error so patent and gross as to amount to an evasion of its positive duty to administer justice in favor of the respondent in this case. Failing in its duty to properly appreciate the facts and evidence on record, and apply the law and decide this otherwise **simple case** in favor of the party to whom justice should be served, the NLRC arrived at a fundamentally unjust, unreasonable, and absurd pronouncement that is consequently null and void and without force and effect. An appreciation of the copious evidence on record should lead one to a single obvious inevitable legal conclusion, yet the NLRC, with its expertise and experience as a labor tribunal, failed to arrive at such a resolution.

A void judgment or order has no legal and binding effect. It does not divest rights and no rights can be obtained under it; all proceedings founded upon a void judgment are equally worthless.

Void judgments, because they are legally non-existent, are susceptible to collateral attacks. A collateral attack is an attack, made as an incident in another action, whose purpose is to obtain a different relief. In other words, a party need not file an action to purposely attack a void judgment; he may attack the void judgment as part of some other proceeding. A void judgment or order is a lawless thing, which can be treated as an outlaw and slain at sight,

or ignored wherever and whenever it exhibits its head. Thus, it can never become final, and could be assailed at any time.[33]

When respondent was hired directly by APCC, an American entity that was not registered to conduct business here, to sell its products and services here, he was tossed over to another APC corporation, APCPI (now APCP BV), a Philippine-registered manufacturing corporation, where he was ostensibly included in the list of employees and the payroll. In other words, APCC sanctioned the use of APCP BV as respondent's cover, from where he conducted his sales operations for APCC. To further conceal and promote APCC's covert sales operations here, respondent was required to create a petty cash fund using his own personal bank account to answer for the daily expenses and operations of the American Power Conversion Philippine Sales Office. Thus, APCC conducted business here as an unregistered and unregulated enterprise; consequently, it did not pay taxes despite doing business here and earning income as a result. APCP BV was not engaged in sales, as it is licensed to engage only in the manufacture of computer-related products – yet, it holds respondent in its payroll. Meanwhile, respondent took orders from and came under the supervision and control of APCS and Kong from Singapore. This arrangement and manner of conducting business by petitioners is illegal. Being illegal, this should have been early on remedied by petitioners, including Plumer, Kong, and Hendy, who are presumed to know, by the very nature of their positions and business, how legitimate business is supposed to be conducted in this country, that is, by registering the business to allow regulation and taxation by the authorities. Yet they did not, and instead continued with this illegal arrangement to further their business here and avoid their legal obligations to the public and government.

Everything seemed to go well for petitioners with their illegitimate business arrangement. For his part, respondent – who was at the losing end of the bargain given that it was his name and reputation on the line as he was working for an

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[33] *Go v. Echavez*, 765 Phil. 410, 424 (2015).

unregistered, unregulated, and untaxed foreign enterprise and doing business with the public – prodded APCC to formalize and declare its existence in order to free himself from the precarious position that APCC has placed him in. Thus, respondent declared in his Position Paper that –

> 16. Despite Complainant's (respondent) continued requests and suggestions, APC Corporation's international management failed and refused to formalize the registration of APC Philippines Sales as distinct and separate from APCPI, and to discontinue the use of his personal bank account for the petty cash requirements of APC Philippines Sales.[34]

When respondent joined APCC, he was merely in his early twenties, as admitted by Truong in his email message announcing respondent's appointment as Regional Manager for APC North ASEAN. He cannot be faulted for acceding to APCC's condition at the outset that he use his personal bank account for APCC's operations in the meantime; during the incipient phase of his employment, he must have been operating under the impression that since APCC's sales and marketing operations were new in the country, it needed time to formalize its operations and secure a license to do business here. And with this hope, he innocently went about doing his work. Indeed, APCC had the sole responsibility of complying with domestic laws if it wanted to continue – as it did – doing business here. It was not respondent's concern to perform administrative and compliance work that APCC, through APCP BV, was more than capable of doing; his only job was to sell APCC's products and services. Given that respondent made repeated requests for APCC to formalize and legalize its presence here, it could be that the latter may have repeatedly assured or misrepresented to the former that it would do so – which kept respondent toward the uncomplaining performance of his work. And when he was ostensibly absorbed into the APCP BV payroll, respondent must have thought that APCC had remedied the situation. Which it did not. Meanwhile, respondent continued as its employee, doing sales work for it.

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[34] *Rollo*, Vol. I, p. 286.

He remained an APCP BV employee on paper, and continued to do business unregulated and untaxed, using his personal bank account to conceal APCC's income.

APC Japan and APCS Singapore, on the other hand, maintained supervision and control over respondent, through Plumer and Kong, respectively. Still, respondent remained an employee of APCC, and not of APC Japan or APCS.

We therefore have this unique situation where respondent was hired directly by APCC of the U.S.A., but was being paid his remuneration by a separate entity – APCP BV of the Philippines, and is supervised and controlled by APCS from Singapore and APC Japan – all in furtherance of APCC's objective of doing business here unfettered by government regulation.

> To determine the existence of an employer-employee relationship, four elements generally need to be considered, namely: (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. These elements or indicators comprise the so-called 'four-fold' test of employment relationship. x x x[35]

From the above, it would seem that all of the petitioners are for all practical purposes respondent's employers. He was selected and engaged by APCC. His salaries and benefits were paid by APCP BV. And he is under the supervision and control of APCS and APC Japan. But of course, there is no such thing in legitimate employment arrangements. This bizarre labor relation was made possible and necessary only by the petitioners' common objective: to enable APCC to skirt the law. For all legal purposes, APCC is respondent's employer. Therefore, this Court declares the subject redundancy scheme a sham, the same being an integral part of petitioners' illegitimate scheme to defraud the public – including respondent – and the State. It is null and void for being contrary to law and public policy as it is in furtherance of an illegal scheme perpetrated by APCC with the aid of its co-petitioners. *Quae ab initio non valent, ex*

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[35] *David v. Macasio*, 738 Phil. 293, 307 (2014).

post facto convalescere non possunt. Things that are invalid from the beginning are not made valid by a subsequent act.

For levity's sake, let us set aside the foregoing for a while and indulge petitioners by precisely illustrating the fallacy of their position. Thus, to demonstrate, while APCC was respondent's employer, the redundancy program in issue that was used to justify respondent's dismissal from work was nonetheless implemented by Plumer and Kong – who are employees of APC Japan and APCS, as well as by Hendy and del Ponso – employees of APCP BV. As admitted by petitioners, Plumer and Kong conceived and implemented the redundancy program, and Hendy and del Ponso prepared the documents which consummated respondent's supposed dismissal. As APCP BV Human Resource Director and Manager, respectively, Hendy and del Ponso furnished the DOLE with documents relative to the redundancy scheme, including a notice of termination/ redundancy. Now, since APCC is respondent's true employer, APC Japan, APCS, APCP BV, Plumer, Kong, Hendy, and del Ponso had no business coming into the picture; they are not connected with APCC whatsoever. They had no authority to devise a redundancy scheme and represent APCC in their dealings with the DOLE. Therefore, their supposed redundancy scheme, as against respondent, is ineffective; they had no power to terminate the services of respondent, in the first place; the prerogative belonged to APCC.

However, this does not prevent respondent from recovering from all the petitioners. Since they all benefited from his services – APCC was able to grow its business and conceal its sales operations and, by its misrepresentations and assurances that it would register its operations, it successfully convinced respondent to do its bidding; APCP BV enjoyed the immense goodwill of APCC for aiding the latter in its elaborate cover-up and duping respondent, government, and the public into believing that it was respondent's actual employer; and APCS utilized respondent as its workhorse even as he drew his salaries from APCP BV – and knowingly aided and abetted each other in the commission of wrong, they should all be held responsible,

under the principle of quasi-contract, for respondent's money claims, including damages and attorney's fees. For all purposes beneficial to respondent, all the petitioners should be considered as his employers since they all benefited from his industry and used him in their elaborate scheme and to further their aim – evading the regulatory processes of this country. And from a labor standpoint, they are all guilty of violating the Labor Code as a result of their concerted acts of fraud and misrepresentation upon the respondent, using him and placing him in a precarious position without risk to themselves, and thus deliberately disregarding their fundamental obligation to afford protection to labor and insure the safety of their employees. For this gross violation of the fundamental policy of the Labor Code, petitioners must be held liable to pay backwages, damages, and attorney's fees.

It is true that the 'backwages' sought by an illegally dismissed employee may be considered, by reason of its practical effect, as a 'money claim.' However, it is not the principal cause of action in an illegal dismissal case but the unlawful deprivation of one's employment committed by the employer in violation of the right of an employee. Backwages is merely one of the reliefs which an illegally dismissed employee prays the labor arbiter and the NLRC to render in his favor as a consequence of the unlawful act committed by the employer. The award thereof is not private compensation or damages but is in furtherance and effectuation of the public objectives of the Labor Code. Even though the practical effect is the enrichment of the individual, the award of backwages is not in redress of a private right, but rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code.[36]

Under Article 2142 of the Civil Code, "[c]ertain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

There is unjust enrichment 'when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and

[36] *Callanta v. Carnation Philippines, Inc.*, 229 Phil. 279, 287 (1986).

good conscience.' The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.

The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. x x x[37]

With the view taken of the case, it cannot be said that respondent may still be reinstated to his former position, on account of strained relations. Besides, the Court shall endeavor to determine the respective accountabilities of petitioners by way of taxes and other possible liabilities proceeding from the manner that they conducted business all these years. Hendy's admission in her December 9, 2005 letter to respondent about APCC's use of the latter's private bank account with which to conduct its business and operations is certainly revealing, just as telling as the evidence on record which suggests that APCC generated substantial revenue from its Philippine operations. For this purpose, respondent's cooperation might be required by the authorities. As a potential witness to the activities of petitioners, his security and safety may not be guaranteed if he continues to work for the petitioners – not to mention that any investigation into the matter might be jeopardized by his continued association with petitioners.

Apparent from the Petition is petitioners' failure to question the monetary awards. Perhaps they found no need to question the same, thinking that it is unnecessary to do so with their full concentration devoted to defending the validity and propriety of their redundancy scheme – which they must sincerely believe will stand the test of validity. Understandably, if the scheme were upheld, respondent's monetary claims would necessarily be struck down. Nonetheless, the Court observes that the Labor Arbiter committed a patent error regarding one of the awards contained in the dispositive portion of her Decision – which

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[37] *Locsin II v. Mekeni Food Corporation*, 722 Phil. 886, 901 (2013), citing *Flores v. Spouses Lindo, Jr.*, 664 Phil. 210, 221 (2011).

escaped the attention of the CA. This pertains to the award of ₱45,771.50, covering vehicle insurance for the years 2006 and 2007, and vehicle registration for the year 2006 – which should be deleted. It has no basis in fact and in law.

WHEREFORE, the Petition is **DENIED**. The April 23, 2014 Decision and September 11, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 110142 are **AFFIRMED WITH MODIFICATION**, in that the decree to reinstate respondent to his former position and the award of ₱45,771.50 covering vehicle insurance for the years 2006 and 2007 and vehicle registration for the year 2006 are **DELETED**.

Let the Office of the Commissioner of the Bureau of Internal Revenue be furnished a copy of this Decision for appropriate action.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218630. January 11, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **KATRINA S. TOBORA-TIONGLICO,**[*] *respondent.*

SYLLABUS

1. CIVIL LAW; MARRIAGE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY AS A GROUND; REQUISITES.— Time and again, it has been

[*] Referred to as Katrina S. Tabora-Tionglico in the RTC and CA Decisions and other pleadings.

held that "psychological incapacity" has been intended by law to be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. Psychological incapacity must be characterized by (a) **gravity**, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage, (b) **juridical antecedence**, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and (c) **incurability**, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.

2. ID.; ID,; ID.; ID.; GUIDELINES FOR THE DECLARATION OF NULLITY OF MARRIAGE ON THE BASIS OF PSYCHOLOGICAL INCAPACITY.— The case of *Republic of the Philippines v. Court of Appeals* has set out the guidelines that has been the core of discussion of practically all declaration of nullity of marriage on the basis of psychological incapacity cases that We have decided: (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. xxx (2) The *root cause* of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. xxx (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. xxx (4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. xxx (5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. xxx (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. xxx (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. xxx (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed

down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. xxx

3. REMEDIAL LAW; EVIDENCE; BARE ALLEGATIONS, UNSUBSTANTIATED BY EVIDENCE, ARE NOT EQUIVALENT TO PROOF; CASE AT BAR.— We have oft-repeated that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings. Here, We find the totality of evidence clearly wanting. First, Dr. Arellano's findings that Lawrence is psychologically incapacitated were based solely on Katrina's statements. It bears to stress that Lawrence, despite notice, did not participate in the proceedings below, nor was he interviewed by Dr. Arellano despite being invited to do so. x x x Second, the testimony of Katrina as regards the behavior of Lawrence hardly depicts the picture of a psychologically incapacitated husband. Their frequent fights, his insensitivity, immaturity and frequent night-outs can hardly be said to be a psychological illness. These acts, in our view, do not rise to the level of the "psychological incapacity" that the law requires, and should be distinguished from the "difficulty," if not outright "refusal" or "neglect" in the performance of some marital obligations that characterize some marriages. x x x No other evidence or witnesses were presented by Katrina to prove Lawrence's alleged psychological incapacity. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence. Here, we reiterate that apart from the psychiatrist, Katrina did not present other witnesses to substantiate her allegations on Lawrence's psychological incapacity. Her testimony, therefore, is considered self-serving and had no serious evidentiary value.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Francis A. Africa for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a petition for review on certiorari of the Decision[1] dated May 27, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 101985, which affirmed the May 8, 2012 Decision[2] rendered by the Regional Trial Court (RTC) of Imus Cavite, Branch 20, granting the petition for declaration of nullity of marriage on the ground of Article 36 of the Family Code and declaring the marriage of Katrina S. Tabora-Tionglico and Lawrence C. Tionglico void *ab initio*.

Respondent Katrina S. Tabora-Tionglico (Katrina) filed a petition for declaration of nullity of her marriage with Lawrence C. Tionglico (Lawrence) on the ground of psychological incapacity under Article 36 of the Family Code.

Katrina and Lawrence met sometime in 1997 through a group of mutual friends. After a brief courtship, they entered into a relationship. When she got pregnant, the two panicked as both their parents were very strict and conservative. Lawrence did not receive the news well as he was worried how it would affect his image and how his parents would take the situation.[3] Nevertheless, they got married on July 22, 2000.[4]

Even during the early stage of their marriage, it was marred by bickering and quarrels. As early as their honeymoon, they were fighting so much that they went their separate ways most of the time and Katrina found herself wandering the streets of Hong Kong alone.[5]

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[1] Penned by Associate Justice Socorro B. Inting, and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Mario V. Lopez; *Rollo*, pp. 25-36.

[2] Penned by Presiding Judge Fernando L. Felicen; *Id*. at 31-34.

[3] *Id*. at 32 and 44.

[4] *Id*. at 26.

[5] *Id*. at 37.

Upon their return, they moved into the home of Lawrence's parents until the birth of their child, Lanz Rafael Tabora Tionglico (Lanz), on December 30, 2000.[6] Lawrence was distant and did not help in rearing their child, saying he knew nothing about children and how to run a family.[7] Lawrence spent almost every night out for late dinners, parties and drinking sprees.[8] Katrina noticed that Lawrence was alarmingly dependent on his mother and suffered from a very high degree of immaturity.[9] Lawrence would repeatedly taunt Katrina to fight with him and they lost all intimacy between them as he insisted to have a maid sleep in their bedroom every night to see to the needs of Lanz.[10]

Lawrence refused to yield to and questioned any and all of Katrina's decisions – from the manner by which she took care of Lanz, to the way she treated the household help. Most fights ended up in full blown arguments, often in front of Lanz. One time, when Katrina remembered and missed her youngest brother who was then committed in a substance rehabilitation center, Lawrence told her to stop crying or sleep in the rehabilitation center if she will not stop.[11]

In 2003, due to their incessant fighting, Lawrence asked Katrina to leave his parents' home and never to come back. They have been separated in fact since then.[12]

Katrina consulted with a psychiatrist, Dr. Juan Arellano (Dr. Arellano), who confirmed her beliefs on Lawrence's psychological incapacity. Dr. Arellano, based on the narrations of Katrina, diagnosed Lawrence with Narcissistic Personality Disorder, that

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[6] *Id*. at 42.

[7] *Id*. at 26.

[8] *Id*. at 37.

[9] *Id*. at 46.

[10] *Id*. at 47.

[11] *Id*. at 38.

[12] *Id*. at 48.

is characterized by a heightened sense of self-importance and grandiose feelings that he is unique in some way.[13]

Dr. Arellano determined that this personality disorder is permanent, incurable, and deeply integrated within his psyche;[14] and that it was present but repressed at the time of the celebration of the marriage and the onset was in early adulthood. His maladaptive and irresponsible behaviors interfered in his capacity to provide mutual love, fidelity, respect, mutual help, and support to his wife.[15]

The RTC granted the petition and declared the marriage of Katrina and Lawrence as void *ab initio*. It disposed, thus:

> WHEREFORE, judgment is hereby rendered declaring the marriage of Katrina S. Tabora-Tionglico and Lawrence C. Tionglico Ito (sic) as void *ab initio*. As a necessary consequence of this pronouncement, petitioner shall cease using the surname of her husband having lost the right over the same and so as to avoid the misconception that she is still the legal wife of respondent. Custody over the couple's minor child is awarded to petitioner, with reasonable visitation rights accorded to respondent, preferably Saturday and Sunday, or as the parties may agree among themselves.
>
> Furnish a copy of this decision the Office of the Solicitor-General, the National Statistics Office and the Local Civil Registrar of Imus, Cavite who, in turn, shall endorse a copy of the same to the Local Civil Registrar of Mandaluyong City, Metro Manila, so that the appropriate amendment and/or cancellation of the parties' marriage can be effected in its registry. Furnish, likewise, the parties and counsel.
>
> **SO ORDERED**.[16]

The CA affirmed the RTC decision, the dispositive portion of which reads:

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[13] *Id*. at 52.

[14] *Id*.

[15] *Id* at 53.

[16] *Id*. at 33-34.

WHEREFORE, the appeal is **DENIED**. Accordingly, the Decision of the Regional Trial Court of Imus, Cavite, Branch 20, in Civil Case No. 4903-11 dated 8 May 2012 is hereby **AFFIRMED**.[17]

Hence, this petition for review on certiorari.

The Office of the Solicitor General (OSG) points out that there has been a myriad of cases declaring that psychological assessment based solely on the information coming from either party in a petition for declaration of nullity of marriage is considered as hearsay evidence. It is evident that in this case, the psychiatrist obtained his data, in concluding that Lawrence is psychologically incapacitated, exclusively from Katrina.

Katrina counters that the facts, bases and surrounding circumstances of each and every case for the nullity is different from the other and must be appreciated for its distinctiveness. She points out that the psychological report of Dr. Arellano clearly outlined well-accepted scientific and reliable tests[18] to come up with his findings. In any case, the decision must be based not solely on the expert opinions but on the totality of evidence adduced in the course of the proceedings, which the RTC and the CA have found to have been sufficient in proving Lawrence's psychological incapacity.

The issue before Us is plainly whether the totality of evidence presented by Katrina supports the findings of both the RTC and the CA that Lawrence is psychologically incapacitated to perform his essential marital obligations, meriting the dissolution of his marriage with Katrina.

Contrary to the findings of both the RTC and the CA, We rule in the negative.

Time and again, it has been held that "psychological incapacity" has been intended by law to be confined to the

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[17] *Id*. at 29.

[18] Psychiatric and psychological interviews, Rhodes Sentence Completion Test, Draw a Person Test, Zung Anxiety and Depression Scale, Examination of Mental Status and Mental Processes, Hamilton Anxiety Rating Scale, Social Case History, and Survey of Interpersonal Values, see *rollo,* pp. 54-55.

most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. Psychological incapacity must be characterized by (a) **gravity**, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage, (b) **juridical antecedence**, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage, and (c) **incurability**, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[19]

The case of *Republic of the Philippines v. Court of Appeals*[20] has set out the guidelines that has been the core of discussion of practically all declaration of nullity of marriage on the basis of psychological incapacity cases that We have decided:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. xxx

(2) The *root cause* of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. xxx

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. xxx

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. xxx

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. xxx

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. xxx

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[19] *Castillo v. Republic*, G.R. No. 214064, February 6, 2017.

[20] 335 Phil. 664 (1997) and 268 SCRA 198.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. xxx

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. xxx[21]

Using these standards, We find that Katrina failed to sufficiently prove that Lawrence is psychologically incapacitated to discharge the duties expected of a husband.

Indeed, and We have oft-repeated that the trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings.[22] Here, We find the totality of evidence clearly wanting.

First, Dr. Arellano's findings that Lawrence is psychologically incapacitated were based solely on Katrina's statements. It bears to stress that Lawrence, despite notice, did not participate in the proceedings below, nor was he interviewed by Dr. Arellano despite being invited to do so.

The case of *Nicolas S. Matudan v. Republic of the Philippines and Marilyn B. Matudan*[23] is instructive on the matter:

Just like his own statements and testimony, the assessment and finding of the clinical psychologist cannot [be] relied upon to substantiate the petitioner-appellant's theory of the psychological incapacity of his wife.

It bears stressing that Marilyn never participated in the proceedings below. The clinical psychologist's evaluation of the respondent-

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[21] *Id*. at 676-679.

[22] *Mendoza v. Rep. of the Phils., et al.,* 698 Phil. 241, 254 (2012).

[23] G.R. No. 203284, November 14, 2016.

appellee's condition was based mainly on the information supplied by her husband, the petitioner, and to some extent from their daughter, Maricel. It is noteworthy, however, that Maricel was only around two (2) years of age at the time the respondent left and therefore cannot be expected to know her mother well. Also, Maricel would not have been very reliable as a witness in an Article 36 case because she could not have been there when the spouses were married and could not have been expected to know what was happening between her parents until long after her birth. On the other hand, as the petitioning spouse, Nicolas' description of Marilyn's nature would certainly be biased, and a psychological evaluation based on this one-sided description can hardly be considered as credible. The ruling in *Jocelyn Suazo v. Angelito Suazo, et al.,* is illuminating on this score:

> We first note a critical factor in appreciating or evaluating the expert opinion evidence – the psychologist's testimony and the psychological evaluation report – that Jocelyn presented. Based on her declarations in open court, the psychologist evaluated Angelito's psychological condition only in an indirect manner – **she derived all her conclusions from information coming from Jocelyn whose bias for her cause cannot of course be doubted. Given the source of the information upon which the psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above** i.e., that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.
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> x x x x x x x x x
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> **From these perspectives, we conclude that the psychologist, using meager information coming from a directly interested party, could not have secured a complete personality profile and could not have conclusively formed an objective opinion or diagnosis of Angelito's psychological condition.** While the report or evaluation may be conclusive with respect to Jocelyn's psychological condition, this is not true for Angelito's. The methodology employed simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder. In short, this is not the psychological

report that the Court can rely on as basis for the conclusion that psychological incapacity exists.

In the earlier case of *Rowena Padilla-Rumbaua v. Edward Rumbaua*, it was similarly declared that '[t]o make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.'

At any rate, We find the report prepared by the clinical psychologist on the psychological condition of the respondent-appellee to be insufficient to warrant the conclusion that a psychological incapacity existed that prevented Marilyn from complying with the essential obligations of marriage. In said report, Dr. Tayag merely concluded that Marilyn suffers from Narcissistic Personality Disorder with antisocial traits on the basis of what she perceives as manifestations of the same. The report neither explained the incapacitating nature of the alleged disorder, nor showed that the respondent-appellee was really incapable of fulfilling her duties due to some incapacity of a psychological, not physical, nature. (Emphasis Ours)

The same could be said in this case, where the various tests conducted by Dr. Arellano can most certainly be conclusive of the psychological disposition of Katrina, but cannot be said to be indicative of the psychological condition of Lawrence. There was simply no other basis for Dr. Arellano to conclude that Lawrence was psychologically incapacitated to perform his essential marital obligations apart from Katrina's self-serving statements. To make conclusions and generalizations on a spouse's psychological condition based on the information fed by only one side, as in the case at bar, is, to the Court's mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.[24]

Second, the testimony of Katrina as regards the behavior of Lawrence hardly depicts the picture of a psychologically incapacitated husband. Their frequent fights, his insensitivity, immaturity and frequent night-outs can hardly be said to be a

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[24] *Castillo v. Republic, supra* note 19.

psychological illness. These acts, in our view, do not rise to the level of the "psychological incapacity" that the law requires, and should be distinguished from the "difficulty," if not outright "refusal" or "neglect" in the performance of some marital obligations that characterize some marriages.[25] It is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he must be shown to be incapable of doing so due to some psychological illness. The psychological illness that must afflict a party at the inception of the marriage should be a malady so grave and permanent as to deprive the party of his or her awareness of the duties and responsibilities of the matrimonial bond he or she was then about to assume.[26]

Although We commiserate with Katrina's predicament, We are hard-pressed to affirm the RTC and CA when the totality of evidence is clearly lacking to support the factual and legal conclusion that Lawrence and Katrina's marriage is void *ab initio*. No other evidence or witnesses were presented by Katrina to prove Lawrence's alleged psychological incapacity. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.[27] Here, we reiterate that apart from the psychiatrist, Katrina did not present other witnesses to substantiate her allegations on Lawrence's psychological incapacity. Her testimony, therefore, is considered self-serving and had no serious evidentiary value.[28]

WHEREFORE, the petition for review on certiorari is hereby **GRANTED**. The Decision dated May 27, 2015 of the Court of Appeals in CA-G.R. CV No. 101985, which affirmed the May 8, 2012 Decision rendered by the Regional Trial Court of Imus Cavite, Branch 20, granting the petition for declaration

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[25] *Padilla-Rumbaua v. Rumbaua,* 612 Phil. 1061, 1083 (2009).

[26] *Id* at 1092.

[27] *Castillo v. Republic*, *supra* note 19.

[28] *Id*.

of nullity of marriage on the ground of Article 36 of the Family Code and declaring the marriage of Katrina S. Tabora-Tionglico and Lawrence C. Tionglico void *ab initio*, is hereby **REVERSED and SET ASIDE**. The petition for declaration of nullity of marriage docketed as Civil Case No. 4903-11 is hereby **DISMISSED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 223099. January 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LINO ALEJANDRO *y* PIMENTEL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; ELEMENTS; PRESENT IN CASE AT BAR.— The 1987 Constitution guarantees the right of the accused against double jeopardy, thus:Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach. For double jeopardy to attach, the following elements must concur: *(1)* a valid information sufficient in form and substance to sustain a conviction of the crime charged; *(2)* a court of competent jurisdiction; *(3)* the accused has been arraigned and had pleaded; and *(4)* the accused was convicted or acquitted or the case was dismissed without his express consent.Here, all the elements

[**] Designated additional Member per Raffle dated November 20, 2017 *vice* Associate Justice Francisco H. Jardeleza.

were present. There was a valid information for two counts of rape over which the RTC had jurisdiction and to which the accused-appellant entered a plea of not guilty. After the trial, a judgment of acquittal was thereafter rendered and promulgated on July 25, 2011. What is peculiar in this case is that a judgment of acquittal was rendered based on the mistaken notion that the private complainant failed to testify; allegedly because of the mix-up of orders with a different case involving the same accused-appellant. This, however, does not change the fact that a judgment of acquittal had already been promulgated. Indeed, a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation.

2. ID.; ID.; EXCEPTIONS; WHERE PROSECUTION WAS ABLE TO PRESENT THEIR CASE AND THEIR WITNESSES, THERE IS NO DEPRIVATION OF DUE PROCESS OR MISTRIAL; CASE AT BAR.—The rule on double jeopardy, however, is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where there has been a grave abuse of discretion under exceptional circumstances. We find that these exceptions do not exist in this case. Here, there was no deprivation of due process or mistrial because the records show that the prosecution was actually able to present their case and their witnesses.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; A PETITION FOR *CERTIORARI*, UNDER RULE 65 IS THE PROPER MODE TO ASSAIL A JUDGMENT OF ACQUITTAL; AN ORDINARY PETITION FOR REVIEW OF THE FINDINGS OF THE COURT *A QUO* WOULD VIOLATE THE RIGHT OF THE ACCUSED AGAINST DOUBLE JEOPARDY; CASE AT BAR.—A mere manifestation also will not suffice in assailing a judgment of acquittal. A petition for *certiorari* under Rule 65 of the Rules should have been filed. A judgment of acquittal may only be assailed in a petition for *certiorari* under Rule 65 of the Rules. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court *a quo,* the constitutional right of the accused against double jeopardy would be violated.In *People v. Laguio, Jr.,* this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion.

> x x x In this case, the acquittal was not even questioned on the basis of grave abuse of discretion. It was only through a supposed mere manifestation of the prosecutor, a copy of which was not in the records, that the RTC was apprised of the supposed mistake it committed.

APPEARANCES OF COUNSEL

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

D EC I S I O N

TIJAM, *J.*:

This is an appeal from the Decision[1] dated February 17, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05256, which affirmed the July 26, 2011 Joint Decision[2] rendered by the Regional Trial Court (RTC) of Cauayan City, Isabela, Branch 20 in Criminal Case Nos. Br. 20-6096 & 20-6097, finding accused-appellant Lino Alejandro *y* Pimentel guilty beyond reasonable doubt of two counts of rape.

Accused-appellant was charged with two counts of rape, defined and penalized under Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to Republic Act No. 8369[3], of a 12-year old minor, AAA.[4] Upon arraignment, accused-appellant entered a plea of not guilty and trial ensued.

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[1] Penned by Associate Justice Ramon A. Cruz, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr., *rollo*, pp. 2-12.

[2] Penned by Judge Reymundo L. Aumentado, CA *rollo*, pp. 16-23.

[3] Otherwise known as the "*Family Courts Act of 1997.*"

[4] Pursuant to *People v. Cabalquinto,* 533 Phil. 703 (2006), the real name and personal circumstances of the victim, and any other information tending to establish or compromise her identity, including those of her immediate family or household members, are not disclosed.

During trial, AAA testified that accused-appellant followed her, grabbed her, and brought her to the back of a school. There, accused-appellant removed AAA's shorts and t-shirt, laid on top of her, and inserted his penis into her vagina.[5]

Two months later, accused-appellant went inside AAA's house through a window one night, undressed himself and AAA, and inserted his penis inside her vagina. On both occasions, accused-appellant threatened to kill AAA if she told anybody what had happened.[6]

AAA eventually told her mother, BBB, about the incident. BBB brought her to the Municipal Health Office where she was examined by Dr. CCC. Dr. CCC testified that she found, among others, deep, healed, old and superficial lacerations in the hymen of AAA and concluded that these indicated positive sexual intercourse.[7]

Accused-appellant, through his counsel, manifested in open court that he would no longer present any evidence for the defense and submitted the case for decision.[8]

On July 26, 2011, the RTC promulgated a Decision acquitting the accused-appellant. On the same day, however, the RTC recalled the said decision and issued an Order, stating:

> Upon manifestation of Assistant Provincial Prosecutor Roderick Cruz that there were Orders that were inadvertently placed in the record of Criminal Case No. Br. 20-4979 involving the same accused but different private complainant-victim, XXX, which if considered will result in a different verdict. The Order dated September 24, 2007, showed that private complainant-victim, AAA, in the above[-]quoted cases, Crim. Case No. Br-20-6096 & 6097, has actually testified in Court.

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[5] *Id*.

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

[7] *Id*. at 4.

[8] *Id*.

WHEREFORE, to rectify the error committed and in order to prevent the miscarriage of justice, the Decision promulgated today acquitting the accused is hereby RECALLED and SET ASIDE.

SO ORDERED.[9]

Accused-appellant filed a Motion for Reconsideration[10] arguing that a judgment of acquittal is immediately final and executory and can neither be withdrawn nor modified, because to do so would place an accused-appellant in double jeopardy.

The RTC denied the motion in an Order[11] dated July 26, 2011, explaining its denial, thus:

> Admittedly, the Court erroneously declared in its Decision that private complainant AAA did not testify in Court. When in truth and in fact said private complainant took the witness stand on September 3, 2008 as evidenced by the Order dated September 3, 2008 which was mistakenly captioned as Crim. Case No. 4979 instead of Crim. Cases Nos. Br. 20-6096 & 6097 and as a result thereof, the Order dated September 3, 2008 was erroneously attached by the Court employee to the records of another criminal case entitled People of the Philippines versus Lino Alejandro, wherein the private complainant is a certain xxx.
>
> Section 14, Article 8 of the 1997 Constitution requires that the Decision should be based on facts and the law. The Court believes and so holds that the Decision contravenes the highest law of the land because it is not in accordance with the law and the facts, and therefore, the judgment of acquittal is invalid. As dispenser of truth and justice, the Court should be candid enough to admit its error and rectify itself with dispatch to avoid grave miscarriage of justice.[12]

A Joint Decision[13] dated July 26, 2011 was rendered by the RTC, finding accused-appellant guilty of two counts of rape and disposed as follows:

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[9] Original Records, p. 40.

[10] CA *rollo*, pp. 79-80.

[11] *Id*. at 82.

[12] *Id*.

[13] *Id*. at 83-90.

WHEREFORE, finding the accused LINO ALEJANDRO y PIMENTEL guilty beyond reasonable doubt of two (2) counts of Simple Rape as defined and penalized under Article 266-A paragraph (D) of the Revised Penal Code, as amended by Republic Act 8353, he is hereby sentenced to suffer, in each count, the penalty of *reclusion perpetua* and to indemnify the victim, minor AAA in the amount of FIFTY THOUSAND PESOS (₱50,000.00) and FIFTY THOUSAND PESOS (₱50,000.00) as moral damages for each count.

Costs to be paid by the accused.

SO ORDERED.[14]

Accused-appellant appealed to the CA, contending that the RTC gravely erred in recalling its previously promulgated decision acquitting the accused-appellant; and for convicting the accused-appellant despite the prosecution's failure to prove his guilt beyond reasonable doubt.[15]

The Office of the Solicitor General (OSG) countered that there was no error in the recall of the acquittal. It ratiocinated that the public prosecutor's manifestation was filed on the same day of the promulgation of the recalled decision, pointing out that AAA actually testified during the trial and her testimony, if considered, would result in a different verdict. The OSG stressed that what was proscribed under the double jeopardy clause was the filing of an appeal to allow the prosecutor to seek a second trier of facts of defendant's guilt after having failed with the first.[16]

The CA dismissed the appeal and held that the RTC's Order of recalling and setting aside the judgment of acquittal was justified. It found that:

The initial decision of the RTC acquitting the accused failed to express clearly and distinctly the facts of the case, as the records on which the acquittal was based was incomplete and inaccurate. Judges are expected to make complete findings of facts in their decisions, and

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[14] *Id*. at 90.

[15] *Id*. at 64.

[16] *Id*. at 113-114.

scrutinize closely the legal aspects of the case in the light of the evidence presented. Obviously, with the unintentional exclusion of the testimony of the private complainant from the records of the two criminal cases, the RTC could not have made complete findings of facts in the initial decision. The verdict of acquittal had no factual basis. It was null and void, and should have necessarily been recalled and set aside.[17]

The CA affirmed the conviction of accused-appellant and modified the award of damages, as follows:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED** and the July 26, 2011 Joint Decision of the Regional Trial Court of Cauayan City, Isabela, Branch 20, in Criminal Case Nos. Br. 20-6096 and 20-6097, finding Lino Alejandro y Pimentel guilty beyond reasonable doubt of two (2) counts of rape is **AFFIRMED WITH MODIFICATION**, in that Alejandro is ordered to pay legal interest on the moral damages awarded to the victim at the rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.

SO ORDERED.[18]

Hence, this petition for review.

Accused-appellant argues that despite the RTC's error and misapprehension of facts, it still had no power to rectify such mistake as said acquittal had attained finality after valid promulgation. The error committed by the RTC cannot be validly recalled without transgressing the accused-appellant's right against double jeopardy. He insists that not only was the decision of acquittal final and executory, the manifestation of the public prosecutor, which was the catalyst in having the decision recalled, was equivalent to a motion for reconsideration of the decision. He also points out that the CA erred in sustaining the conviction for rape despite AAA's incredible testimony.[19]

The OSG did not submit a supplemental brief and adopted its Appellee's Brief before the CA where it stated that the recall

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[17] *Id*. at 130.

[18] *Id*. at 134.

[19] *Rollo*, pp. 35-36.

of the earlier decision of the trial court, by reason of the manifestation filed by the public prosecutor, does not actually result in double jeopardy. The OSG maintained that what is proscribed under the double jeopardy clause is the filing of an appeal that would allow the prosecutor to seek a second trier of fact of defendant's guilt after having failed with the first. It stressed that here, the OSG only manifested that the court overlooked a fact, which if not considered, will result to a great injustice to the private complainant. It pressed that there was no double jeopardy because there was no presentation of additional evidence to prove or strengthen the State's case.

The appeal has merit.

In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable.[20]

The 1987 Constitution guarantees the right of the accused against double jeopardy, thus:

> Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach. For double jeopardy to attach, the following elements must concur: *(1)* a valid information sufficient in form and substance to sustain a conviction of the crime charged; *(2)* a court of competent jurisdiction; *(3)* the accused has been arraigned and had pleaded; and *(4)* the accused was convicted or acquitted or the case was dismissed without his express consent.[21]

Here, all the elements were present. There was a valid information for two counts of rape over which the RTC had jurisdiction and to which the accused-appellant entered a plea of not guilty. After the trial, a judgment of acquittal was thereafter rendered and promulgated on July 25, 2011. What is peculiar in this case is that a judgment of acquittal was rendered based

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[20] *People v. Hon. Asis, et al.*, 643 Phil. 462, 469 (2010).

[21] *Chiok v. People, et al.,* 774 Phil. 230, 247-248 (2015).

on the mistaken notion that the private complainant failed to testify; allegedly because of the mix-up of orders with a different case involving the same accused-appellant. This, however, does not change the fact that a judgment of acquittal had already been promulgated. Indeed, a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation.[22]

The rule on double jeopardy, however, is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where there has been a grave abuse of discretion under exceptional circumstances. We find that these exceptions do not exist in this case.[23] Here, there was no deprivation of due process or mistrial because the records show that the prosecution was actually able to present their case and their witnesses.

A mere manifestation also will not suffice in assailing a judgment of acquittal. A petition for *certiorari* under Rule 65 of the Rules should have been filed. A judgment of acquittal may only be assailed in a petition for *certiorari* under Rule 65 of the Rules. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court *a quo,* the constitutional right of the accused against double jeopardy would be violated.[24]

In *People v. Laguio, Jr.*,[25] this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus:

x x x The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or

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[22] *Villareal v. Aliga,* 724 Phil. 47, 62 (2014).

[23] *Id*. at 64.

[24] *Id*. at 60.

[25] 547 Phil. 296 (2007).

where the trial was a sham. However, while certiorari may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[26]

In this case, the acquittal was not even questioned on the basis of grave abuse of discretion. It was only through a supposed mere manifestation of the prosecutor, a copy of which was not in the records, that the RTC was apprised of the supposed mistake it committed.

A similar instance had been ruled upon by this Court in *Argel v. Judge Pascua,*[27] where the Judge was sanctioned for gross ignorance of the law for recalling a judgment of acquittal, thus:

> As stated earlier, complainant was accused of murder in Crim. Case No. 2999-V of the RTC of Vigan, Ilocos Sur. On 13 August 1993 judgment was promulgated acquitting him on the ground that there was no witness who positively identified him as the perpetrator of the crime. **However after respondent's attention was called by the private complainant's counsel to the fact that there was such a witness and confirmed by respondent upon re-reading her notes, she issued an Order dated 16 August 1993 stating her intention to "revise" the previous judgment of acquittal, branded the same as "uncalled for" and "not final," and reset the case for another "rendering of the decision." <u>The reason given was that the judgment of acquittal was rendered without all the facts and circumstances being brought to her attention</u>.**
>
> Respondent Judge explained that the transcript of stenographic notes of the testimony of eyewitness Tito Retreta was not attached to the records when she wrote her decision. **Thus, in a Decision dated 19 August 1993, respondent Judge declared herein complainant Miguel Argel guilty beyond reasonable doubt of murder** on the basis of the eyewitness account of Tito Retreta, sentenced complainant Argel to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* to *reclusion perpetua*, and

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[26] *Id*. at 315.

[27] 415 Phil. 608 (2001).

to pay the heirs of the victim ₱50,000.00 as civil indemnity and ₱60,000.00 for actual damages.

Too elementary is the rule that a decision once final is no longer susceptible to amendment or alteration except to correct errors which are clerical in nature, to clarify any ambiguity caused by an omission or mistake in the dispositive portion or to rectify a travesty of justice brought about by a *moro-moro* or mock trial. A final decision is the law of the case and is immutable and unalterable regardless of any claim of error or incorrectness.

In criminal cases, a judgment of acquittal is immediately final upon its promulgation. It cannot be recalled for correction or amendment except in the cases already mentioned nor withdrawn by another order reconsidering the dismissal of the case since the inherent power of a court to modify its order or decision does not extend to a judgment of acquittal in a criminal case.

Complainant herein was already acquitted of murder by respondent in a decision promulgated on 13 August 1993. Applying the aforestated rule, the decision became final and immutable on the same day. As a member of the bench who is always admonished to be conversant with the latest legal and judicial developments, more so of elementary rules, respondent should have known that she could no longer "revise" her decision of acquittal without violating not only an elementary rule of procedure but also the constitutional proscription against double jeopardy. When the law is so elementary, not to know it constitutes gross ignorance of the law. (Emphasis Ours)[28]

Similarly, in this case, the RTC was reminded of the fact that private complainant AAA testified during the trial, only after it had already rendered and promulgated the judgment of acquittal. The RTC then realized that had AAA's testimony been taken into account, the case would have had a different outcome. Consequently, the RTC issued an Order recalling the judgment of acquittal for the purpose of rectifying its error, and thereafter, rendered a Decision convicting the accused-appellant for two counts of rape. This, however, cannot be countenanced for a contrary ruling would transgress the accused-appellant's constitutionally-enshrined right against double jeopardy.

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[28] *Id*. at 611-612.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated February 17, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05256, which affirmed the July 26, 2011 Joint Decision rendered by the Regional Trial Court (RTC) of Cauayan City, Isabela, Branch 20 in Criminal Case Nos. Br. 20-6096 & 20-6097, finding accused-appellant Lino Alejandro *y* Pimentel guilty beyond reasonable doubt of two counts of rape, is hereby **REVERSED and SET ASIDE**.

Accused-appellant Lino Alejandro *y* Pimentel is hereby **ACQUITTED** and is ordered immediately **RELEASED** from custody, unless he is being held for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 224498. January 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PFC ENRIQUE REYES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE, ELEMENTS OF; EFFECTS OF INVOKING SELF-DEFENSE.— By invoking self-defense, accused-appellant admitted inflicting the fatal injuries that caused Danilo's death, albeit under circumstances that, if proven, would have

exculpated him. With this admission, the burden of proof shifted to him to show that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person invoking self-defense. Considering that self-defense totally exonerates the accused from criminal responsibility, it is incumbent upon him who invokes the same to prove by clear, satisfactory and convincing evidence that he indeed acted in defense of his life or personal safety. When successful, an otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused.

2. ID.; ID.; ID.; UNLAWFUL AGGRESSION IS AN INDISPENSABLE ELEMENT OF SELF-DEFENSE; TEST TO DETERMINE EXISTENCE OF UNLAWFUL AGGRESSION; ELEMENTS OF UNLAWFUL AGGRESSION; WANTING IN CASE AT BAR.— Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing for there is nothing to repel. Verily, there can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person invoking it as a justifying circumstance. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. The test for the presence of unlawful aggression is whether the victim's aggression placed in real peril the life or personal safety of the person defending himself. The danger must not be an imagined or imaginary threat. Accordingly, the confluence of these elements of unlawful aggression must be established by the accused, to wit: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or at least imminent; and (c) the attack or assault must be unlawful. As the second element of unlawful aggression will show, it is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening or intimidating attitude, nor must it be merely imaginary, but must

be offensive, menacing and positively strong, manifestly showing the wrongful intent to cause injury (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). There must be an actual, sudden, unexpected attack or imminent danger thereof, which puts the accused's life in real peril. Tested against the foregoing criteria, the Court finds the element of unlawful aggression to be wanting in this case.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS ENTITLED TO GREAT WEIGHT AND RESPECT.—** Both the RTC and the CA gave weight and credence to the testimonies of said eyewitnesses. The CA noted that they were "made in a clear, positive, straightforward and consistent manner that inspire(s) belief, unwavering even under cross-examination by the defense." The appellate court further observed that the testimonies were "replete with details that could not easily be concocted by prevaricating witnesses." The trial court's assessment of the facts, as affirmed by the CA, is entitled to great weight and respect. Absent any clear disregard of evidence, We find no reason to deviate from such finding.

4. **ID.; ID.; BURDEN OF PROOF; AFTER CLAIMING SELF-DEFENSE, THE BURDEN OF PROOF SHIFTED TO ACCUSED-APPELLANT TO ESTABLISH SUCH DEFENSE.—** [A]fter having owned the crime, the burden of proof has been shifted to accused-appellant to establish self-defense. He, therefore, cannot simply protest that the prosecution's evidence is weak. He must rely on the strength of his own evidence because even if weak, the prosecution's evidence cannot be disbelieved after the accused himself has admitted to the killing. His failure to adduce clear and convincing evidence of self-defense will accordingly result in his conviction.

5. **ID.; ID.; CREDIBILITY OF WITNESSES; CANNOT BE DESTROYED BY MINOR INCONSISTENCIES IN THEIR TESTIMONIES.—** Inconsistencies in the witnesses' testimonies referring to minor details do not destroy their credibility. Such minor inconsistencies even manifest truthfulness and candor and remove any suspicion of a rehearsed testimony. Different persons have different reflexes which may produce varying reactions, impressions, perceptions and recollections. Considering the natural frailties of the human mind and its capacity to

assimilate all material details of a given incident, slight variances in the declarations of witnesses hardly weaken their probative value. As long as the testimonies of the witnesses corroborate one another on material points, particularly in relating the principal occurrence and in the positive identification of the assailant, minor inconsistencies therein will not impair their credibility.

6. ID.; ID.; BURDEN OF PROOF; ACCUSED-APPELLANT FAILED TO DISCHARGE HIS BURDEN OF PROVING SELF-DEFENSE BY CLEAR AND CONVINCING EVIDENCE.— We are not persuaded. Said [victim's] injuries do not conclusively prove accused-appellant's theory of unlawful aggression, and accused-appellant has offered no credible evidence to convince the Court otherwise. The testimonies of accused-appellant's own witnesses failed to establish that the victim was aiming a gun at him. Furthermore, the testimonies of the prosecution witnesses consistently showed that the victim was neither holding a gun nor pointing one at accused-appellant. Plainly taken, therefore, the argument is baseless and self-serving. Besides, accused-appellant's contention only serves to prove that the other gunshots, to the victim's head and clavicle, both fatal, were neither necessary nor justified in the name of self-defense. Verily, accused-appellant failed to discharge his burden of proving unlawful aggression by clear and convincing evidence. Unlawful aggression on the part of the victim is a statutory and doctrinal requirement for the justifying circumstance of self-defense to be appreciated. Without it, there can be no self-defense, complete or incomplete. x x x [A]ccused-appellant's plea of self-defense is belied by the nature and number of wounds suffered by Danilo which reveal an intent to kill and not merely an effort to prevent or repel an attack. x x x [T]he Court agrees with both the trial and appellate courts that accused-appellant failed to discharge his burden of proving self-defense.

7. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS, NOT ESTABLISHED BEYOND REASONABLE DOUBT.— The elements of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his

act. Every element of the circumstance must be shown to exist beyond reasonable doubt. To be considered an aggravation of the offense, the circumstance must not merely be premeditation but must be evident premeditation. The foregoing elements have not been established beyond reasonable doubt.

8. ID.; ID.; ID.; NATURE AND ESSENCE OF EVIDENT PREMEDITATION TO QUALIFY THE KILLING.— It is settled, however, that mere existence of ill feelings or grudges between the parties is not sufficient to sustain a conclusion of premeditated killing. Furthermore, it cannot be said that enough time has passed to allow accused-appellant to reflect upon the consequences of his act. "It has been held in one case that even the lapse of 30 minutes between the determination to commit a crime and the execution thereof is insufficient for full meditation on the consequences of the act." The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during an interval of time sufficient to arrive at a calm judgment. There is no evident premeditation when the attack was the result of rising tempers or made in the heat of anger.

9. ID.; ID.; TREACHERY; MAY STILL BE APPRECIATED EVEN IF THE VICTIM WAS FOREWARNED OF THE DANGER TO HIS PERSON AS LONG AS THE MANNER OF THE ATTACK MADE IT IMPOSSIBLE FOR HIM TO RETALIATE OR DEFEND HIMSELF.— There is treachery when the offender, in committing any of the crimes against persons, employs means or methods which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. When alleged in the information and clearly proved, treachery qualifies the killing and elevates it to the crime of murder. x x x [C]ircumstances [in this case] are manifestly indicative of the presence of the conditions under which treachery may be appreciated. In finding that the killing was not attended by treachery, the CA reasoned that "(the) bad blood between Enrique and Danilo, taken together with the fact that accused-appellant was firing an assault rifle while walking towards Francisco St. and the victim attempted to retreat to the comfort of his residence militate against the prosecution's claim that the attack was sudden and unexpected." It has been held, however, that treachery may

still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to retaliate or defend himself, as in this case. Furthermore, that Danilo did not find it necessary to pull out his gun and prepare to defend himself against a possible assault from accused-appellant, underscores the fact that he did not expect the attack.

10. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; CIRCUMSTANCES ANALOGOUS TO VOLUNTARY SURRENDER, PRESENT IN CASE AT BAR.— To be considered a mitigating circumstance, voluntary surrender must be spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or wishes to save them the trouble and expense that will be incurred in his search and capture. x x x The prosecution's evidence showed that after the incident, accused-appellant went back to his house and the policemen later on arrived. Ellano confirmed that as he and his team of policemen approached the gate of accused-appellant's residence, the latter appeared and surrendered himself, his firearm and Danilo's revolver. The confluence of the foregoing circumstances justifies the appreciation of a mitigating circumstance of a similar nature or analogous to voluntary surrender, under number 10, Article 13 of the Revised Penal Code. Indeed, it would appear that accused-appellant returned home following the incident and resolved to remain there, knowing that the police was on its way to his house. And as the policemen approached his home, he directly gave himself up to them. If accused-appellant wanted to abscond, he could have readily done so but this, he did not do.

11. ID.; MURDER; WHERE THE KILLING WAS COMMITTED WITH *ALEVOSIA*, THE ACCUSED MUST BE CONVICTED FOR MURDER; PENALTY.— The killing having been committed with *alevosia*, accused-appellant's conviction for homicide, as determined by the CA, must be modified to one for murder. It must be stressed that an appeal in a criminal case throws the entire case wide open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether or not raised by the parties. x x x [T]he minimum penalty for murder, i.e., *reclusion temporal* in its maximum period, shall be imposed pursuant to Article 64(2) of the Revised Penal

Code. Applying the Indeterminate Sentence Law, accused-appellant is sentenced to ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.

12. ID.; ID.; CIVIL LIABILITY.— In keeping with prevailing jurisprudence on damages to be awarded when murder is committed, the civil indemnity and moral damages awarded by the CA are each increased to ₱100,000.00. Exemplary damages in the amount of ₱100,000.00 are also awarded. Accused-appellant shall additionally pay temperate damages in the amount of ₱50,000.00 as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved. All monetary awards are subject to interest at the rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Augusto P. Jimenez, Jr. for accused-appellant.

D E C I S I O N

TIJAM, *J.*:

This is an appeal from the June 10, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05671, which affirmed with modification the June 25, 2012 Decision[2] of the Regional Trial Court (RTC), Branch 54, Manila, in Criminal Case No. 91-97103, modifying accused-appellant PFC Enrique Reyes' conviction from Murder to Homicide, and the CA's February 3, 2016 Resolution[3] which denied his Motion for Reconsideration.

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[1] Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda; *Rollo*, pp. 2-17.

[2] Penned by Presiding Judge Maria Paz R. Reyes-Yson; CA *rollo*, pp. 46-62.

[3] *Id.* at 473-477.

The Facts

Accused-appellant was charged with the murder of Danilo Estrella y Sanchez (Danilo) in an Information dated August 1, 1991, the accusatory portion of which reads as follows:

> That on or about August 13, 1990, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with treachery and evident premeditation and with intent to kill, attack, assault and use personal violence upon C2C DANILO ESTRELLA Y SANCHEZ by then and there firing his armalite rifle at said C2C Danilo Estrella *y* Sanchez who was then walking home and hitting him on different parts of the body, depriving the latter of a chance to defend himself from the attack thereby inflicting upon him mortal gunshot wounds in the different parts of his body which wounds were the direct and immediate cause of his death thereafter.[4]

On accused-appellant's motion for the determination of probable cause, the RTC, in its July 23, 1992 Order, found probable cause to hold accused-appellant for trial and ordered his arrest. Finding, however, that the evidence of guilt was not strong, the RTC allowed accused-appellant to post bail in the amount of ₱150,000.00. Upon arraignment, accused-appellant entered a plea of "not guilty."[5]

Based on the testimonies of its three eyewitnesses, namely, Eliseo de Castro (Eliseo), Apolonio Gaza, Jr. (Apolonio) and Rolando Quintos (Rolando), the prosecution sought to prove that around 7:00 in the morning of August 13, 1990, Eliseo and several others were in the basketball court along Francisco Street, Tondo, Manila, in front of Danilo's house, while Rolando was cleaning his truck parked in the same basketball court. Eliseo and Rolando saw accused-appellant fire his Armalite rifle upwards while his nephews, Rey Buenaflor, a certain Al and Bernie, picked up the empty slugs. Danilo was then walking towards his house after tending to his fighting cock, and was three steps away from his residence when accused-appellant

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[4] *Rollo*, p. 4.

[5] *Id.* at 4.

suddenly fired at him from behind, causing him to fall on the ground. Accused-appellant then approached Danilo. Hearing the gunshots from his house prompted Apolonio to go to nearby Francisco Street where he saw Danilo's body on the ground, bathing in blood, while accused-appellant, who was wearing only a pair of camouflage pants and holding an Armalite rifle in his right hand, stood in front of Danilo. Accused-appellant took the .38 caliber firearm tucked in Danilo's waist, and fired the same upwards thrice. Afterwards, he placed the gun on Danilo's right hand and turned the latter's body on a lying position. Out of fear, Eliseo and the others hid behind Rolando's truck, and when the firing stopped, they tried to get Danilo's body. Accused-appellant, however, fired his Armalite upwards, saying *"walang kukuha nito,"* and then walked to his house. When the policemen later arrived, they went into accused-appellant's house. The policemen, together with accused-appellant, subsequently boarded the mobile car.[6]

Dr. Emmanuel Lagonera took the witness stand for the prosecution to identify the certificate of identification of dead body as well as the medico-legal report executed by the National Bureau of Investigation's Dr. Marcial Cenido who passed away before he could testify in court.[7] Based on said report, Danilo died from multiple gunshot wounds.[8]

The report listed the following injuries to Danilo's body:

> 1. Gunshot wound, right clavicular region, 8.5 cm. From the anterior midline, measuring 13 cm[.] 8 cm., directed obli-backwards, slightly upwards and towards the middle fracturing the clavicle, middle 3rd, right and 6th cervical vertebra lacerating the spinal cord, and with the recovery of a markedly deformed copper jacket and lead fragments embedded in the muscle tissue at the left lower nape and a lead splinter at the left upper nape;

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[6] *Id.* at 5-6; CA *rollo*, pp. 50-51.

[7] *Id.* at 5. *Id.* at 53.

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

2. Gunshot wound, thru and thru, point of entry at the left temporal region, 2.3 cm. above the left ear, measuring 1.5 cm. x 0.5 cm., directed obliquely backwards, downwards and slightly towards the midline penetrating the cranial cavity and lacerating the left temporal and occipital lobes and left cerebellar hemisphere and the slug exiting behind the left ear and which measures 7 cm. x 6 cm.;

3. Gunshot wound, thru and thru, right ring finger, point of entry at the dorsal surface measuring 1 cm. x 0.6 cm., directed obliquely forwards, very slightly upwards and towards the small finger fracturing and dislocating the proximal interphalangeal joint, slug exiting anteriorly measuring 3 m. 1.2 cm., and lacerating the palmar surface of the right small finger and which measures 5.5 cm. x 1.5 cm.;

4. Lacerated wound, proximal 3rd, right arm, antero-lateral surface measuring 4 cm. x 3 cm. thru the subcutaneous tissue;

5. Lacerated wound, right arm, middle 3rd, antero-medial surface measuring 7.5 cm x 4.5 cm. thru the subcutaneous tissue;

6. Splinter wounds, right and left thigh, anterior; and

7. Abrasion, upper distal 3rd, right leg, antero-medial surface measuring 2 cm. x 0.2 cm.[9]

Testifying as the prosecution's rebuttal witness, P/Sr. Insp. Joseph Torcita of the Philippine National Police Crime Laboratory identified a Chemistry Report by which the prosecution sought to prove that a paraffin examination of Danilo's hands yielded a negative result for the existence of gunpowder nitrates.[10]

With his nephews Adelardo Buenaflor III (Adelardo) and P/Insp. Gary Reyes (P/Inp. Gary), his neighbors Celia Rodriguez (Celia) and Ernesto Galvez (Ernesto), police officer Felizardo Ellano (Ellano) and retired police ballistician Nelson Fuggan (Nelson), as his witnesses,[11] accused-appellant invoked self-

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[9] *Id*. at 3.

[10] *Id*. at 5; *Id*. at 50.

[11] *Id*.

defense. He claimed that even before the incident, he was already receiving death threats from Danilo's uncle, Manuel Sanchez (Manuel), who was a suspected member of the *"Bawas Gang"* whose activities he had a hand in exposing as an Investigator of the Theft and Robbery Section of the Manila Police Department.[12]

According to accused-appellant, he was on his way home in the morning of August 13, 1990, after preparing his son's wake, when he was met by Adelardo who informed him that he had overheard Danilo and four other men talking on board an owner-type jeep parked along Velasquez Street, Tondo, Manila. One of them remarked *"Itumba na natin iyan puede na kahit anong mangyari,"* to which Danilo replied "*Hagisan ng granada kahit sa bahay."* Fearing for his family's safety, accused-appellant prepared his Armalite rifle and called for assistance from the Police Station 1, Theft and Robbery Section, and the SWAT. After a while, someone outside the house shouted that there were policemen in civilian clothes. Hearing this, accused-appellant stood from a rocking chair, got his Armalite rifle and told Gary and his other companions not to leave the house. Accused-appellant then proceeded towards Francisco Street going to Velasquez Street, thinking that the police he called had arrived. At that time, Celia, who was on her way to accused-appellant's house, saw a man holding a gun approaching accused-appellant from behind. When Celia shouted "Ricky," accused-appellant turned towards Celia and saw Danilo holding a gun in the act of shooting him. Accused-appellant drew and fired his Armalite rifle, hitting Danilo who fell on the ground. He took Danilo's gun for his safety. He was about to lift Danilo to bring him to the hospital, when he heard gunfire and the cocking of a gun from a container van parked nearby. Fearful of a possible ambush, he fired Danilo's .38 caliber revolver as well as his Armalite rifle at the direction of the container van, taking cover behind a ten-wheeler truck parked on the street until the police patrol car arrived. He proceeded to his house through the backdoor.

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[12] *Id.* at 6.

When he heard Ellano call his name, he surrendered himself as well as his Armalite rifle and Danilo's gun.[13]

On June 25, 2012, the RTC rendered its Decision[14] convicting accused-appellant of murder. The dispositive portion of the Decision reads:

> **WHEREFORE, all premises considered,** accused Enrique Reyes is hereby found guilty beyond reasonable doubt of the offense of **Murder** and is hereby sentenced to suffer the [sic] imprisonment of *reclusion perpetua*. Accordingly, the surety bond posted by the accused for his provisional liberty is hereby cancelled and the accused is hereby ordered to be committed at the National Bilibid Prison.
>
> He is, further, sentenced to compensate the Heirs of Danny Estrella the following amounts consistent with law and jurisprudence relating to an accused adjudged guilty of a crime covered by Republic Act No. 7659: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages and ₱30,000 as exemplary damages.
>
> Furnish the Public Prosecutor, the private complainants, the accused, his counsel and the Warden of the Manila City Jail copies of this decision.
>
> Given in open court this 25th day of June 2012 in the City of Manila, Philippines.[15]

The RTC gave more weight to the testimonies of the prosecution witnesses and rejected accused-appellant's claim of self-defense, finding no clear and convincing proof that Danilo had assaulted him or posed an imminent threat to him. The RTC held that the killing was attended by treachery because accused-appellant fired at Danilo suddenly and without giving him the chance to run or defend himself. The trial court likewise appreciated the qualifying circumstance of evident premeditation, holding that accused-appellant had sufficient time to contemplate

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[13] *Id*. at 6-7; *Id*. at 54.

[14] *Supra* note 2.

[15] *Id*. at 61.

his actions while sitting in his rocking chair before emerging from his house armed with a rifle, ready to kill.[16]

On appeal, the CA sustained the RTC's finding that the killing was not done in self-defense in the absence of unlawful aggression. However, finding no sufficient evidence that would establish the aggravating circumstances of treachery and evident premeditation, the appellate court downgraded accused-appellant's conviction from murder to homicide. The dispositive portion of the CA's June 10, 2015 Decision[17] reads:

> **WHEREFORE,** the appeal is **PARTIALLY GRANTED**. The June 25, 2012 Decision of the Regional Trial Court, Branch 54, Manila in Criminal Case No. 91-97103 is **AFFIRMED** with **MODIFICATIONS**. As modified, accused-appellant PFC ENRIQUE REYES is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE**. He is hereby sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor* as minimum to fourteen (14) years and eight (8) months of *reclusion temporal* minimum as maximum, and to pay civil indemnity and moral damages of ₱50,000.00 each. The award of exemplary damages is hereby deleted. Further, all the monetary awards for damages are subject to a 6% interest *per annum* from date of finality of this decision until fully paid.
>
> **SO ORDERED.**

Accused-appellant moved for reconsideration, assailing both his conviction and the penalty imposed on him by the appellate court.[18] Accused-appellant also moved to post bail in view of the downgrading of the offense from murder to homicide.[19] Both motions were denied in the CA's Resolution dated February 3, 2016.[20]

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[16] *Id*. at 7.

[17] *Supra* note 1, *id*. at 16-17.

[18] CA *rollo*, p. 474.

[19] *Id*.

[20] *Supra* note 3, *id*. at 474.

In the instant appeal, accused-appellant insists that he acted in complete self-defense and, thus, prays for an acquittal.

The Court's Ruling

The appeal lacks merit.

By invoking self-defense, accused-appellant admitted inflicting the fatal injuries that caused Danilo's death, albeit under circumstances that, if proven, would have exculpated him. With this admission, the burden of proof shifted to him to show that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person invoking self-defense.[21]

Considering that self-defense totally exonerates the accused from criminal responsibility, it is incumbent upon him who invokes the same to prove by clear, satisfactory and convincing evidence that he indeed acted in defense of his life or personal safety.[22] When successful, an otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused.[23]

Unlawful aggression is the indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing for there is nothing to repel.[24] Verily, there can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person invoking it as a justifying circumstance.[25]

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.[26] The

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[21] *Guevarra, et al. v. People*, 726 Phil. 183, 194 (2014); *People v. Fontanilla*, 680 Phil. 155, 165 (2012).

[22] *Dela Cruz v. People*, *et al.,* 747 Phil. 376, 384-385 (2014); *People v. Fontanilla*, *id.*

[23] *Oriente v. People*, 542 Phil. 335, 347 (2007).

[24] *People v. Fontanilla*, *supra* note 21, *id.* at 165.

[25] *Guevarra, et al. v. People*, *supra* at 194-195.

[26] *Id.*

test for the presence of unlawful aggression is whether the victim's aggression placed in real peril the life or personal safety of the person defending himself. The danger must not be an imagined or imaginary threat. Accordingly, the confluence of these elements of unlawful aggression must be established by the accused, to wit: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or at least imminent; and (c) the attack or assault must be unlawful.[27]

As the second element of unlawful aggression will show, it is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury.[28] Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening or intimidating attitude, nor must it be merely imaginary, but must be offensive, menacing and positively strong, manifestly showing the wrongful intent to cause injury (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack).[29] There must be an actual, sudden, unexpected attack or imminent danger thereof, which puts the accused's life in real peril.[30]

Tested against the foregoing criteria, the Court finds the element of unlawful aggression to be wanting in this case. As the CA succinctly held:

> There is nothing in the records which would clearly and convincingly prove Enrique's claim that his life was in danger when he saw Danilo. Enrique claimed that when Celia shouted his name, he saw Danilo

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[27] *People v. Fontanilla*, *supra* note 21, *id*.

[28] *People v. Nugas*, 677 Phil. 168, 177-178 (2011).

[29] *People v. Fontanilla*, *supra* note 21, *id*. at 166; *People v. Nugas*, *supra* at 177; *Manaban v. Court of Appeals*, 527 Phil. 84, 99 (2006).

[30] *Oriente v. People*, *supra* note 23, at 347; *Manaban v. People*, *supra* at 99.

who was about to shoot him. However, based on Celia's testimony, Danilo was only approaching Enrique while holding a gun. Celia did not witness any positive act showing the actual and material unlawful aggression on the part of the victim. Even P/Insp. Gary, whom Enrique presented as an alleged eyewitness, only testified that he saw a man carrying a small firearm approaching Enrique and when the latter turned to his right, a volley of gunshots followed. Evidently, the records of this case are bereft of any indication of unlawful aggression that would justify a finding of self-defense.[31]

Indeed, accused-appellant failed to show an attack so offensive, menacing and strongly indicative of an intent to cause injury, as to justify the killing of Danilo. In *People v. Rubiso,*[32] the Court held:

> Assuming that Hubines had a gun and pulled it, however, records show that he did not manifest any aggressive act which may have imperiled the life and limb of herein appellant. It is axiomatic that the mere thrusting of one's hand into his pocket as if for the purpose of drawing a weapon is not unlawful aggression. **Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger. Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression**.[33] (Emphasis ours)

Furthermore, the prosecution's eyewitnesses have established that Danilo was on his way home after tending to his fighting cock, and was three steps away from his house, when accused-appellant suddenly fired his Armalite at him. They also testified that Danilo's gun was tucked in his waist (or his right side), repudiating accused-appellant's claim that the victim had been holding a gun when accused-appellant shot him.

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[31] *Rollo*, p. 10.

[32] 447 Phil. 374, 381 (2003).

[33] *Id*. at 381.

Both the RTC and the CA gave weight and credence to the testimonies of said eyewitnesses. The CA noted that they were "made in a clear, positive, straightforward and consistent manner that inspire(s) belief, unwavering even under cross-examination by the defense."[34] The appellate court further observed that the testimonies were "replete with details that could not easily be concocted by prevaricating witnesses."[35]

The trial court's assessment of the facts, as affirmed by the CA, is entitled to great weight and respect.[36] Absent any clear disregard of evidence, We find no reason to deviate from such finding.[37]

The records also show no evidence of any dubious or improper motive on the part of the prosecution's eyewitnesses to falsely testify against accused-appellant.[38] It is settled that where there is nothing to indicate that witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[39]

Accused-appellant harps on the alleged inconsistencies in the prosecution witnesses' testimonies. He points to the supposed disparity between Rolando's testimony that accused-appellant got Danilo's gun from his waist and Apolonio's account that accused-appellant took it from the right side of Danilo's chest. Accused-appellant likewise impugns Rolando's testimony that accused-appellant shot Danilo six times, which allegedly conflicts with the three gunshot wounds indicated in the medico-legal report.[40]

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[34] *Rollo,* p. 11.

[35] *Id*.

[36] *Almojuela v. People*, 734 Phil. 636, 651 (2014).

[37] *Id*.

[38] *Rollo,* p. 11.

[39] *People v. Aquino*, 724 Phil. 739, 755 (2014); *People v. Dadao*, *et al.,* 725 Phil. 298, 310-311 (2014).

[40] *Rollo*, pp. 11-12 and 40; CA *rollo*, p. 301.

However, after having owned the crime, the burden of proof has been shifted to accused-appellant to establish self-defense. He, therefore, cannot simply protest that the prosecution's evidence is weak. He must rely on the strength of his own evidence because even if weak, the prosecution's evidence cannot be disbelieved after the accused himself has admitted to the killing. His failure to adduce clear and convincing evidence of self-defense will accordingly result in his conviction.[41]

In any event, as the CA correctly found, the inconsistencies thus cited refer to minor matters.

Inconsistencies in the witnesses' testimonies referring to minor details do not destroy their credibility.[42] Such minor inconsistencies even manifest truthfulness and candor and remove any suspicion of a rehearsed testimony.[43] Different persons have different reflexes which may produce varying reactions, impressions, perceptions and recollections.[44] Considering the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight variances in the declarations of witnesses hardly weaken their probative value.[45] As long as the testimonies of the witnesses corroborate one another on material points, particularly in relating the principal occurrence and in the positive identification of the assailant, minor inconsistencies therein will not impair their credibility.[46]

The alleged inconsistencies aside, the testimonies of the prosecution's eyewitnesses concur on material points.[47] Taken

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[41] *Dela Cruz v. People, et al.*, *supra* note 22, *id*. at 385; *People v. Fontanilla*, *supra* note 21, *id*. at 166-167; *Oriente v. People*, *supra* note 30, *id*. at 346.

[42] *People v. Pidoy*, 453 Phil. 221, 229 (2003).

[43] *Id*.

[44] *People v. Zamora*, 343 Phil. 574, 584 (1997).

[45] *People v. Dadao*, *supra* note 39, *id*. at 311.

[46] *People v. Calara*, 710 Phil. 477, 484 (2013).

[47] *Rollo,* p. 12.

as a whole,[48] they clearly establish that Danilo was neither holding nor pointing a gun at accused-appellant, and was in fact on his way home, when accused-appellant shot him with an Armalite rifle.

Besides, whether Danilo's gun was taken by accused-appellant from his waist or from the right side of his chest, the testimonies of Apolonio and Rolando are consistent in showing that the gun was tucked close to the victim's body, negating accused-appellant's claim that Danilo was pointing the same at him.

Furthermore, in *People v. Joel Tañeza y Dacal*,[49] the Court held:

> Accused-appellant points to the fact that Esgrina's testimony conflicts with the medico-legal report of Dr. Figuracion as well as the physical evidence, for while Esgrina stated that the victim was shot four times, the autopsy indicated at least five gunshot wounds and only four empty shells were submitted in evidence by the prosecution. Furthermore, there is no indication of head bruises in the autopsy report as to coincide with Esgrina's representation that she saw accused-appellant strike Umandam on the head with the gun.
>
> Even as Esgrina's eyewitness account does not tally to the last detail with the findings in the medico-legal report, we do not perceive such inconsistencies as materially affecting the substance of her testimony. Inconsistencies such as these in the testimonies of prosecution witnesses have been known to happen, and indeed acquittals have been the result where the inconsistencies and self-contradictions dealt with material points as to altogether erode the credibility of the witness. On the other hand, discrepancies which are minor in character may also serve to add credence and veracity to a witness' testimony, and enhance her credibility in the process. The latter rule we find applicable to the instant case, for the inconsistencies pointed out by the defense do not alter the substance

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[48] In *People v. Zamora, supra* at 584, the Court held: "Each (witness) may give a different account of what transpired. One testimony may be replete with details not found in the other. But taken as a whole, the versions must concur on material points."

[49] 389 Phil. 398 (2000).

of Esgrina's testimony – which is that accused-appellant attacked a defenseless Emersion Umandam.[50]

Accused-appellant contends that the "looming" death threat from Manuel's group, owing to his exposure of the latter's alleged illegal activities, became real and evident when his nephew, Adelardo, overheard Danilo's plan to kill him. Thus, he submits that Danilo's remarks were "more than enough to show the imminent and real danger" to his life.[51]

The jurisprudential standards for a finding of unlawful aggression clearly negate accused-appellant's argument. Granting they were true, neither the "looming" threat perceived by accused-appellant nor the remarks overheard by his nephew satisfies the requirement of an actual, menacing, sudden and unexpected danger to accused-appellant's life. To constitute imminent unlawful aggression, the attack must be at the point of happening and must not be imaginary or consist in a mere threatening attitude.[52] Furthermore, as the trial court found, the supposed threat overheard by Adelardo actually made "no specific or definite reference to (accused-appellant)."[53] The Court is thus unconvinced that there was a real peril to accused-appellant's life when he killed Danilo.

Accused-appellant avers that in self-defense, he fired shots at Danilo, hitting the ring finger of the latter's right hand which supposedly held a gun pointed at him. Accused-appellant thus argues that the gunshot wound through Danilo's right ring finger as well as the lacerated wounds on his right arm prove that Danilo was in the act of shooting and guilty of unlawful aggression.

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[50] *Id*. at 409.

[51] CA *rollo*, pp. 434-435.

[52] *People v. Fontanilla*, *supra* note 21, *id*. at 166; *People v. Nugas*, *supra* note 28, *id*. at 178; *Manaban v. Court of Appeals*, *supra* note 29, *id*. at 99.

[53] CA *rollo*, p. 323.

We are not persuaded. Said injuries do not conclusively prove accused-appellant's theory of unlawful aggression, and accused-appellant has offered no credible evidence to convince the Court otherwise. The testimonies of accused-appellant's own witnesses failed to establish that the victim was aiming a gun at him. Furthermore, the testimonies of the prosecution witnesses consistently showed that the victim was neither holding a gun nor pointing one at accused-appellant. Plainly taken, therefore, the argument is baseless and self-serving. Besides, accused-appellant's contention only serves to prove that the other gunshots, to the victim's head and clavicle, both fatal,[54] were neither necessary nor justified in the name of self-defense.

Verily, accused-appellant failed to discharge his burden of proving unlawful aggression by clear and convincing evidence. Unlawful aggression on the part of the victim is a statutory and doctrinal requirement for the justifying circumstance of self-defense to be appreciated. Without it, there can be no self-defense, complete or incomplete.[55]

In fact, evidence clearly establishes that accused-appellant was the aggressor. As the RTC found, Eliseo and Rolando positively and categorically stated that even before Danilo was shot, accused-appellant was already firing his Armalite rifle upwards and as Danilo was walking towards his house, accused-appellant suddenly fired at him, causing him to fall on the ground. Eyewitnesses also saw accused-appellant then take the firearm tucked in Danilo's waist and fire it thrice in an upward direction, placing the gun thereafter on Danilo's right hand and turning his body in a lying position. When Eliseo and others tried to get Danilo's body, accused-appellant fired his Armalite upward, telling them *"walang kukuha nito."*

Considering that accused-appellant was the aggressor, his employment of any means in furtherance of the aggression

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[54] *Rollo*, pp. 10-11.

[55] *People v. Boniao*, 291 Phil. 684, 701 (1993).

cannot be considered as the rational means to repel an illegal aggression.[56]

Furthermore, accused-appellant's plea of self-defense is belied by the nature and number of wounds suffered by Danilo which reveal an intent to kill and not merely an effort to prevent or repel an attack.[57]

The autopsy report shows that the victim died from multiple gunshot wounds, including one on the left temple and another on the right collarbone, both of which proved fatal. The gunshot wound on the victim's head, a vital part of the body, demonstrates a mind resolved to end the life of the victim.[58] The multiple shots which accused-appellant fired at the victim unmistakably manifested an irrevocable decision to kill.[59] It has been held in this regard that the location, gravity and presence of several wounds on the victim's body provide physical evidence that eloquently refutes allegations of self-defense.[60] Physical evidence is evidence of the highest order; it speaks more eloquently than a hundred witnesses.[61]

Granting the victim was indeed holding a gun, as defense witnesses Celia and Gary portrayed him, accused-appellant's infliction of multiple gunshot wounds on the victim, including one on the victim's head, is neither commensurate nor reasonable. The second element of self-defense is thus clearly absent.

The last element of self-defense is also wanting. As the clear aggressor, accused-appellant cannot successfully argue that there was no sufficient provocation on his part.

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[56] *People v. Boniao*, *supra* note 55, *id* at 701.

[57] *People v. Fontanilla*, *supra* note 21, *id.* at 167; *People v. Rubiso, supra* note 32, *id.* at 382; *Guevarra, et al. v. People*, *supra* note 21, *id.* at 191.

[58] *Dela Cruz v. People*, *supra* note 22, *id*. at 393.

[59] *People v. Boniao*, *id*.

[60] *Flores v. People*, 705 Phil. 119, 137 (2013), citing *People v. Villa, Jr.*, 573 Phil. 592, 610 (2008).

[61] *People v. Boniao*, *supra* at 702.

Another factor that militates against accused-appellant's defense lies in the incredulous aspects of his version of the incident.

It is settled that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself. Accordingly, the test to determine the value or credibility of a witness' testimony is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.[62]

Accused-appellant alleged that minutes after calling the police station for assistance, "somebody shouted coming from the outside that there were policemen who were in civilian clothes outside [sic]," which prompted him to go out of the house with his Armalite rifle.[63] It is, however, against common experience for someone to shout the arrival of the police and in the same breath describe their attire. It appears that accused-appellant had to add that sartorial detail if only to justify his leaving the house when no policemen were visibly outside. The excuse proffered, indeed, hardly inspires belief. Furthermore, as it would have been readily apparent that the police, whose protection accused-appellant allegedly sought, were not in fact present, the most natural and logical reaction was for him to have immediately returned to the safety of his house.

Accused-appellant also alleged that when he shot Danilo, he was merely defending himself from the unlawful aggression of the latter and his group who were armed.[64] He averred that after he shot Danilo in self-defense, he tried to lift Danilo so he could bring him to the hospital but he was fired upon, allegedly by Danilo's group, until the police arrived.[65] However, it taxes

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[62] *Flores v. People*, *supra* at 136.

[63] CA *rollo*, p. 290.

[64] *Id.* at 295 and 297.

[65] *Id.* at 290 and 295.

credulity how the victim's group would not have immediately fired at him the moment he shot Danilo. It is implausible that they would wait until he has fired several shots, taken Danilo's revolver and tried to lift him, before commencing fire either to protect their own or to execute the purported plan to kill him.

In fine, the Court agrees with both the trial and appellate courts that accused-appellant failed to discharge his burden of proving self-defense.

Contrary to accused-appellant's assertion, the Court cannot disregard the trial court's findings or reverse its decision on the ground that it has been reached by a trial judge who merely took over the case and did not hear or observe the deportment of the witnesses. While the trial judge who presided over the trial of the case would be in a better position to determine the truth or falsity of the witnesses' testimonies, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision, as he could rely on the transcribed stenographic notes taken during the trial as the basis for his decision. This is the main reason for the mandatory requirement that all trial courts be courts of record.[66]

The Court agrees with the CA that the qualifying circumstance of evident premeditation was not sufficiently proved.

The elements of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[67] Every element of the circumstance must be shown to exist beyond reasonable doubt.[68] To be considered an aggravation of the

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[66] *People v. Rabutin*, 338 Phil. 705, 712 (1997).

[67] *People v. Alvarez, et al.*, 752 Phil. 451, 459 (2015).

[68] *People v. Dadivo*, 434 Phil. 684, 689 (2002).

offense, the circumstance must not merely be premeditation but must be evident premeditation.[69]

The foregoing elements have not been established beyond reasonable doubt.

In finding the existence of evident premeditation, the trial court observed that there existed an animosity between accused-appellant and Danilo's uncle and close ally, Manuel, after he exposed Manuel's alleged illegal activities and the latter filed a libel case against him. The RTC concluded that accused-appellant, who had a grudge against Manuel, had sufficient time to ponder his feelings for Danilo and his uncle as he "waited several minutes to lapse while sitting in a rocking chair inside his house before he went out of the house carrying a loaded assault rifle."[70]

It is settled, however, that mere existence of ill feelings or grudges between the parties is not sufficient to sustain a conclusion of premeditated killing.[71] Furthermore, it cannot be said that enough time has passed to allow accused-appellant to reflect upon the consequences of his act.[72] "It has been held in one case that even the lapse of 30 minutes between the determination to commit a crime and the execution thereof is insufficient for full meditation on the consequences of the act."[73]

The essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during an

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[69] *People v. Tigle*, 465 Phil. 368, 382 (2004).

[70] CA *rollo*, p. 58.

[71] *People v. Aposaga*, 460 Phil. 178, 191-192 (2003).

[72] *People v. Medina*, 349 Phil. 718, 734 (1998); *People v. Nalangan*, 336 Phil. 970, 976 (1997).

[73] *People v. Illescas*, 396 Phil. 200, 210 (2000), citing *People v. Rabanillo*, 367 Phil. 114, 124 (1999).

interval of time sufficient to arrive at a calm judgment.[74] There is no evident premeditation when the attack was the result of rising tempers or made in the heat of anger.[75]

The Court, however, disagrees with the CA's finding that the qualifying circumstance of treachery was absent.

There is treachery when the offender, in committing any of the crimes against persons, employs means or methods which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. When alleged in the information and clearly proved, treachery qualifies the killing and elevates it to the crime of murder.[76]

Treachery was established in this case. Prosecution witnesses Eliseo and Rolando, whose testimonies were found to be credible by both the RTC and the CA, showed that Danilo was walking towards his house after tending to his fighting cock, and was three steps away from his residence when accused-appellant suddenly rushed towards his direction and shot him.[77] Accused-appellant's shots, fired from an assault rifle, were multiple and successive, depriving Danilo of any chance to run or to defend himself and repel the attack. The foregoing circumstances are manifestly indicative of the presence of the conditions under which treachery may be appreciated.[78]

In finding that the killing was not attended by treachery, the CA reasoned that "(the) bad blood between Enrique and Danilo, taken together with the fact that accused-appellant was firing an assault rifle while walking towards Francisco St. and the victim attempted to retreat to the comfort of his residence militate

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[74] *People v. Aposaga*, *supra* at 190; *People v. Alinao*, 718 Phil. 133, 151 (2013).

[75] *People v. Torpio*, 474 Phil. 752, 761 (2004).

[76] *People v. Dulin*, 762 Phil. 24, 40 (2015).

[77] CA *rollo*, p. 325.

[78] *People v. Casela*, 547 Phil. 690, 705 (2007).

against the prosecution's claim that the attack was sudden and unexpected."[79]

It has been held, however, that treachery may still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to retaliate or defend himself,[80] as in this case. Furthermore, that Danilo did not find it necessary to pull out his gun and prepare to defend himself against a possible assault from accused-appellant, underscores the fact that he did not expect the attack.

Even if the Court were to consider accused-appellant's contention, supposedly based on the autopsy report, that Danilo was shot frontally, it is settled that the essence of treachery is the unexpected and sudden attack on the victim that renders the latter unable and unprepared to defend himself because of the suddenness and severity of the attack. This criterion applies whether the attack is frontal or from behind. Thus, a frontal attack could still be deemed treacherous when unexpected and on an unarmed victim who would not be in a position to repel the attack or avoid it.[81] It has been sufficiently established by the prosecution that accused-appellant's attack on Danilo was unexpected and executed in a manner that deprived the latter of a chance to put up a defense.

The killing having been committed with *alevosia,* accused-appellant's conviction for homicide, as determined by the CA, must be modified to one for murder. It must be stressed that an appeal in a criminal case throws the entire case wide open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether or not raised by the parties.[82]

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[79] *Rollo*, p. 15.

[80] *People v. Pidoy*, *supra* note 42, *id*. at 230; *People v. Nasayao, Sr.*, 437 Phil. 806, 815 (2002); *People v. Tanoy*, 387 Phil. 750, 759 (2000).

[81] *People v. Alfon*, 447 Phil. 138, 148 (2003).

[82] *Ramos v. People*, G.R. No. 218466, January 23, 2017; *Esqueda v. People*, 607 Phil. 480, 501 (2009); *People v. Buban*, 551 Phil. 120, 134 (2007).

The appeal confers on the reviewing tribunal full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, and increase the penalty.[83]

On the strength of defense witness Ellano's testimony, the CA appreciated the mitigating circumstance of voluntary surrender. To be considered a mitigating circumstance, voluntary surrender must be spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or wishes to save them the trouble and expense that will be incurred in his search and capture.[84]

Ellano's testimony indicates that around 6:30 in the morning on August 13, 1990, before the shooting incident, he received a call from accused-appellant asking for police assistance as his family was reportedly in danger.[85] The prosecution's evidence showed that after the incident, accused-appellant went back to his house and the policemen later on arrived.[86] Ellano confirmed that as he and his team of policemen approached the gate of accused-appellant's residence, the latter appeared and surrendered himself, his firearm and Danilo's revolver.[87]

The confluence of the foregoing circumstances justifies the appreciation of a mitigating circumstance of a similar nature or analogous to voluntary surrender, under number 10, Article 13[88]

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[83] *Ramos v. People*, *id*.

[84] *People v. Aquino*, 475 Phil. 447, 453 (2004).

[85] CA *rollo*, p. 55.

[86] *Rollo*, p. 6.

[87] CA *rollo,* p. 55.

[88] Article 13. *Mitigating circumstances.* — The following are mitigating circumstances:

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That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;

of the Revised Penal Code.[89] Indeed, it would appear that accused-appellant returned home following the incident and resolved to remain there, knowing that the police was on its way to his house. And as the policemen approached his home, he directly gave himself up to them. If accused-appellant wanted to abscond, he could have readily done so but this, he did not do.[90]

The crime was committed prior to the effectivity of Republic Act (RA) No. 7659,[91] during the suspension of the death penalty.[92] Before RA No. 7659 took effect on December 31, 1993 reimposing the death penalty, the penalty for murder was *reclusion temporal*, in its maximum period, to death.[93] Since the crime in this case was not attended by the generic aggravating circumstance of evident premeditation, and the mitigating circumstance analogous to voluntary surrender is credited in accused-appellant's favor, the minimum penalty for murder, i.e., *reclusion temporal* in its maximum period, shall be imposed pursuant to Article 64(2) of the Revised Penal Code.[94] Applying the Indeterminate Sentence Law, accused-appellant is sentenced to ten (10) years and one (1) day of *prision mayor*, as minimum,

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10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

[89] See *Eduarte v. People*, 617 Phil. 661, 668 (2009).

[90] *Eduarte v. People*, *supra* note 89, *id*. at 668.

[91] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, other Special Penal Laws, and for Other Purposes.

[92] Section 19(1) of the 1987 Constitution provides: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua.*"

[93] *People v. Tortosa*, 391 Phil. 497, 508 (2000).

[94] *People v. Sol*, 338 Phil. 896, 911 (1997).

to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum.[95]

In keeping with prevailing jurisprudence on damages to be awarded when murder is committed,[96] the civil indemnity and moral damages awarded by the CA are each increased to ₱100,000.00. Exemplary damages in the amount of ₱100,000.00 are also awarded. Accused-appellant shall additionally pay temperate damages in the amount of ₱50,000.00 as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved.[97] All monetary awards are subject to interest at the rate of six percent (6%) *per annum* from the finality of this decision until fully paid.[98]

WHEREFORE, the Decision of the Court of Appeals dated June 10, 2015 in CA-G.R. CR-HC No. 05671 is **MODIFIED** in that accused-appellant is held guilty of murder and sentenced to a penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum. Furthermore, accused-appellant shall pay civil indemnity, moral damages and exemplary damages, each in the amount of ₱100,000.00, as well as temperate damages in the amount of ₱50,000.00. The civil indemnity and all damages payable by accused-appellant are subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr.,[*] *Leonardo-de Castro,* and *del Castillo, JJ.,* concur.

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[95] *People v. Sol*, *id.*; *People v. Tumaob, Jr.*, 353 Phil. 331, 340 (1998); *People v. Unarce*, 338 Phil. 826 (1997); *People v. Tortosa*, *supra* at 508.

[96] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 336.

[97] *Id.*, citing Article 2224 of the Civil Code.

[98] *People v. Veloso,* 703 Phil. 541, 556 (2013).

[*] Designated additional Member as per Raffle dated October 24, 2017.

THIRD DIVISION

[G.R. No. 200469. January 15, 2018]

PHILIPPINE SAVINGS BANK, *petitioner, vs.* **JOSEPHINE L. PAPA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PLEADINGS; FILING AND SERVICE GO HAND-IN-HAND AND MUST BE CONSIDERED TOGETHER WHEN DETERMINING WHETHER THE PLEADING, MOTION, OR ANY OTHER PAPER WAS FILED WITHIN THE APPLICABLE REGLEMENTARY PERIOD.— PSB is correct that filing and service are distinct from each other. Indeed, filing is the act of presenting the pleading or other paper to the clerk of court; whereas, service is the act of providing a party with a copy of the pleading or paper concerned. Nevertheless, although they pertain to different acts, filing and service go hand-in-hand and must be considered together when determining whether the pleading, motion, or any other paper was filed within the applicable reglementary period. Precisely, the Rules require every motion set for hearing to be accompanied by proof of service thereof to the other parties concerned; otherwise, the court shall not be allowed to act on it, effectively making such motion as not filed.

2. ID.; ID.; ID.; ID.; MODE OF SERVICE; SERVICE BY A PRIVATE COURIER OR ORDINARY MAIL IS ALLOWED ONLY IN INSTANCES WHERE NO REGISTRY SERVICE EXISTS EITHER IN THE LOCALITY OF THE SENDER OR THE ADDRESSEE; VIOLATION IN CASE AT BAR.— The kind of proof of service required would depend on the mode of service used by the litigant. x x x In some decided cases, the Court considered filing by private courier as equivalent to filing by ordinary mail. The Court opines that this pronouncement equally applies to service of pleadings and motions. Hence, to prove service by a private courier or ordinary mail, a party must attach an affidavit of the person who mailed the motion or pleading. Further, such

affidavit must show compliance with Rule 13, Section 7 of the Rules of Court, x x x This requirement is logical as service by ordinary mail is allowed only in instances where no registry service exists either in the locality of the sender or the addressee. This is the only credible justification why resort to service by ordinary mail or private courier may be allowed. In this case, PSB admits that it served the copy of the motion for reconsideration to Papa's counsel via private courier. However, said motion was not accompanied by an affidavit of the person who sent it through the said private messengerial service. Moreover, PSB's explanation why it resorted to private courier failed to show its compliance with Rule 13, Section 7. x x x Very clearly, PSB failed to comply with the requirements under Rule 13, Section 7 for an effective service by ordinary mail. While PSB explained that personal service was not effected due to lack of time and personnel constraints, it did not offer an acceptable reason why it resorted to "private registered mail" instead of by registered mail. In particular, PSB failed to indicate that no registry service was available in San Mateo, Rizal, where the office of Papa's counsel is situated, or in Makati City, where the office of PSB's counsel is located. Consequently, PSB failed to comply with the required proof of service by ordinary mail.

3. ID.; ID.; ID.; JUDGMENT; THE FINALITY OF A JUDGMENT BECOMES A FACT UPON THE LAPSE OF THE REGLEMENTARY PERIOD OF APPEAL IF NO APPEAL IS PERFECTED OR NO MOTION FOR RECONSIDERATION OR NEW TRIAL IS FILED.— It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law. x x x A decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

4. ID.; RULES OF COURT; LIBERALITY IN THE INTERPRETATION AND APPLICATION OF THE RULES CAN BE INVOKED ONLY IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.— At this juncture, the Court stresses that the bare invocation of "the interest of substantial justice" or, in this case, "good or efficient case" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Time and again, the Court has reiterated that rules of procedure, especially those prescribing the time within which certain acts must be done, are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.

APPEARANCES OF COUNSEL

Salgado Masangya Gordove Avila and Associates for petitioner.

Desi Karlo G. Mendoza for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari seeking to reverse and set aside the 21 July 2011 Decision[1] and the 1 February 2012 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 112611, which affirmed the 14 October 2009 Decision[3] and the 14 January 2010 Order of the Regional Trial Court of Makati City, Branch 65 (*RTC*), in Civil Case No. 09-545, which in turn reversed and set aside the 23 December 2008 Decision[4] of the Metropolitan Trial Court of Makati City, Branch 65 (*MeTC*) in Civil Case No. 90987.

THE FACTS

On 30 March 2006, petitioner Philippine Savings Bank *(PSB)* filed before the MeTC a complaint[5] for collection of sum of money against respondent Josephine L. Papa *(Papa)*. In its complaint, PSB alleged that Papa obtained a flexi-loan with a face amount of ₱207,600.00, payable in twenty-four (24) monthly installments of ₱8,650.00 with interest at 38.40% per annum. For the said loan, Papa executed a promissory note dated 26 July 2005. PSB further alleged that the promissory note provides additional charges in case of default, to wit: Three percent (3%) late payment charge per month of the total amount until the amount is fully paid; Twenty-Five percent (25%) Attorney's Fees, but not less than ₱5,000.00; Ten percent (10%) liquidated damages, but not less than ₱1,000.00; and costs of suit. When the obligation fell due, Papa defaulted in her payment. PSB

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[1] *Rollo*, pp. 46-56; penned by Associate Justice Marlene Gonzales-Sison, and concurred in by Associate Justices Noel G. Tijam (now a member of this Court) and Associate Justices Michael P. Elbinias.

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

[3] CA *rollo*, pp. 170-176; penned by Presiding Judge Edgardo M. Caldona.

[4] *Id*. at 51-53; penned by Presiding Judge Henry E. Laron.

[5] *Id*. at 33-35.

averred that as of 27 March 2006, Papa's total obligation amounted to ₱173,000.00; and that despite repeated demands, Papa failed to meet her obligation.

On 26 October 2006, Papa filed her Answer.[6] She alleged that PSB had no cause of action against her as her liability had already been extinguished by the several staggered payments she made to PSB, which payments she undertook to prove. She likewise claimed that there was no basis for the interest and damages as the principal obligation had already been paid.

During the trial on the merits, PSB introduced in evidence a photocopy of the promissory note,[7] which the MeTC admitted despite the vehement objection by Papa. Meanwhile, Papa chose to forego with the presentation of her evidence and manifested she would instead file a memorandum.

After the parties had submitted their respective memoranda, the case was submitted for decision.

The MeTC Ruling

On 23 December 2008, the MeTC rendered a decision in favor of PSB and against Papa. The MeTC was convinced that PSB was able to establish its cause of action against Papa by preponderance of evidence. It also emphasized the fact that other than her bare allegation, Papa never adduced any evidence regarding the payments she had allegedly made. The MeTC, however, deemed it equitable to award interest at the rate of twelve percent (12%) per annum only instead of the stipulated interest, penalty, and charges. The dispositive portion of the MeTC Decision provides:

> WHEREFORE, premises considered, judgment is hereby rendered ordering defendant JOSEPHINE L. PAPA to pay plaintiff the amount of ₱173,000.00 plus interest at the rate of 12% per annum from February 9, 2006 until the whole amount is fully paid; the amount of ₱20,000.00 as and by way of attorney's fees; and the costs.

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

[7] *Id.* at 37.

SO ORDERED.[8]

Papa moved for reconsideration, but the same was denied by the MeTC in its Order, dated 14 May 2009.

Aggrieved, Papa elevated an appeal before the RTC.

The RTC Ruling

In its decision, dated 14 October 2009, the RTC reversed and set aside the MeTC decision. The trial court ruled that PSB failed to prove its cause of action due to its failure to prove the existence and due execution of the promissory note. It opined that Papa's apparent admission in her Answer could not be taken against her as, in fact, she denied any liability to PSB, and she never admitted the genuineness and due execution of the promissory note. It explained that the fact that Papa interposed payment as a mode of extinguishing her obligation should not necessarily be taken to mean that an admission was made regarding the contents and due execution of the promissory note; specifically the amount of the loan, interests, mode of payment, penalty in case of default, as well as other terms and conditions embodied therein. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The decision dated December 23, 2008 in Civil Case No. 09-945 is reversed and set aside.

SO ORDERED.[9]

On 10 November 2009, PSB filed its motion for reconsideration,[10] wherein it admitted that it received the copy of the 14 October 2009 RTC decision on 26 October 2009.

In its opposition to PSB's motion for reconsideration, Papa posited, among others, that the RTC decision had already attained

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[8] *Id*. at 53.

[9] *Id*. at 176.

[10] *Id*. at 54-57.

finality. Papa explained that although PSB filed the motion for reconsideration on 10 November 2009, it appears that service of the said motion was made one (1) day late as PSB availed of a private courier service instead of the modes of service prescribed under the Rules of Court. As such, PSB's motion for reconsideration is deemed not to have been made on the date it was deposited to the private courier for mailing but rather on 11 November 2009, the date it was actually received by Papa.

In its Order, dated 14 January 2010, the RTC denied PSB's motion for reconsideration ratiocinating that its 14 October 2009 decision had already attained finality, among others.

Aggrieved, PSB filed a petition for review under Rule 42 of the Revised Rules of Court before the CA.

In her comment,[11] Papa reiterated her position that the 14 October 2009 RTC decision had already attained finality.

The CA Ruling

In its assailed decision, dated 21 July 2011, the CA affirmed the 14 October 2009 decision and the 14 January 2010 order of the RTC.

The appellate court ruled that the RTC decision had already attained finality due to PSB's failure to serve on Papa a copy of its motion for reconsideration within the prescribed period. The appellate court noted that in its motion for reconsideration, PSB did not offer any reasonable explanation why it availed of private courier service instead of resorting to the modes recognized by the Rules of Court.

The appellate court further agreed with the RTC that PSB failed to prove its cause of action. It concurred with the RTC that Papa made no admission relative to the contents and due execution of the promissory note; and that PSB failed to prove that Papa violated the terms and conditions of the promissory note, if any.

The dispositive portion of the assailed decision reads:

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[11] *Id*. at 98-118.

WHEREFORE, premises considered, the Decision of the Makati Regional Trial Court, Branch 65 dated 14 October 2009 and its subsequent Order dated 14 January 2010 denying petitioner's Motion for Reconsideration in Civil Case No. 09-545 are hereby AFFIRMED *in toto*. With costs against the petitioner.

SO ORDERED.[12]

PSB moved for reconsideration, but the same was denied by the CA in its resolution, dated 1 February 2012.

Hence, this petition.

THE ISSUES

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED PETITIONER'S APPEAL BY REASON OF PURE TECHNICALITY THEREBY PREJUDICING THE SUBSTANTIAL RIGHT OF THE PETITIONER TO RECOVER THE UNPAID LOAN OF THE RESPONDENT.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE LOWER COURTS DECISION DATED 14 OCTOBER 2009 ON THE GROUND THAT PETITIONER FAILED TO PROVE ITS CAUSE OF ACTION WHEN IT FAILED TO PRESENT THE ORIGINAL OF THE PROMISSORY NOTE THEREBY FAILING TO ESTABLISH THE DUE EXISTENCE AND EXECUTION OF THE PROMISSORY NOTE.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED PETITIONER'S APPEAL RESULTING IN UNJUST ENRICHMENT IN FAVOR OF THE RESPONDENT.[13]

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[12] *Rollo*, p. 55.

[13] *Id*. at 8-41.

Stated differently, PSB argues that the appellate court erred when it ruled that the RTC decision had already attained finality; and that the appellate court erred when it ruled that it failed to prove its cause of action despite Papa's admission regarding the existence of the loan.

OUR RULING

PSB insists that it timely filed its motion for reconsideration. It stresses that the records of the case would disclose that it personally filed the subject motion before the RTC on 10 November 2009, or the last day of the 15-day prescriptive period. PSB also claims that, although it deviated from the usual mode of service as prescribed by the Rules of Court when it served the copy of the aforesaid motion by private courier service, there was still effective service upon Papa considering that she received the motion for reconsideration through her counsel, on 11 November 2009, and nine (9) days prior to its intended hearing date. Additionally, PSB contends that the timeliness of the filing of the motion for reconsideration should not be reckoned from the date of the actual receipt by the adverse party, but on the actual receipt thereof by the RTC, pointing out that filing and service of the motion are two different matters.

PSB further argues that, notwithstanding the said deviation, a liberal construction of the rules is proper under the circumstances and that the Court has the power to suspend its own rules especially when there appears a good and efficient cause to warrant such suspension.

These arguments deserve scant consideration.

PSB is correct that filing and service are distinct from each other. Indeed, filing is the act of presenting the pleading or other paper to the clerk of court; whereas, service is the act of providing a party with a copy of the pleading or paper concerned.[14]

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[14] RULES OF COURT, Rule 13, Section 2, par. 2.

Nevertheless, although they pertain to different acts, filing and service go hand-in-hand and must be considered together when determining whether the pleading, motion, or any other paper was filed within the applicable reglementary period. Precisely, the Rules require every motion set for hearing to be accompanied by proof of service thereof to the other parties concerned; otherwise, the court shall not be allowed to act on it,[15] effectively making such motion as not filed.

The kind of proof of service required would depend on the mode of service used by the litigant. Rule 13, Section 13 of the Rules of Court provides:

> SECTION 13. *Proof of Service*. – Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. **If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule.** If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. [emphasis supplied]

In some decided cases, the Court considered filing by private courier as equivalent to filing by ordinary mail.[16] The Court opines that this pronouncement equally applies to service of pleadings and motions. Hence, to prove service by a private courier or ordinary mail, a party must attach an affidavit of the person who mailed the motion or pleading. Further, such affidavit must show compliance with Rule 13, Section 7 of the Rules of Court, which provides:

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[15] RULES OF COURT, Rule 15, Section 6.

[16] *Industrial Timber Corp. v. National Labor Relations Commission*, 303 Phil. 621, 626 (1994). *Philippine National Bank v. Commissioner of Internal Revenue*, 678 Phil. 660, 674 (2011).

> Section 7. *Service by mail*. — Service by registered mail shall be made by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. **If no registry service is available in the locality of either the senders or the addressee, service may be done by ordinary mail**. [emphasis supplied]

This requirement is logical as service by ordinary mail is allowed only in instances where no registry service exists either in the locality of the sender or the addressee.[17] This is the only credible justification why resort to service by ordinary mail or private courier may be allowed.

In this case, PSB admits that it served the copy of the motion for reconsideration to Papa's counsel via private courier. However, said motion was not accompanied by an affidavit of the person who sent it through the said private messengerial service. Moreover, PSB's explanation why it resorted to private courier failed to show its compliance with Rule 13, Section 7. PSB's explanation merely states:

> Greetings:
>
> Kindly set the instant motion on 20 November 2009 at 8:30 o'clock in the morning or soon thereafter as matter and counsel may be heard. Copy of this pleading was served upon defendant's counsel by private registered mail for lack of material time and personnel to effect personal delivery.[18]

Very clearly, PSB failed to comply with the requirements under Rule 13, Section 7 for an effective service by ordinary mail. While PSB explained that personal service was not effected due to lack of time and personnel constraints, it did not offer an acceptable reason why it resorted to "private registered mail" instead of by registered mail. In particular, PSB failed to indicate that no registry service was available in San Mateo, Rizal, where

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[17] *Philippine National Bank v. Commissioner of Internal Revenue*, 678 Phil. 660, 674 (2011).

[18] CA *rollo*, p. 57.

the office of Papa's counsel is situated, or in Makati City, where the office of PSB's counsel is located. Consequently, PSB failed to comply with the required proof of service by ordinary mail. Thus, the RTC is correct when it denied PSB's motion for reconsideration, which, for all intents and purposes, can be effectively considered as not filed.

Since PSB's motion for reconsideration is deemed as not filed, it did not toll the running of the 15-day reglementary period for the filing of an appeal; and considering that PSB's appeal was filed only after the expiration of the 15-day period on 10 November 2009, such appeal has not been validly perfected. As such, the subject 14 October 2009 decision of the RTC had already attained finality as early as 11 November 2009.

It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law.[19]

At this juncture, the Court stresses that the bare invocation of "the interest of substantial justice" or, in this case, "good or efficient case" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[20]

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[19] *Barrio Fiesta Restaurant v. Beronia*, G.R. No. 206690, 11 July 2016, 796 SCRA 257, 277.

[20] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000).

Time and again, the Court has reiterated that rules of procedure, especially those prescribing the time within which certain acts must be done, are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business.[21] While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[22]

Considering that the RTC decision had already attained finality, there is no longer need to discuss whether the RTC and the CA erred in ruling that PSB failed to prove its cause of action. A decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[23]

WHEREFORE, the present petition is **DISMISSED** for lack of merit. The 21 July 2011 Decision and the 1 February 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 112611 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

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[21] *Philippine National Bank v. Deang Marketing Corporation*, 593 Phil. 703, 715 (2008).

[22] *De Leon v. Hercules Agro Industrial Corporation*, 734 Phil. 652, 663 (2014).

[23] *Gadrinab v. Salamanca*, 736 Phil. 279, 292-293 (2014).

THIRD DIVISION

[G.R. No. 205440. January 15, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **YOLANDO B. PANERIO** *alias* **JOHN "YOLLY" LABOR and ALEX (JOJO) F. ORTEZA,** *accused*, **YOLANDO B. PANERIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES; THE ACCUSED HAS THE BURDEN TO PROVE THESE REQUISITES BY CLEAR AND CONVINCING EVIDENCE.— The plea of self-defense is as much a confession as it is an avoidance. By invoking self-defense, the accused admits having killed or having deliberately inflicted injuries on the victim, but asserts that he has not committed any felony and is not criminally liable therefor. Thus, the plea of self-defense can be described as a double-edged sword which can either bring favorable or unfavourable consequences to the accused. To bring about a result favorable to the accused in the form of exculpation from criminal liability, jurisprudence teaches that the accused must establish the essential requisites of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means used to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself. The accused has the burden to prove these requisites by clear and convincing evidence. In doing so, he must rely on the strength of his evidence and not on the weakness of that of the prosecution because it could no longer be denied that he admitted to be the author of the victim's death or injuries. After careful review of the records of the case, the Court is convinced of Panerio's failure to prove that he acted in self-defense when he and Orteza killed Elesio. Most important among the requisites of self-defense is unlawful aggression which is the condition *sine qua non* for upholding self-defense as justifying circumstance. Unless the victim commits unlawful aggression against the accused, self-defense,

whether complete or incomplete, cannot be appreciated, for the two other essential elements of self-defense would have no factual and legal bases without any unlawful aggression to prevent or repel.

2. **ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; DEFINED; THE CONCURRENCE OF TWO CONDITIONS MUST BE ESTABLISHED FOR TREACHERY TO BE APPRECIATED; ENUMERATED.—** Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in its execution, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. For treachery to be appreciated, the concurrence of two conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted. Moreover, in order to qualify the killing as murder, treachery must be proved by clear and convincing evidence or as conclusively as the killing itself. The presence of treachery cannot be presumed. x x x In this regard, it has been held that even where all indicia tend to support the conclusion that the attack was sudden and unexpected, yet no precise data on this point exists, treachery cannot be taken into account. Thus, when the witness did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. Mere probabilities cannot substitute for proof required to establish each element necessary to convict.

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 24 February 2011 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00707-MIN, which affirmed with modification the 4 February 2009 Decision[2] of the Regional Trial Court of Davao City, Branch 12, in Criminal Case No. 22,247-91, finding accused-appellant Yolando B. Panerio alias John "Yolly"[3] *(Panerio)* and accused Alex *(Jojo)* F. Orteza *(Orteza)* guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code *(RPC)*.

THE FACTS

On 23 February 1991, Panerio and Orteza were charged with the crime of murder committed upon the person of one Elesio[4] Ung *(Elesio)* in an Information[5] which reads:

> That on or about February 18, 1991, in the City of Davao, Philippines, the said accused, conspiring, confederating and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of ELESIO UNG by then and there stabbing him on the different parts of his body with the use of a fan-knife *(balisong)* and ice pick, thereby inflicting upon the said Elesio Ung mortal wounds which were the direct and immediate cause of his death thereafter.
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> Contrary to law.[6]

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[1] *Rollo*, pp. 4-13; penned by Associate Justice Edgardo A. Camello, and concurred in by Associate Justice Leoncia R. Dimagiba, and Associate Justice Nina G. Antonio-Valenzuela.

[2] Records, pp. 179-195; penned by Judge Pelagio S. Paguican.

[3] Also referred to as "alias Yoli" in some parts of the records.

[4] Also referred to as "Eliseo" in some parts of the records.

[5] Records, p. 1.

[6] *Id*.

On 29 April 1991, Panerio and Orteza, with the assistance of counsel, were arraigned and pleaded not guilty to the charge.[7] Trial on the merits thereafter ensued.

Evidence for the Prosecution

The prosecution presented six (6) witnesses, namely: Virgilio Olivar (Olivar), Exipher C. Rebosura *(Rebosura)*, Police Officer Gualberto Callos *(PO Callos)*, Police Officer Wenifredo Dutano *(PO Dutano)*, Patrolman George Alojado *(Alojado)*, and Antonio Ung. Their combined testimonies tended to establish the following:

On 18 February 1991, at around 10:00 o'clock in the evening, at the billiard hall of a certain Piatos in Mintal, Davao City, Panerio and Orteza, both drunk, scattered the billiard balls causing disruption of the billiard games going on there; thus, the games stopped. Thereafter, Panerio and Orteza left the billiard hall,[8] and saw Elesio on the road. While under the influence of alcohol, Panerio and Orteza repeatedly stabbed Elesio. Panerio, using a fan knife or *balisong*, was in front of the victim; while Orteza, using an ice pick, was at the victim's back.[9]

After stabbing Elesio, the two assailants ran towards the nearby elementary school. Witness Olivar brought Elesio to the hospital but he expired the following day.[10]

Meanwhile, at about 11:00 o'clock of the same evening, Rebosura who was then on guard duty at the Mintal public market located in front of the billiard hall, was approached by Panerio and Orteza. The accused told Rebosura that somebody, whom they did not know, was stabbed and killed. Rebosura then was advised by his superior to report the matter and refer Panerio and Orteza to the police.[11] Thus, Rebosura, together

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[7] *Id*. at 22.

[8] TSN, dated 25 February 1992, pp. 3-4.

[9] *Id*. at 4.

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

[11] TSN, dated 12 March 1992, p. 5.

with Panerio and Orteza, went to the Tugbok police station in Davao City, where they met with Alojado, a police officer Dodong Molve, and Andoy Bintad *(Bintad)*, a member of the Citizens Armed Forces Geographical Unit. Thereafter, the police officers and Bintad accompanied Rebosura and the two accused to the place where the stabbing incident occurred.[12]

On their way to the crime scene, Alojado noticed bloodstains on the hands of Panerio and Orteza. When asked about it by Alojado, the two replied that they helped the victim and tried to bring him to a hospital.[13] At this juncture, Alojado frisked the two accused and recovered a fan knife from Panerio and an ice pick from Orteza.[14] After marking the fan knife and ice pick, Alojado turned these over to PO Dutano, the desk officer of the Tugbok police station.[15] PO Dutano, in turn, endorsed the confiscated items to PO Callos, the Exhibit Custodian of the Tugbok police station. PO Callos identified the fan knife and ice pick in open court.[16]

The post-mortem findings[17] revealed that Elesio sustained a total of eleven (11) stab and puncture wounds. The cause of death was hemorrhage secondary to multiple stab wounds.

Evidence for the Defense

On 23 November 1992, Panerio and Orteza escaped from their guards while on their way back to detention prison from a court trial.[18] Thus, on 24 November 1992, the trial court ordered that the case be archived pending the arrest of the accused.[19]

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[12] *Id*. at 6.

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

[14] TSN, dated 8 September 1992, p. 10.

[15] TSN, dated 21 July 1992, p. 3.

[16] TSN, dated 20 July 1992, pp. 2-3.

[17] Records, p. 131, Exhibit "A".

[18] *Id*. at 139, Letter, dated 24 November 1992.

[19] *Id*. at 140.

On 14 April 2008, Panerio was re-arrested and re-committed to the Davao City Jail, while Orteza remained at large.[20] Trial resumed thereafter.

The defense presented Panerio as its sole witness. In his testimony, Panerio offered the exculpatory circumstance of self-defense and narrated his version of the incident, as follows:

On the night of 18 February 1991, Panerio, together with Orteza, went out to buy food. They walked by the store of Piatos where they saw two persons, including Elesio, drinking. Elesio and his companion called them and offered them drinks but they refused.[21] Feeling disrespected, Elesio got mad and boxed Panerio.[22] When Panerio fell to the ground, Elesio rushed towards him and attempted to stab him with a knife twice, but missed. Elesio tried to stab Panerio for a third time, but the latter was able to hit the former's hand causing the knife to fall.[23] Panerio picked up the knife off the ground and stabbed Elesio with it three times.[24] After stabbing Elesio, Panerio, prompted by his guilt, immediately surrendered to Rebosura, the guard on duty at the nearby Mintal public market. Rebosura brought Panerio to the police station where he was detained.[25]

Regarding his escape, Panerio claimed that such was not his intention. He averred that it was Orteza's idea; he was merely dragged by him as they were handcuffed together.[26]

The RTC Ruling

In its decision, dated 4 February 2009, the RTC found Panerio and Orteza guilty beyond reasonable doubt of the crime of murder. The trial court deemed Orteza had waived his right to present evidence because he escaped detention.

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[20] *Id*. at 143-145.

[21] TSN, dated 8 December 2008, pp. 4-5.

[22] *Id*. at 6.

[23] *Id*. at 7.

[24] *Id*. at 8 and 10.

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

[26] *Id*. at 10.

The trial court found Panerio's uncorroborated testimony unconvincing and insufficient to show that he had acted in self-defense. With respect to Orteza, the trial court opined that the prosecution witnesses were able to positively identify him as one of the assailants. It also considered Panerio and Orteza's escaped from detention as indicative of their guilt. The trial court likewise ruled that Panerio and Orteza conspired in killing Elesio. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, JUDGMENT is hereby rendered finding Accused YOLANDO B. PANERIO alias JOHN "Yolly" LABOR and ALEX (Jojo) F. ORTEZA guilty of the crime of Murder defined and penalized under Art. 248 of the Revised Penal Code and hereby sentences the said Accused to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of [Elesio] Ung jointly and severally the sum of Fifty Thousand (₱50,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos, as moral damages.
>
> Considering that Accused ALEX (Jojo) F. ORTEZA is at large, let the promulgation of the Judgment of this case be made by recording the Judgment in the criminal docket and furnishing him a copy of the Judgment at his last known address pursuant to Rule 120, Sec. 6 of the Revised Rules of Criminal Procedure.
>
> SO ORDERED.[27]

Aggrieved, Panerio appealed before the CA.[28]

The CA Ruling

In its appealed decision, dated 24 February 2011, the CA affirmed with modification the 4 February 2009 RTC decision. The appellate court concurred with the trial court that Panerio failed to sufficiently show that he acted in self-defense. It noted that the sheer number, nature, and location of the stab wounds sustained by the victim is telling of the determined effort of Panerio and Orteza to kill Elesio. Thus, it opined that Panerio's account of the incident does not inspire belief. The appellate court likewise appreciated the attendance of the qualifying

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[27] Records, pp. 194-195.

[28] *Id*. at 198.

circumstance of treachery. It noted that the two accused repeatedly stabbed the victim until he died.

With respect to the civil aspect of the case, the appellate court deemed it proper to further award temperate damages in the amount of ₱30,000.00, and exemplary damages in the amount of ₱25,000.00, considering that the qualifying circumstance of treachery attended the commission of the felony.

The *fallo* of the appealed decision provides:

> FOR THESE REASONS, the appealed judgment convicting the accused-appellant YOLANDO B. PANERIO alias JOHN "Yolly" LABOR and co-accused ALEX (Jojo) F. ORTEZA of Murder is AFFIRMED with the MODIFICATION that they are jointly and severally ORDERED to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱30,000.00 as temperate damages. *Costs de officio.*
>
> SO ORDERED.[29]

Hence, this appeal.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED WHEN THEY FAILED TO APPRECIATE THE JUSTIFYING CRICUMSTANCE OF SELF-DEFENSE IN FAVOR OF THE ACCUSED-APPELLANT.

OUR RULING

The appeal lacks merit.

Self-defense not established

The plea of self-defense is as much a confession as it is an avoidance. By invoking self-defense, the accused admits having killed or having deliberately inflicted injuries on the victim, but asserts that he has not committed any felony and is not

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[29] *Rollo*, p. 13.

criminally liable therefor.[30] Thus, the plea of self-defense can be described as a double-edged sword which can either bring favorable or unfavourable consequences to the accused.

To bring about a result favorable to the accused in the form of exculpation from criminal liability, jurisprudence teaches that the accused must establish the essential requisites of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means used to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself.[31] The accused has the burden to prove these requisites by clear and convincing evidence. In doing so, he must rely on the strength of his evidence and not on the weakness of that of the prosecution because it could no longer be denied that he admitted to be the author of the victim's death or injuries.[32]

After careful review of the records of the case, the Court is convinced of Panerio's failure to prove that he acted in self-defense when he and Orteza killed Elesio.

Most important among the requisites of self-defense is unlawful aggression which is the condition *sine qua non* for upholding self-defense as justifying circumstance. Unless the victim commits unlawful aggression against the accused, self-defense, whether complete or incomplete, cannot be appreciated, for the two other essential elements of self-defense would have no factual and legal bases without any unlawful aggression to prevent or repel.[33]

As aptly stated by the trial court, Panerio's uncorroborated testimony regarding the incident is unclear and unconvincing. His assertion that Elesio, then drunk, boxed him and attempted to stab him is unsubstantiated by any convincing proof. Moreover,

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[30] *Garcia v. People*, 469 Phil. 179, 188 (2004).

[31] *People v. Ramelo*, G.R. No. 224888, 22 November 2017.

[32] *People v. Delima and Areo*, 452 Phil. 36, 44 (2003).

[33] *People v. Dulin*, 762 Phil. 24, 36 (2015).

Panerio's account on how many times he stabbed the victim is miserably inconsistent with the post-mortem findings on the deceased.

On the other hand, eyewitness testimony shows that Panerio and Orteza were the ones who were drunk. Olivar's account that Panerio and Orteza, as if looking for trouble, disrupted the billiard games while under the influence of alcohol, and his positive testimony that the two accused stabbed Elesio numerous times, are worthy of full credence. Not only is his version of the incident consistent with the corroborating testimonies of the other prosecution witnesses, Olivar's testimony is confirmed by the post-mortem findings on the deceased.

In sum, Panerio's self-serving testimony that Elesio mounted an unlawful aggression must fail when weighed against the positive, straightforward, and overwhelming evidence of the prosecution.

Even on the assumption that Elesio was the unlawful aggressor, self-defense cannot be appreciated on account of the evident lack of reasonable means employed necessary to repel it. To recall, the post-mortem findings reveal that Elesio sustained eleven (11) stab and puncture wounds, to wit:

> On autopsy, pertinent findings are:
>
> (1) Stab wound — 1.2 cm. by 0.5 cm., single-edge[d] sharp slanting across and near the right anterior axillary line, directed medially **puncturing the right lung**;
>
> (2) Stab wound — 3 cm. by 1 cm., single-edge[d] sharp slanting across the right chest, just above the nipple, directed posteriorly, slightly upwards and **medially hitting the middle lobe of the right lung**;
>
> (3) Stab wound — 2 cm. by 1 cm., single-edge[d] sharp, slanting across the epigastrium, slightly right to the mid line directed posteriorly **puncturing the liver**;
>
> (4) Incised wound — 0.5 cm. by 0.3 cm., across proximal base of the right thenar prominence;

(5) Incised wound 1 cm. by 0.5 cm., across the proximal portion of the right palm;

(6) Stab wound — 3 cm. by 1 cm., single-edge[d] sharp, slanting across the left mid clavicular line on the level of the 3rd ICS directed posteriorly **puncturing the heart**;

(7) Stab wound —1 cm. by 0.5 cm., single-edge[d] sharp, across the left anterior axillary line on the level of the 4th ICS directed medially and posterior **puncturing the left lung**;

(8) Stab wound — 2 cm. by 1 cm., single-edge[d] sharp, across the upper mid portion of the epigastrium, directed posteriorly **hitting the liver**;

(9) Stab wound — 3 cm. by 1 cm., single-edge[d] sharp, along the mid line, just above the navel, directed posteriorly **hitting some loops of intestine**;

(10) Punctured wound shallow — 0.5 cm. by 0.2 cm., at the upper medial quadrant of the right gluteal region;

(11) Punctured wound shallow — 0.5 cm. by 0.3 cm., at the mid portion of the right gluteal region.

Cause of death: Hemorrhage secondary to multiple stab wounds.[34] (emphases supplied)

Of the eleven (11) stab and puncture wounds, at least seven (7) are deemed fatal having been inflicted over vital organs such as the heart, the lungs, the liver, and the intestines. The large number of wounds sustained by the victim negates any claim of self-defense. Rather than imply an effort for self-defense, the presence of multiple stab wounds on the victim strongly indicates a determined effort to kill the victim.[35] Considering the quantity, nature, and location of the wounds sustained by Elesio, the Court finds Panerio's plea of self-defense incredible.

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[34] Records, p. 131.

[35] *People v. More*, 378 Phil. 1153, 1161 (1999).

The crime committed is homicide; treachery was not established.

Although the guilt of Panerio and Orteza for the death of Elesio is unquestioned, the Court is of the considered view that the accused may only be convicted of homicide, not murder. The prosecution failed to prove that the crime was committed with treachery or with any other qualifying circumstance.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in its execution, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[36] For treachery to be appreciated, the concurrence of two conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted.[37] Moreover, in order to qualify the killing as murder, treachery must be proved by clear and convincing evidence or as conclusively as the killing itself.[38] The presence of treachery cannot be presumed.[39]

In this case, only Olivar personally witnessed the stabbing incident which he narrated in this wise:

PROS. ALBARRACIN:

Q. What, if anything, transpired while you were playing billiards?

A. [Yo]Lando and Alex arrived and they scattered the balls causing disruption of our games, Sir.

Q. Why did they scatter the balls and interrupt the games?

A. They were drunk, Sir.

Q. What else transpired?

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[36] *People v. De Leon*, 428 Phil. 556, 581 (2002).

[37] *People v. De Gracia*, 765 Phil. 386, 396 (2015).

[38] *People v. Lopez,* 371 Phil. 852, 864 (1999).

[39] *People v. Calinawan*, G.R. No. 226145, 13 February 2017.

A. The games were stopped. They left and I proceeded home, Sir.

Q. What happened next?

A. **When I was on my way home, I saw the accused Yolando Panerio and Alex Orteza stabbing Elesio Ung.**[40] (emphasis supplied)

The testimony of Olivar clears the fact that he only witnessed the incident when Elesio was already being stabbed by Panerio and Orteza. He did not witness how the incident started and he had no idea what moved the two accused to stab Elesio to death. All that could be gleaned from Olivar's account was that Panerio and Orteza were both under the influence of alcohol; and that they stabbed Elesio, presumably when they met him on the road.

In this regard, it has been held that even where all indicia tend to support the conclusion that the attack was sudden and unexpected, yet no precise data on this point exists, treachery cannot be taken into account.[41] Thus, when the witness did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. Mere probabilities cannot substitute for proof required to establish each element necessary to convict.[42]

From the foregoing, the Court finds without any basis the trial and appellate courts' conclusion that treachery attended the commission of the crime. In fact, the trial court merely concluded that the crime committed was murder without a single mention of any aggravating circumstance that supposedly qualified the crime. Similarly, the appellate court simply

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[40] TSN, dated 25 February 1992, pp. 3-4.

[41] *People v. Silva*, 378 Phil. 1267, 1276 (1999).

[42] *People v. Santiago*, 396 Phil. 200, 207 (2000).

concurred with the trial court and ruled that the attack was treacherous because it was sudden and unexpected, without citing any evidence showing that the attack was indeed done so.

Penalties and monetary awards

In the absence of any qualifying aggravating circumstance, the crime committed by Panerio and Orteza is Homicide, the penalty for which is *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(1) of the RPC. Applying the Indeterminate Sentence Law, Panerio and Orteza 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 upon each of the two accused the indeterminate penalty ranging from twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal,* as maximum.

In *People v. Jugueta*,[43] the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that for the crime of homicide, the following amounts may be awarded: (1) ₱50,000.00, as civil indemnity; and (2) ₱50,000.00, as moral damages. Further, the Court deems it proper to delete the awards of exemplary and temperate damages considering that no aggravating circumstance attended the felony. Although exemplary damages, being corrective in nature, may be awarded even if in the absence of aggravating circumstance,[44] the Court sees no reason for such award in this case.

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[43] G.R. No. 202124, 05 April 2016, 788 SCRA 331.

[44] *People v. Ronquillo*, G.R. No. 214762, 20 September 2017.

WHEREFORE, accused-appellant Yolanda B. Panerio and accused Alex F. Orteza are found **GUILTY** beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code. They are each sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

Accused-appellant Yolanda B. Panerio and accused Alex F. Orteza are further ordered to pay jointly and severally the heirs of the deceased Elesio Ung the following amounts: (1) ₱50,000.00, as civil indemnity; and (2) ₱50,000.00, as moral 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), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

EN BANC

[A.M. No. MTJ-18-1908. January 16, 2018]
(Formerly OCA IPI No. 14-2674-MTJ)

BERNARDITA F. ANTIPORDA, *complainant, vs.* **FRANCISCO A. ANTE, JR.**, **Presiding Judge, Municipal Trial Court in Cities, Vigan City, Ilocos Sur,** *respondent.*

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[45] *People v. Combate*, 653 Phil. 487, 518 (2010).

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF JUDGES; A JUDGE SHOULD ALWAYS CONDUCT HIMSELF IN A MANNER THAT WOULD PRESERVE THE DIGNITY, INDEPENDENCE AND RESPECT FOR HIMSELF, THE COURT, AND THE JUDICIARY AS A WHOLE; VIOLATION IN CASE AT BAR.—** Canon 2 of the New Code of Judicial Conduct states that "[i]ntegrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges." x x x A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself/herself, the Court, and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of *gravitas*. Judges are required to always be temperate, patient, and courteous, both in conduct and in language. In this case, the OCA, affirming the findings of Judge Balloguing, found that respondent's behavior towards complainant amounted to a conduct that the Court cannot countenance. Apart from being a display of arrogance, respondent's demeanor and actuations, which resulted in physical injuries to complainant, are in direct contravention of the virtues of patience, sobriety, and self-restraint so espoused by the Court and highly expected of a member of the judiciary. Regardless of the reason for the incident, respondent, being a magistrate, should have observed judicial temperament which requires him to be always temperate, patient, and courteous, both in conduct and in language.

2. **ID.; ID.; WHEN GUILTY OF GRAVE MISCONDUCT; IMPOSABLE PENALTY.—** Respondent's acts, therefore, constitute grave misconduct, which the Court defines as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or a disregard of established rules, which must be proven by substantial evidence, as in this case. x x x Grave or gross misconduct is classified as a serious charge under Section 8 (3) of Rule 140 of the Rules of Court: x x x Since respondent

has, however, retired on November 7, 2017 and hence, could not anymore be dismissed from service, the Court, instead, finds it proper to order the forfeiture of all of his retirement benefits (except accrued leave credits), and further, disqualify him from reinstatement or appointment to any public office, including government-owned or controlled corporations.

D E C I S I O N

***PER CURIAM*:**

This administrative case arose from a verified complaint[1] for grave misconduct filed by complainant Bernardita F. Antiporda (complainant) against respondent Judge Francisco A. Ante, Jr. (respondent), Presiding Judge of the Municipal Trial Court in Cities (MTCC) in Vigan, Ilocos Sur.

The Facts

Complainant alleged that between 7:30 and 8:00 in the morning of March 2, 2014, she was in the backyard of a house located at Rizal St., Barangay III, Vigan City, Ilocos Sur, when respondent, who was in the adjacent lot attending to his fighting cocks, suddenly confronted her by saying, *"Apay nga agkuskusilap ka?* (Why are you glaring/pouting at me?)" Then, he approached her, slapped her face several times, and whipped her with a dog chain. He also pointed a .45 caliber pistol at complainant, as well as her boarders and workers Clarinda Ridao (Ridao), Rosario Rabe (Rabe), and Pedro Alquiza (Alquiza), who witnessed the incident.[2]

Although complainant admitted having glared at respondent at the time, she explained that it was because she discovered that respondent had maliciously reported to the Office of the City Engineer of Vigan that her house was being renovated without the necessary building permit inspite of the fact that she secured one. She alleged that it was actually respondent

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[1] Dated March 31, 2014. *Rollo*, pp. 1-4.

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

who had building code violations, as the drainage pipes in his house were left exposed outside the firewall abutting her property.[3]

To bolster her allegations, complainant offered in evidence: (1) her Sworn Statement dated March 3, 2014;[4] (2) Police Blotter Report dated March 3, 2014;[5] (3) Medical Report dated March 3, 2014;[6] (4) pictures of her body showing the hematoma caused by respondent;[7] (5) pictures of the exposed drainage pipes from respondent's house;[8] and (6) Sworn Statements of witnesses Alquiza, Rabe, and Ridao.[9]

In defense,[10] respondent claimed that it was complainant who attempted to kill him by ordering Alquiza and two (2) others to attack him with *bolos*. He denied that he slapped and whipped her with a dog chain, averring instead that it was *she* who struck him with a steel chain. He also maintained that complainant harbored a grudge against him for having reported her illegal house renovation to the Engineering Department of the City Hall of Vigan. Although complainant indeed secured a building permit therefor, she did so only after the renovation was completed.[11]

In support of his defense, respondent submitted the affidavit[12] of Misael Frando (Frando), a first degree cousin of complainant,

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[3] See *id*. at 2.

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

[5] *Id*. at 7.

[6] *Id*. at 8.

[7] *Id*. at 9.

[8] *Id*. at 10.

[9] *Id*. at 11-16.

[10] See Comment to the Complaint of Bernardita Antiporda dated May 16, 2014; *id*. at 19-20.

[11] See *id*. at 19.

[12] Dated March 2, 2014. *Id*. at 26-27.

who witnessed the incident and narrated that it was complainant who held the dog chain and that she snapped it, striking respondent on the head.[13] When respondent got hold of the chain, complainant hurriedly went inside her house and directed three (3) men with knives to kill respondent. Upon seeing respondent's gun, however, they retreated.[14] Moreover, respondent dismissed the affidavits of Rabe and Ridao, who he asserted were not physically present at the time of the incident, as well as that of Alquiza, who was complainant's laborer.[15] In fact, he had already filed a criminal complaint[16] for attempted homicide against complainant and Alquiza as a result of the incident.[17]

In a letter[18] dated November 11, 2014, complainant sought the dismissal of the administrative complaint against respondent, explaining that respondent had not intentionally caused her harm, and that whatever injury she sustained as a result of the incident was accidental. As such, she prayed that the charge against respondent be dropped in order "to restore the good relationship existing" between them.

However, in a Memorandum[19] dated May 4, 2015, the Office of the Court Administrator (OCA) denied complainant's request, as the mere desistance or recantation of a complainant in an administrative complaint against any member of the bench does not necessarily result in the dismissal thereof.[20] Instead, the OCA referred the matter to Executive Judge Marita Bernales Balloguing (Judge Balloguing) of the Regional Trial Court of

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[13] See *id*. at 21.

[14] See *id*. at 21-22.

[15] *Id*. at 20.

[16] See Affidavit/Complaint dated March 2, 2014; *id*. at 21-22.

[17] Docketed as NPS Docket No. I-14-INV-14C-00028. See Investigation Data Form dated March 7, 2014; *id*. at 28.

[18] *Id*. at 32.

[19] *Id*. at 33-36. Submitted by Deputy Court Administrator Raul Bautista Villanueva and OCA Legal Office Chief Wilhelmina D. Geronga.

[20] *Id*. at 35.

Vigan City, Ilocos Sur, for investigation, report, and recommendation.[21]

In her Report[22] dated March 30, 2016, Judge Balloguing found that complainant had indeed sustained physical injuries inflicted by respondent. However, she believed that it was complainant who held the steel chain, which she used to defend herself when respondent approached her. Judge Balloguing also found that respondent had a grudge against complainant because he reported the illegal renovation of her house to the authorities, opining that he could have instead advised her to secure the necessary building permit. She posited that this could have triggered complainant's anger towards respondent, prompting her to glare at him at the time and date of the incident. On that note, Judge Balloguing further opined that respondent could have exercised maximum tolerance towards complainant, and rejected his explanation that he approached complainant simply to shake her hand, pointing out that he did so in order to confront her for glaring at him.[23]

In a Supplemental Report[24] dated November 15, 2016, Judge Balloguing recommended that respondent be found guilty of acts unbecoming of a judge and be sanctioned with either a fine or suspension.[25]

The OCA's Report and Recommendation

In a Memorandum[26] dated July 17, 2017, the OCA, while concurring with Judge Balloguing's conclusions of fact, disagreed with respect to the recommended penalty.

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[21] *Id*. at 36.

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

[23] See *id*. at 68-69.

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

[25] See *id*. at 40.

[26] *Id*. at 92-99. Submitted by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva.

Citing Judge Balloguing's findings, the OCA found that respondent's behavior during the incident left much to be desired, having failed to exercise more tolerance and self-restraint in dealing with complainant. Had he done so, he could have prevented the incident from further escalating. As such, respondent's infliction of physical injuries on complainant amounts to grave misconduct, which contravenes the Code of Judicial Conduct.[27]

Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[28] grave misconduct is a grave offense punishable by dismissal from service even on the first offense. However, respondent had been previously found administratively guilty of grave misconduct, acts unbecoming of a judge, oppression, and abuse of authority in A.M. No. MTJ-02-1411 (formerly OCA IPI No. 96-208-MTJ) entitled *"Jocelyn Briones v. Judge Francisco A. Ante, Jr."* dated April 11, 2002 and was suspended for three (3) months, with a warning that a repetition of the same shall be dealt with more severely.[29]

In view thereof, the OCA initially observed that respondent should be dismissed from service with forfeiture of all benefits, except accrued leave credits, if any, and with prejudice to reemployment in the government or any subdivision, agency or instrumentality thereof, including government-owned and controlled corporations and government financial institutions.[30] However, in light of respondent's retirement on November 7, 2017 and finding the extreme penalty of dismissal much too harsh, considering his twelve (12) years in the judiciary, the OCA instead recommended that a fine of ₱100,000.00 be imposed, to be deducted from his retirement benefits should the Court resolve this administrative matter after his retirement.[31]

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[27] See *id*. at 98.

[28] Promulgated on November 8, 2011, through CSC Resolution No. 1101502.

[29] See 430 Phil. 204, 210 (2002).

[30] *Rollo*, p. 98.

[31] See *id*. at 98-99.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not respondent should be held administratively liable.

The Court's Ruling

Canon 2 of the New Code of Judicial Conduct[32] states that "[i]ntegrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges." Thus, Sections 1 and 2 thereof provide:

> Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.
>
> Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Further, Sections 1 and 2 of Canon 4 thereof states:

> CANON 4
> *Propriety*
>
> Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.
>
> Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.
>
> Section 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself/herself, the Court, and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-

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[32] A.M. No. 03-05-01-SC, entitled "ADOPTING THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY" (April 27, 2004).

restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of *gravitas*.[33] Judges are required to always be temperate, patient, and courteous, both in conduct and in language.[34]

In this case, the OCA, affirming the findings of Judge Balloguing, found that respondent's behavior towards complainant amounted to a conduct that the Court cannot countenance. Apart from being a display of arrogance, respondent's demeanor and actuations, which resulted in physical injuries to complainant, are in direct contravention of the virtues of patience, sobriety, and self-restraint so espoused by the Court and highly expected of a member of the judiciary. Regardless of the reason for the incident, respondent, being a magistrate, should have observed judicial temperament which requires him to be always temperate, patient, and courteous, both in conduct and in language.[35]

Respondent's acts, therefore, constitute grave misconduct, which the Court defines as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[36] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or a disregard of established rules, which must be proven by substantial evidence,[37] as in this case.

As aptly pointed out by the OCA, this is not the first administrative complaint charging respondent with grave misconduct. In "*Jocelyn Briones v. Judge Francisco A. Ante, Jr.*,"[38] the Court suspended respondent for three (3) months on

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[33] *Lorenzana v. Austria*, 731 Phil. 82, 101-102 (2014).

[34] *Id.* at 102, citing *Guanzon v. Rufon*, 562 Phil. 633, 638 (2007).

[35] See *Marcelo v. Barcillano*, A.M. No. RTJ-16-2450, June 7, 2017.

[36] *Rubin v. Corpus-Cabochan*, 715 Phil. 318, 330 (2013).

[37] *Id.*, citing *OCA v. Lopez*, 654 Phil. 602, 608 (2011).

[38] See *supra* note 29.

the charges of grave misconduct, acts unbecoming of a judge, and abuse of authority for having hit complainant therein with a monobloc chair and shouted invectives at her.[39] Thereat, respondent had already displayed "a predisposition to use physical violence and intemperate language which reveals a marked lack of judicial temperament and self-restraint – traits which, aside from the basic equipment of learning in the law – are indispensable qualities of every judge."[40] Sadly, it seems that respondent has not learned to mend his ways and hence, should be dealt with the full force of the law.

Grave or gross misconduct is classified as a serious charge under Section 8 (3) of Rule 140 of the Rules of Court:

> Section 8. *Serious charges.* – Serious charges include:
>
> x x x x x x x x x
>
> 3. Gross misconduct constituting violations of the Code of Judicial Conduct[.]

Section 11 of the same Rule states that:

> Section 11. *Sanctions*. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> **1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, That the forfeiture of benefits shall in no case include accrued leave credits**;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. (Emphasis and underscoring supplied)

Since respondent has, however, retired on November 7, 2017 and hence, could not anymore be dismissed from service, the

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[39] See *id*. at 207.

[40] *Id*. at 209.

Court, instead, finds it proper to order the forfeiture of all of his retirement benefits (except accrued leave credits), and further, disqualify him from reinstatement or appointment to any public office, including government-owned or controlled corporations.

WHEREFORE, respondent Judge Francisco A. Ante, Jr. is found **GUILTY** of Grave Misconduct. Accordingly, considering respondent's retirement on November 7, 2017, his retirement benefits are hereby **FORFEITED**, except accrued leave credits. He is further **DISQUALIFIED** from reinstatement or appointment to any public office, including government-owned or controlled corporations.

SO ORDERED.

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

Peralta, J., on leave.

EN BANC

[A.M. No. RTJ-11-2301. January 16, 2018]
(Formerly A.M. No. 11-3-55-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE PERLA V. CABRERA-FALLER, OFFICER-IN-CHARGE OPHELIA G. SULUEN and PROCESS SERVER RIZALINO RINALDI B. PONTEJOS, all of the RTC, Branch 90, Dasmariñas, Cavite,** *respondents.*

[A.M. No. RTJ-11-2302. January 16, 2018]
(Formerly A.M. No. 11-7-125-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **PRESIDING JUDGE FERNANDO L. FELICEN, CLERK OF COURT V ATTY. ALLAN SLY M. MARASIGAN, SHERIFF IV ANSELMO P. PAGUNSAN, JR., COURT STENOGRAPHERS ROSALIE MARANAN and TERESITA P. REYES, COURT INTERPRETER IMELDA M. JUNTILLA, and PROCESS SERVER HIPOLITO O. FERRER, all of the RTC, Branch 20, Imus, Cavite; PRESIDING JUDGE NORBERTO J. QUISUMBING, JR., CLERK OF COURT ATTY. MARIA CRISTITA A. RIVAS-SANTOS, LEGAL RESEARCHER MANUELA O. OSORIO, SHERIFF IV FILMAR M. DE VILLA, COURT STENOGRAPHERS MARILOU CAJIGAL, WENDILYN T. ALMEDA and HELEN B. CARALUT, COURT INTERPRETER ELENITA T. DE VILLA, and PROCESS SERVER ELMER S. AZCUETA, all of the RTC, Branch 21, Imus, Cavite; PRESIDING JUDGE CESAR A. MANGROBANG, CLERK OF COURT VI ATTY. REGALADO E. EUSEBIO, CLERK OF COURT V ATTY. SETER M. DELA CRUZ-CORDEZ, LEGAL RESEARCHER DEVINA A. REYES BERMUDEZ, COURT STENOGRAPHERS PRISCILLA P. HERNANDEZ, NORMITA Z. FABIA, MERLY O. PARCERO, and JOYCE ANN F. SINGIAN, COURT INTERPRETER MICHELLE A. ALARCON, and PROCESS SERVER ELMER S. AZCUETA, all of the RTC, Branch 22, Imus, Cavite; EXECUTIVE JUDGE PERLA V. CABRERA-FALLER, CLERK OF COURT ZENAIDA C. NOGUERA, SHERIFF IV TOMAS C. AZURIN, OIC LEGAL RESEARCHER OPHELIA G. SULUEN, COURT STENOGRAPHERS JESUSA B. SAN JOSE, ROSALINA A. COSTUNA, and MARIA LOURDES M. SAPINOSO, COURT INTERPRETER MERLINA S. FERMA, and PROCESS SERVER**

RIZALINO RINALDI B. PONTEJOS, all of the RTC, Branch 90, Dasmariñas, Cavite, *respondents.*

[A.M. No. 12-9-188-RTC. January 16, 2018]

RE: ANONYMOUS LETTER-COMPLAINT AGAINST JUDGE PERLA V. CABRERA-FALLER, Branch 90, Regional Trial Court, Dasmariñas City, Cavite, relative to Civil Case No. 1998-08

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; AS PUBLIC OFFICIALS, THEY ARE EXHORTED TO DISCHARGE THEIR DUTIES WITH UTMOST RESPONSIBILITY, INTEGRITY, COMPETENCE AND LOYALTY, UPHOLDING PUBLIC INTEREST OVER PERSONAL INTEREST.— Court personnel are, first and foremost, public officials. They are held to a high standard of ethics in public service and exhorted to discharge their duties with utmost responsibility, integrity, competence, and loyalty, as well as to uphold public interest over personal interest. As professionals, they are expected to perform their duties with the highest degree of excellence, intelligence and skill. The presence or absence of objections cannot be the measure by which our public officials should perform their sacred duties. First and foremost, they should be guided by their conscience; and, in the case of those employed in the judiciary, by a sense of responsibility for ensuring not only that the job is done, but that it is done with a view to the proper and efficient administration of justice.

2. REMEDIAL LAW; RULES OF COURT; A.M. NO. 02-11-10-SC (RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES); RULE ON VENUE OF PETITIONS.— A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages), which took effect on 15 March 2003,

provides that petitions shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing. In the case of nonresident respondents, it shall be filed where they may be found in the Philippines, at the election of the petitioner.

3. ID.; ID.; SUMMONS; RESORT TO SUBSTITUTED SERVICE OF SUMMONS REQUIRES STRICT COMPLIANCE WITH THE PRESCRIBED REQUIREMENTS; CASE AT BAR.— The return for a substituted service should state, with more particularity and detail, the facts and circumstances such as the number of attempts at personal service, dates and times of the attempts, inquiries made to locate the respondent, names of occupants of the alleged residence, and reasons for failure in order to satisfactorily show the efforts undertaken. The exertion of efforts to personally serve the summons on respondent, and the failure of those efforts, would prove the impossibility of prompt personal service. *Manotoc* also emphasized that while substituted service of summons is permitted, it is extraordinary in character and a departure from the usual method of service. As such, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. In these cases, it was clear that no faithful and strict compliance with the requirements for substituted service of summons was observed by Sheriffs De Villa and Pagunsan and Process Servers Ferrer, Azcueta, and Pontejos.

4. ID.; ID.; ID.; TWOFOLD PURPOSE; TO ACQUIRE JURISDICTION OVER THE PERSON OF RESPONDENTS AND TO NOTIFY THEM THAT AN ACTION HAS BEEN COMMENCED SO THAT MAY BE GIVEN OPPORTUNITY TO BE HEARD.— The purpose of a summons is twofold: to acquire jurisdiction over the person of respondents and to notify them that an action has been commenced, so that they may be given an opportunity to be heard on the claim being made against them. The importance of the service and receipt of summons is precisely the reason why the Court has laid down very strict requirements for undertaking substituted service of summons. As we said in *Manotoc*, to allow sheriffs and process servers to describe the facts and circumstances of substituted service

in inexact terms would encourage routine performance of their precise duties. It would be quite easy for them to shroud or conceal carelessness or laxity in such broad terms.

5. **ID.; ID.; A.M. NO. 02-11-20-SC (RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES); COLLUSION REPORT BY THE PUBLIC PROSECUTOR IS MANDATORY IF THERE IS NO ANSWER FILED BY RESPONDENT. —** Under Section 8(1) of A.M. No. 02-11-10-SC, the respondent is required to submit an Answer within 15 days from receipt of the summons. If no answer is filed, the court shall order the public prosecutor to investigate whether collusion exists between the parties. Within one month from receipt of the order of the court, the public prosecutor shall submit a report to the court stating whether the parties are indeed in collusion. If it is found that collusion exists, the public prosecutor shall state the basis of that conclusion in the report. The court shall then set the report for hearing; and if convinced that the parties are in collusion, it shall dismiss the petition. If the public prosecutor reports that no collusion exists, the court shall set the case for pretrial. Notably, the rules do not merely ask whether the public prosecutor is in a position to determine whether collusion exists. They require that the investigating prosecutor determine whether or not there is collusion. x x x [I]n declaration of nullity and annulment of marriage cases, the investigation report of the prosecutor on whether there is collusion between the parties is a condition *sine qua non* for setting the case for pretrial or further proceedings. x x xNo further proceedings should have been held without the investigation report.

6. **ID.; ID.; ID.; IF THE PARTIES HAVE NO PROPERTIES, COURT MAY ISSUE ON THE SAME DAY THE CERTIFICATE OF FINALITY AND THE DECREE OF DECLARATION OF NULLITY OR ANNULMENT OF MARRIAGE; CASE AT BAR.—** In these administrative cases, absent a finding by the OCA and the judicial audit teams that the parties in the identified cases have properties, the Court cannot condemn the practice of the issuance on the same day of the certificate of finality and the decree of declaration of absolute nullity or annulment of marriage. The rule is clear

that courts shall forthwith issue the corresponding decree upon the finality of the decision if the parties have no properties. Considering further that both the entry of judgment and the decree must be registered with the civil registry where the marriage was registered and the civil registry of the place where the family court is situated, it is in fact easier for the parties to secure both from the courts on the same day and have them registered at the same time.

7. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; TO BE LIABLE FOR GROSS IGNORANCE OF THE LAW, IT MUST BE PROVEN THAT THE JUDGE, IN THE PERFORMANCE OF OFFICIAL DUTIES, IS MOVED BY BAD FAITH, FRAUD, DISHONESTY OR CORRUPTION.— A blatant disregard of the provisions of A.M. No. 02-11-10-SC constitutes gross ignorance of the law. This Court has ruled that for a judge to be liable for gross ignorance of the law, it is not enough that the decision, order or actuation in the performance of official duties is contrary to existing law and jurisprudence. It must also be proven that the judge was moved by bad faith, fraud, dishonesty or corruption; or committed an error so egregious that it amounted to bad faith.

8. ID.; ID.; ID.; MISCONDUCT REFERS TO ANY UNLAWFUL CONDUCT ON THE PART OF THE JUDGE PREJUDICIAL TO THE RIGHTS OF THE PARTIES OR TO THE RIGHT DETERMINATION OF THE CAUSE; SIMPLE MISCONDUCT DISTINGUISHED FROM GROSS MISCONDUCT; CASE AT BAR.— x x x [W]hen there is persistent disregard of well-known rules, judges not only become liable for gross ignorance of the law, they commit gross misconduct as well. It is then that a mistake can no longer be regarded as a mere error of judgment, but one purely motivated by a wrongful intent. The four courts herein have allowed themselves to become havens for "paid-for annulments." Their apparent conspiracy with the counsels of the parties in order to reflect paper compliance with the rules if not complete disregard thereof, as well as their failure to manage and monitor the regularity in the performance of duties by their court personnel, shows not only gross ignorance of the law but also a wrongful intention that smacks of misconduct. Misconduct

refers to any unlawful conduct on the part of a judge prejudicial to the rights of parties or to the right determination of the cause. It entails wrongful or improper conduct motivated by a premeditated, obstinate or deliberate purpose. Simple misconduct is defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. On the other hand, gross misconduct connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful."

9. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW AND GROSS MISCONDUCT ARE CLASSIFIED AS SERIOUS CHARGES; PENALTY.— Gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct are serious charges under Section 8, Rule 140 of the Rules of Court. Justices and judges found guilty of these charges may be penalized by any of the following: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months: or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. We have had occasion to impose the penalty of suspension for a period of three months on judges found guilty of gross ignorance of the law and gross misconduct. However, in a line of cases where the judges found guilty of the same offenses had already compulsorily retired from service and therefore could no longer be penalized with suspension, a fine was ordered deducted from their retirement benefits.

10. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; EXECUTIVE JUDGE; PERFORMS THE FUNCTION OF A COURT ADMINISTRATOR WITHIN HIS ADMINISTRATIVE AREA AND MUST PROVIDE LEADERSHIP AND COORDINATE THE MANAGEMENT OF THE COURTS; CASE AT BAR.— The irregularities committed in these administrative cases took place and festered under the watch of Judge Quisumbing. As executive judge, he performs the functions of a court

administrator within his administrative area. He was supposed to provide leadership and coordinate the management of the courts, as well as implement policies concerning court operations laid down by the Supreme Court. Unfortunately, instead of exercising his prerogatives in order that those under his management be kept in line, he joined in the commission of some of the reprehensible practices described in these administrative cases.

11. ID.; ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE NEGLECT OF DUTY; PENALTY; CASE AT BAR.— Under the Revised Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is punishable by suspension for one month and one day to six months for the first offense and dismissal from service for the second offense. Gross neglect of duty is punishable by dismissal from service for the first offense. We find Sheriffs Pagunsan and De Villa and Process Servers Ferrer, Azcueta, and Pontejos guilty of simple neglect of duty. x x x The penalty of suspension for a period of one year shall instead be imposed on Sheriff Pagunsan. On the other hand, the penalty of suspension for a period of six months shall be imposed on Sheriff De Villa and Process Servers Azcueta and Pontejos. The penalty of suspension for one month and one day shall be meted out to Process Server Ferrer for the instant first offense of simple neglect of duty.

12. ID.; ID.; ID.; CLERKS OF COURT; TASKED TO MONITOR COMPLIANCE WITH THE RULES AND REGULATIONS GOVERNING THE PERFORMANCE OF DUTIES BY COURT PERSONNEL UNDER THEIR ADMINISTRATIVE SUPERVISION; CASE AT BAR.— Clerks of Court Marasigan and Cordez in A.M. No. RTJ-11-2302 and OIC Suluen in A.M. No. RTJ-11-2301 are likewise found guilty of simple neglect of duty. They failed to monitor compliance with the rules and regulations governing the performance of duties by court personnel under their administrative supervision. Also, Clerks of Court Marasigan and Cordez failed to exercise the required circumspection prior to issuing certificates of finality in declaration of nullity and annulment of marriage cases, considering that notices of the court's decisions had not been served at the time upon the respondents. The penalty of

suspension for one month and one day shall be meted out to them for the instant first offense of simple neglect of duty.

13. ID.; ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; COMMITTED BY A GOVERNMENT EMPLOYEE WHO ALLOWS ANOTHER USE HIS/HER ADDRESS IN ORDER TO COMPLY WITH RESIDENCE REQUIREMENTS LAID DOWN BY THE RULES; PENALTY.— The surrounding facts in *Japson* are analogous to those in the case of Process Server Azcueta and Social Worker Serilo. Both involve the use of a government employee's address in order for others to comply with the residence requirement laid down by the rules. In their defense, the petitioner therein and Process Server Azcueta and Social Worker Serilo herein claim that they did not authorize anyone to use their address. As in Japson, the Court's conclusion here shall be the same. Considering, however, that the infraction committed by Process Server Azcueta and Social Worker Serilo is not directly connected with the performance of their official duties, they are liable not for misconduct but for conduct prejudicial to the best interest of the service. "The word 'prejudicial' means 'detrimental or derogatory to a party; naturally, probably or actually bringing about a wrong result.'" Their conduct placed the entire judiciary in a bad light; that our rules are easily circumvented by our very own. Under the Revised Uniform Rules on Administrative Cases in the Civil Service, conduct prejudicial to the best interest of the service is punishable by suspension for six months and one day to one year for the first offense and dismissal from service for the second offense.

Leonardo-de Castro, *J.*, *concurring and dissenting opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; JUDGES; IN THE ABSENCE OF FRAUD, DISHONESTY OR CORRUPTION, THE ACTS OF JUDGE IN HIS/HER JUDICIAL CAPACITY ARE NOT SUBJECT TO DISCIPLINARY ACTION EVEN THOUGH SUCH ARE ERRONEOUS; REMEDY OF THE AGGRIEVED PARTY IS TO ELEVATE

THE ERROR TO THE HIGHEST COURT FOR REVIEW AND CORRECTION, NOT TO FILE AN ADMINISTRATIVE COMPLAINT AGAINST THE JUDGE; CASE AT BAR.— It bears to stress that the acts of a judge which pertain to his/her judicial functions are not subject to disciplinary power unless they are committed with fraud, dishonesty, corruption or bad faith. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his/her judicial capacity are not subject to disciplinary action even though such acts are erroneous. Otherwise, a judicial office would be untenable, for "no one called upon to try the facts or interpret the law in the administration of justice can be infallible." He/she cannot be subjected to liability — civil, criminal, or administrative — for any of his/her official acts, no matter how erroneous, as long as he/she acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction, because an administrative complaint is not an appropriate remedy where judicial recourse is still available. The court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. Not every error or mistake that a judge committed in the performance of his/her duties renders him/her liable, unless he/she is shown to have acted in bad faith or with deliberate intent to do an injustice. Otherwise, perhaps, no judge, however competent, honest or dedicated he/she may be, can ever hope to retire from the judiciary with an unblemished record.

D E C I S I O N

SERENO, *C.J.*:

A.M. No. RTJ-11-2301 is an administrative complaint for gross irregularity in the conduct of proceedings in annulment and declaration of nullity of marriage cases. The complaint was born of a judicial audit conducted at the Regional Trial Court of Dasmariñas, Cavite, Branch 90 (RTC Dasmariñas 90), on 15-17 September 2010.

A.M. No. RTJ-11-2302 stemmed from a report on a judicial audit conducted on 3-11 February 2011 and treated as an administrative complaint against the judges and personnel of the Regional Trial Court of Imus, Cavite, Branches 20, 21 and 22 (RTC Imus 20, 21 and 22); and RTC Dasmariñas 90.

A.M. No. 12-9-188-RTC stemmed from an anonymous complaint against Judge Perla V. Cabrera-Faller (Judge Cabrera-Faller) of RTC Dasmariñas 90 relative to the irregularity of the proceedings in Civil Case No. 1998-08 for declaration of nullity of marriage.

FACTS

A.M. No. RTJ-11-2301

In a Report dated 23 February 2011,[1] the Office of the Court Administrator (OCA) narrated its findings on the judicial audit conducted on 15-17 September 2010 at RTC Dasmariñas 90.

At the time of audit, the court had a total case load of 827 cases, 417 of which were criminal and 410, civil.

Of the criminal cases, the judicial audit team found that the court had failed to take action on three cases for a considerable length of time. Its last action on one case was on 10 June 2008, when the private prosecutor was given five days within which to submit a formal offer of evidence; the two other cases had not been acted upon since the denial of the motion for judicial determination of probable cause on 3 June 2009. Another criminal case had a pending motion to lift a warrant of arrest since 19 August 2009. Two cases had recently been submitted for decision, and one case was scheduled for the promulgation of judgment.

The civil cases proved more problematic. Still not acted upon from the time of their filing were 106 cases, some of which went as far back as 2008. The court had not acted on 51 cases for a considerable length of time. In fact, the last court action on 35 of these cases was from 2003 to 2009. There were 28 civil cases with pending incidents. Their pendency was relatively recent, because 26 of them were filed

[1] *Rollo* (A.M. No. RTJ-11-2301), pp. 1-40.

only in 2010, one was filed 2009 and another in 2008. There were 17 civil cases submitted for decision – 16 of them were recent, but one had been submitted for decision since 8 December 2008.

The judicial audit team observed that the case records in the court were not stitched, but held together by fasteners only, and that they were not chronologically arranged or paginated. Nevertheless, the stitching of the records was immediately done upon advice of the audit team. It also appeared that the court personnel were not wearing the prescribed uniform for the trial courts.

The team noted several irregularities in the petitions for declaration of nullity and annulment of marriage:

1. Improper service of summons

Process Server Rizalino Rinaldi B. Pontejos (Process Server Pontejos) had been in the habit of making a substituted service of summons without compliance with the mandatory requirements for validly effecting it, as enunciated in *Manotoc v. CA*.[2] In two cases, it is indicated that the summonses were "duly served but despite diligent efforts x x x exerted, the same proved ineffectual."[3] In at least 12 cases cited, summonses were not attached to the records.

2. No appearance by the Solicitor General

In nine cases, the hearing of the petition proceeded even without the filing of a notice of appearance by the Solicitor General.

3. No categorical finding on whether collusion existed between the parties/no collusion report at all

In all his reports regarding the existence of collusion between the parties, Assistant Provincial Prosecutor Oscar R. Jarlos stated that "the undersigned Prosecutor is not in the position to tell whether collusion exists."[4] In 10 cases, the hearing of the petition proceeded even without the submission of the collusion report by the public prosecutor.

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[2] 530 Phil. 454 (2006).

[3] *Rollo* (A.M. No. RTJ-11-2301), p. 18.

[4] *Id*. at 19.

4. No pretrial briefs

No pretrial briefs can be found in the records of 11 cases at the trial stage and three that have been submitted for decision.

5. No formal offer of exhibits/evidence

Two cases were submitted for decision without any formal offer of exhibits/evidence.

6. Non-attachment of the minutes to the records

The minutes were not attached to the records of several cases, and the audit team had doubts whether the psychiatrist/psychologist who had prepared the evaluation report testified in court.

7. Irregular psychological evaluation reports

Some of the Psychological Evaluation Reports attached to the records were mere photocopies. In two cases, the affidavits of the psychiatrist/psychologist were unsubscribed. The psychological report attached to the record of one case was unsigned and undated.

8. Absence of the public prosecutor's signature in the *jurat* of the judicial affidavit of the petitioner in one case

In a Resolution dated 11 October 2011,[5] the Court resolved to docket the Report as A.M. No. RTJ-11-2301, a case for gross irregularity in the conduct of proceedings in petitions for declaration of nullity and annulment of marriage. Judge Cabrera-Faller, Officer-in-Charge Ophelia G. Suluen (OIC Suluen) and Process Server Pontejos were required to explain, within 30 days from notice, the irregularities observed by the judicial audit team.

Judge Cabrera-Faller was likewise directed to take appropriate action on all cases that the court had failed to act upon for a considerable length of time from the date of their filing. She was further directed to act on those without further setting,

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[5] *Id*. at 167-190.

with pending incidents or those submitted for decision. She was required to submit a copy of the actions taken thereon within 10 days from notice.

During the audit, it was brought to the attention of the team that family court cases falling within the territorial jurisdiction of RTC Dasmariñas 90 were being raffled to RTC Imus 20 and 21. Accordingly, the Court also amended the Resolution dated 16 June 1998 in A.M. No. 92-9-855-RTC[6] to read as follows: "[F]amily court cases originating from the municipalities of Dasmariñas shall be heard and tried exclusively by the Regional Trial Court, Branch 90, Dasmariñas, Cavite."[7]

Judge Cabrera-Faller, OIC Suluen and Process Server Pontejos submitted their joint compliance or explanation in a letter dated 8 December 2011.[8] They also attached relevant court orders and decisions to cases that were cited by the audit team as awaiting action by the court.[9] The Court referred these documents to the OCA for evaluation, report and recommendation.[10]

In its Memorandum dated 12 August 2014,[11] the OCA recommended that Judge Cabrera-Faller be fined in the amount of ₱10,000 for her failure to comply fully with the Resolution dated 11 October 2011. According to the OCA, she did not take appropriate action on all the cases enumerated in the Court's Resolution, in defiance of the directive given to her. For the same reason, it also recommended that OIC Suluen be fined in the amount of ₱20,000.

As regards Process Server Pontejos, the OCA observed that while he signed the joint compliance or explanation dated 8

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[6] *Re: Report on the Audit and Inventory of Cases in the RTC, Br. 19, Bacoor, Cavite*.

[7] *Rollo* (A.M. No. RTJ-11-2301), p. 40.

[8] *Id*. at 191-198.

[9] *Id*. at 199-437.

[10] *Id*. at 440; Resolution dated 23 October 2012.

[11] *Id*. at 442-478.

December 2011, he gave no explanation regarding his practice of making a substituted service of summons without compliance with the mandatory requirements for validly effecting it. Thus, it recommended that he be suspended for three months without salary and other benefits for his utter failure to comply with the Resolution dated 11 October 2011.

The OCA recommended the foregoing penalties not for the irregularities observed by the audit team, but for the failure of Judge Cabrera-Faller, OIC Suluen and Process Server Pontejos to comply fully, if at all, with the Resolution dated 11 October 2011. Noting this deficiency, the Court opted to defer the imposition of penalties and instead require complete compliance with the Resolution.[12] In addition, the irregularities discovered involved petitions for declaration of nullity and annulment of marriage, which are among the subjects of A.M. No. RTJ-11-2302 and A.M. No. 12-9-188-RTC. Hence, the Court consolidated the two cases with the instant administrative matter, which has a lower, and therefore earlier, docket number.

Judge Cabrera-Faller and OIC Suluen complied through their submissions dated 8 December 2011,[13] 29 January 2015[14] and 30 September 2015.[15] Process Server Pontejos submitted his explanation in a compliance dated 30 September 2015.[16]

As regards several irregularities in the petitions for annulment and declaration of nullity of marriage noted by the judicial audit team, the following explanations were offered by Judge Cabrera-Faller, OIC Suluen and Process Server Pontejos:

1. Improper service of summons

Process Server Pontejos explained that while some summonses were made through substituted service, they were served upon

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[12] *Id*. at 479-481; Resolution dated 18 November 2014.

[13] *Id*. at 191-437.

[14] *Id*. at 499-510.

[15] *Id*. at 527-661.

[16] *Id*. at 524-525.

persons who were immediate relatives, had relations of confidence with the respondent, or were residing at the given address.[17] These are persons who usually know the situation and expect that court personnel will serve summons, which they are willing to receive and acknowledge on behalf of the respondent.[18] Some of them also call or text the respondent before receiving the summons.[19] However, if the relatives refuse to receive the summons, Process Server Pontejos sets an appointment with the respondent and makes a second or third attempt to serve the summons. When it is not possible to make a second or third attempt due to the distance of the respondent's address, he explains to the relatives the importance of the summons and of notifying the respondent about the petition. In case only caretakers, security guards or minors are at the given address, he makes several attempts to locate the respondent or submits a written report with the notation "UNSERVED."[20]

Judge Cabrera-Faller, OIC Suluen and Process Server Pontejos claim that the rules and jurisprudence on the service of summons are largely observed, although they admit that due to the heavy work load of the process server, some of these rules may have been overlooked.[21]

Judge Cabrera-Faller explains that no "*pro forma* summons"[22] was attached to the records of some cases, because summonses were made by publication. In summons by publication, the order granting the summons already incorporates it as a form of cost-cutting.

2. No appearance by the Solicitor General

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[17] *Id*. at 524.

[18] *Id*. at 524-525.

[19] *Id*. at 525.

[20] *Id*. at 524.

[21] *Id*. at 197-198.

[22] *Id*. at 197.

Judge Cabrera-Faller insists that there is nothing in the rules prohibiting the court from proceeding with the case without the entry of appearance of the Solicitor General.[23] She says that it is enough that there be proof of service on the Solicitor General and the provincial prosecutor to commence proceedings. She is aware of the mandatory period for the disposal of cases and, considering that the Office of the Solicitor General takes ages before the latter transmits its entry of appearance, she sees a need to speedily proceed with the hearing of the cases.[24]

3. No categorical finding on whether collusion exists between the parties/no collusion report at all

Judge Cabrera-Faller believes that the proceedings in the Office of the Provincial Prosecutor are not under the direct control and supervision of the judge.[25] She points out that the rules do not state that the court shall order the prosecutor to conduct the collusion investigation in a manner that the court deems fit.[26] She further points out that it is not true that in all the reports of Assistant Provincial Prosecutor Oscar R. Jarlos regarding the existence of collusion between the parties, he merely indicated that "the undersigned Prosecutor is not in the position to tell whether collusion exists."[27] Attached to the compliance dated 8 December 2011 is a report of the prosecutor stating that "the undersigned is of well-considered opinion that no collusion exists between the parties to this petition."[28]

She also considers it highly improbable for the court to proceed with the hearing of annulment cases when no report of collusion is attached to the record.[29] While she admits that the audit team

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[23] *Id*. at 193.

[24] *Id*. at 193-194.

[25] *Id*. at 191.

[26] *Id*. at 192.

[27] *Id*.

[28] *Id*. at 199.

[29] *Id*. at 192.

identified 10 cases in which the hearings proceeded even without the submission of the public prosecutor's collusion report, she emphasizes that these are contested cases. The prosecutor no longer submits any collusion report in cases where the respondent has vigorously opposed the petition by filing an answer.[30]

4. No pretrial briefs

Judge Cabrera-Faller believes that pretrial briefs are simply guides for the parties on the stipulation of facts, admissions, and the manner in which the case shall proceed.[31] She allows the parties to proceed to pretrial even without the required pretrial briefs if the parties agree, in the case of contested proceedings; or if the prosecutor agrees, in the case of uncontested petitions. It is a strategy she has devised in order to shorten the proceedings and lessen the costs of litigation.

5. No formal offer of exhibits/evidence

It is not true that two cases were submitted for decision without any formal offer of exhibits or evidence. In those cases, the offer of evidence was made orally in open court, as there were only few documentary exhibits offered.[32]

6. Nonattachment of minutes to the records[33]

Judge Cabrera-Faller states that the audit team seemed to equate the nonattachment of the stenographic notes to the record with the non-taking of the actual testimonies of the parties.[34] The stenographic notes are kept in the stenographers' files to keep them safe. They are not attached to the records, which are kept in a container van outside the Hall of Justice and exposed to the elements.[35]

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

[31] *Id*. at 194.

[32] *Id*. at 195.

[33] Explanation was given in the Comment for A.M. No. RTJ-11-2302.

[34] *Rollo* (A.M. No. RTJ-11-2302), pp. 755-756.

[35] *Id*. at 756.

Despite repeated orders by this Court and several compliances by Judge Cabrera-Faller, OIC Suluen and Process Server Pontejos, no explanation or comment was included with regard to the irregularities involving the psychological evaluation reports of the psychiatrists/psychologists.

In a Resolution dated 20 October 2015,[36] the Court referred this administrative case, together with A.M. Nos. RTJ-11-2302 and 12-9-188-RTC, to the Court of Appeals (CA) for its immediate raffle among the members thereof. The investigating CA justice was directed to evaluate the cases and make a report and recommendation within 90 days from notice.

A.M. No. RTJ-11-2302

In a Report dated 29 June 2011,[37] the OCA narrated its findings on the judicial audit conducted on 3-11 February 2011 at RTC Imus 20, 21 and 22; and RTC Dasmariñas 90. According to the OCA, the four branches have generally violated A.M. No. 02-11-10-SC[38] and specific provisions of the Rules of Court in handling petitions for declaration of nullity and annulment of marriage, adoption, and correction of entries.

In the Resolution dated 10 April 2012,[39] the Court considered the irregularities found by the audit team sufficient to warrant the conduct of a full investigation. Accordingly, the Report was treated as an administrative complaint against the judges and personnel of the four branches, and they were required to comment on the findings. The OCA was directed to submit its evaluation, report and recommendation to the Court. Meanwhile, until the conclusion of the investigation, the presiding judges of the four branches were prohibited from acting on all cases for declaration of nullity and annulment of marriage, adoption, and correction of entries.

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[36] *Rollo* (A.M. No. RTJ-11-2301), pp. 662-663.

[37] *Rollo* (A.M. No. RTJ-11-2302), pp. 1-40.

[38] Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, which took effect on 15 March 2003.

[39] *Rollo* (A.M. No. RTJ-11-2302), pp. 41-45.

The investigation, conducted from 22 April to 8 May 2013, covered the decided cases for declaration of nullity and annulment of marriage filed from the year 2008 to 2011.[40] Thereafter, the OCA submitted an Investigation Report dated 13 February 2014.[41]

The findings of the comprehensive investigation were itemized per court, to wit:

RTC Imus 20

1. Improper venue

Out of 65 cases, 49 are indicative of improper venue.[42] While the petitions for declaration of nullity and annulment of marriage show that one or both of the parties reside under the territorial jurisdiction of RTC Imus 20, most of the given addresses were vague or incomplete.[43] The notices sent to several parties were "returned to sender" because the addresses were insufficient, incomplete, unknown or could not be located. In others, the addressees were unknown at the given addresses, or they were abroad, or had moved out. Worse, there were four different cases in which the parties had common addresses, leading to the suspicion that the private counsels might have also been involved in the use of bogus addresses in order to fulfill the residence requirement.

In Civil Case No. 2785-09 for declaration of nullity of marriage, the respondent filed an Answer and prayed for the dismissal of the petition, because the petitioner had allegedly been living in Taoyuan, Taiwan, since 1994; and none of the parties resided in Imus, Cavite.[44] In fact, the order setting the case for pretrial and sent to the petitioner's address bore the notation "RTS-moved out." Nevertheless, the OCA found that Judge Fernando L. Felicen (Judge Felicen) ignored the Answer

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[40] *Id*. at 500.

[41] *Id*. at 497-588.

[42] *Id*. at 502-508.

[43] *Id*. at 502.

[44] *Id*. at 508.

entirely when he granted the petition. He said in his Decision dated 7 June 2010 that "[d]espite the service of summons, no responsive pleading was filed by respondent within the reglementary period."[45] A certification from the Bureau of Immigration showed that the petitioner had no record of arrival or departure in the country from January 1993 to 28 May 2013.[46] Yet she apparently testified before the court on 3 March 2010[47] based on the minutes of the proceedings prepared by Interpreter Imelda M. Juntilla (Interpreter Juntilla) and the transcript prepared by Stenographer Teresita P. Reyes (Stenographer Reyes).[48]

In Civil Case No. 3141-09 for declaration of nullity of marriage, the respondent also filed an Answer stating that the petition was filed in the wrong venue, because petitioner was in fact a resident of Caloocan City. The petition was still given due course, despite the fact that mail matters sent to the petitioner were returned because of the vague Cavite address.

2. Questionable jurisdiction/improper service of summons

Process Server Hipolito O. Ferrer (Process Server Ferrer) claims to have personally served summons at the given Cavite addresses, even though subsequent notices sent to them were "returned to sender" for the above-mentioned reasons.[49] Together with Sheriff Anselmo P. Pagunsan, Jr. (Sheriff Pagunsan), Process Server Ferrer also resorts to substituted service of summons without observing the requirements therefor.[50] There was clearly a practice of leaving the summons at the front door or resorting to a substituted service, even when the recipient refused to sign or acknowledge receipt. Sheriff Pagunsan made a substituted

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[45] *Id*.

[46] *Id*. at 609.

[47] *Id*. at 610.

[48] *Id*. at 509.

[49] *Id*. at 509.

[50] *Id*. at 510-516.

service on a person named "Jose Justino" on two separate occasions in two different addresses.[51]

In Civil Case No. 3222-09, Sheriff Pagunsan issued a return dated 16 November 2009 stating that the summons was served on the respondent through a certain Gino Uson.[52] However, the respondent sent a letter dated 21 January 2010 requesting copies of the pertinent records of the case to enable him to file an Answer. Nevertheless, initial trial proceeded on 25 January 2010, and a decision granting the petition was rendered on 12 March 2010, stating that the respondent had "failed to tender his responsive pleading within the reglementary period to file the same."[53]

3. Questionable raffling of cases

Of the 65 cases examined, 37 were filed and raffled on the same day.[54] In one case, the petition had already been assigned to RTC Imus 20 even before it was stamped "received" by the RTC Office of the Clerk of Court and raffled to that branch. In others, there are clear indications that the court had already acted upon the petition even before the case was assigned to it by raffle.[55] This circumstance led to a suspicion that the petitions were just stamped "received" on the day of the raffle, so that they could be assigned to predetermined courts.[56]

4. No categorical finding on whether collusion existed between the parties/no collusion report at all

Of the 65 case records examined, 59 contained an investigation report submitted by Prosecutor Rosa Elmina Catacutan-Villarin stating that "she is not in a position to tell whether collusion

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[51] *Id*. at 510.

[52] *Id*. at 517.

[53] *Id*. at 632.

[54] *Id*. at 517.

[55] *Id*. at 518.

[56] *Id*. at 517.

exists or not."[57] Civil Case Nos. 2666-09 and 2916-09 proceeded to trial, and the petitions for declaration of nullity of marriage were granted even if no investigation reports were found in the records.

5. Finality of judgment despite non-service of copies of the decisions on the respondents

In four cases, the certificate of finality and the decree of absolute nullity of marriage were issued despite the fact that the copy of the decision sent to the respondents bore the notation "returned to sender."[58]

6. Issuance of the decree of nullity of marriage despite absence of proof that the entry of judgment had been registered with the local civil registrar

In 40 cases, the certificate of finality and the decree of nullity were issued on the same day; in seven cases, the decree of nullity was even issued ahead of the certificate of finality.[59]

7. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

Of the 65 case records examined, 50 were found to have been granted in six months or less from the date of filing to the rendition of judgment.[60]

RTC Imus 21

1. Improper venue

Out of the 62 cases examined, 19 have indications of improper venue.[61] In the petition in Civil Case No. 2329-08, while the body alleged that the petitioner was a resident of Dasmariñas, Cavite, and the respondent of Valenzuela City, the verification

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[57] *Id*. at 518.

[58] *Id*. at 519.

[59] *Id*. at 519-523.

[60] *Id*. at 523-524.

[61] *Id*. at 525-527.

expressly stated that the petition was to be filed in Pasay City.[62] In the petition in Civil Case No. 2691-09, while the body alleged that the petitioner was a resident of Dasmariñas, Cavite, the verification stated that she was a resident of Silang, Cavite, which was outside the jurisdiction of the court. There were eight cases in which a party had the same address as a party in another case.[63]

In Civil Case No. 3026-09, the petition stated that both parties were based in Italy. Despite the fact that the petitioner had no record of travel back to the Philippines since 18 July 2002, she was able to execute a judicial affidavit in Makati City, and it was allowed in court by Judge Norberto J. Quisumbing, Jr. (Judge Quisumbing).[64]

2. Questionable jurisdiction/improper service of summons

Improper service of summons was shown in 25 cases, mainly because Sheriff Wilmar M. De Villa (Sheriff De Villa) resorted to a substituted service of summons without observing the requirements therefor.[65] In Civil Case No. 2963-09, the summons was returned unserved because the respondent was in the United States, and yet the case proceeded and the petition was eventually granted.[66] The respondents in Civil Case Nos. 3208-09 and 2733-09 had the same address, but Sheriff De Villa was able to make both a personal and a substituted service on the two respondents in that address.

3. No collusion report

Despite the lack of answer from the respondents, no investigation report regarding collusion can be found in 13 out of all the cases examined.[67]

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[62] *Id*. at 525.

[63] *Id*. at 525-527.

[64] *Id*. at 527.

[65] *Id*. at 528-530.

[66] *Id*. at 528.

[67] *Id*. at 530-531.

4. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

Of the 62 case records examined, 15 were found to have been granted in six months or less from the date of filing to the rendition of judgment.[68]

RTC Imus 22

1. Improper venue

Out of 118 cases examined, 36 have clear indications of improper venue.[69] Some of the addresses in Cavite indicated in the petitions appear to be highly suspicious, if not fictitious. In Civil Case No. 3227-09, the petitioner alleged in the petition that he resided in Imus, Cavite, but likewise indicated an "alternative" address in Quezon City where summons and other court processes may be served on him.[70] In Civil Case No. 2545-09, the petitioner stated in his petition that he resided in Imus, Cavite, while the respondent lived in Quezon City. However, the body of the petition stated that petitioner had earlier initiated the same proceeding before the RTC of Malolos, Bulacan, Branch 18. Petitioner's verification in Civil Case No. 2839-09 bears no signature of the alleged notary public. The notices sent to several parties were "returned to sender" because the addresses were insufficient, incomplete, vague, unknown or could not be located. In others, the addressees were unknown at the given address, or they were abroad, or had moved out. Despite these irregularities, Judge Cesar A. Mangrobang (Judge Mangrobang) allowed these cases to prosper.

There were eight cases in which a party had the same address as a party in another case.[71] Furthermore, the address of Process Server Elmer S. Azcueta (Process Server Azcueta) appears to

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[68] *Id*. at 531-532.

[69] *Id*. at 532-537.

[70] *Id*. at 532.

[71] *Id*. at 536-537.

be the same as the address of the petitioner in Civil Case No. 1256-07.[72]

2. Questionable jurisdiction/improper service of summons

In 88 cases, there were indications of questionable jurisdiction or improper service of summons.[73] Copies of orders setting the cases for pretrial were "returned to sender" for the following reasons: unknown address; unlocated/no such name and number of house on the given address; unknown/unlocated; or no such name. However, Process Server Azcueta indicated in the prior returns of summons that he was able to make a substituted service on the respondents in those addresses.[74] He also made a substituted service on a person named "Shiela G. Villanueva" on two separate occasions in two different addresses in two different cases.[75] The same irregularity is shown in the case of an individual named "Rosemarie Magno."[76]

Process Server Azcueta also served summonses on persons in distant provinces outside the jurisdiction of the court, such as Sorsogon, Isabela, and Cagayan de Oro City. There were numerous cases in which he indicated in the returns that he was able to make a personal service of summons, but that the respondent refused to sign or acknowledge receipt.[77] He also resorted to a substituted service without observing the requirements therefor. Worse, there are cases in which no summonses or returns thereof were found in the records.

3. No collusion report

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[72] *Id*. at 537.

[73] *Id*. at 537-549.

[74] *Id*. at 537.

[75] *Id*.

[76] *Id*.

[77] *Id*. at 538.

Despite the lack of answer from the respondents, no investigation report regarding collusion can be found in 16 out of 118 cases examined.[78]

4. In one case, the rendition of a decision even before the admission of exhibits

The decision in Civil Case No. 3702-10 was rendered four days ahead of the issuance of the order admitting all documentary exhibits and submitting the case for decision.[79]

5. In another, the absence of a verification and certification against forum shopping

The petition in Civil Case No. 3092-09 was given due course despite the absence of a verification and certification against forum shopping.[80]

6. Finality of judgment despite the non-service of copies of the decisions on the respondents

In eight cases, the certificate of finality was issued despite the fact that the copy of the decision sent to the respondents bore the notation "returned to sender."[81]

7. Issuance of the decree of nullity of marriage despite the absence of proof that the entry of judgment had been registered with the local civil registrar

In four cases, the certificate of finality and the decree of nullity were issued on the same day.[82]

8. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

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[78] *Id*. at 549-550.

[79] *Id*. at 550.

[80] *Id*. at 551.

[81] *Id*.

[82] *Id*. at 552.

Out of the 118 cases examined, 46 were found to have been granted in six months or less from the date of filing to the rendition of judgment.[83] In fact, Civil Case No. 2434-08 for declaration of nullity of marriage was granted at the record speed of 25 days from the date of filing to the rendition of judgment granting the petition.[84]

RTC Dasmariñas 90

1. Improper venue

Out of 88 cases examined, 28 have clear indications of improper venue.[85] Some of the addresses in Cavite are incomplete or vague.[86] The notices sent to several parties were "returned to sender" because the addresses were insufficient, incomplete or unknown.

There were four cases in which a party had the same address as a party in another case.[87] Furthermore, the address of Social Worker Officer Alma N. Serilo (Social Worker Serilo) of the RTC Office of the Clerk of Court was the same as the address of the petitioners in Civil Case Nos. 2893-09 and 3179-09.[88]

2. Questionable jurisdiction/improper service of summons

In 45 cases, there were indications of questionable jurisdiction or improper service of summons.[89] There were numerous cases in which Process Server Pontejos indicated in the returns that he was able to make a personal service of summons, but that the respondent refused to sign or acknowledge receipt.[90] He

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[83] *Id*. at 552-554.

[84] *Id*. at 552-553.

[85] *Id*. at 555-558.

[86] *Id*. at 555.

[87] *Id*. at 558.

[88] *Id*. at 555.

[89] *Id*. at 558-565.

[90] *Id*. at 558-559.

also resorted to a substituted service of summons without observing the requirements therefor.[91] In Civil Case Nos. 2940-09 and 1860-08, Process Server Pontejos allegedly served summonses personally on the respondents who resided in Camarines Norte. In Civil Case No. 3374-09, summons for the respondent was served by the sheriff of the Office of the Clerk of Court of RTC Iloilo City and received in Iloilo City by the sister of the petitioner. The summons in Civil Case No. 1528-07 was returned unserved, and yet the case proceeded and the petition was eventually granted.

3. In one case, the grant of the petition for declaration of nullity of marriage even without the appearance of any of the parties

Civil Case No. 3443-10 was a petition for declaration of nullity of marriage on the ground of lack of the formal requisite of a marriage license. During the initial trial on 7 June 2010, petitioner's counsel and the public prosecutor entered into a stipulation with respect to a certification from the Office of the Local Civil Registrar that no license was issued relative to the questioned marriage.[92] Thereafter, the case was submitted for decision and eventually granted. None of the parties appeared, as they were both nonresidents of the Philippines as alleged in the petition.

4. Questionable raffling of cases

Of the 88 cases examined, 65 were filed and raffled on the same day.[93] This circumstance leads to a suspicion that the petitions were just stamped "received" on the day of the raffle, so that they could be assigned to predetermined courts. The record of Civil Case No. 3676-10 shows that it was raffled on 12 April 2010, yet the return of summons showed that it was personally served on the respondent on 25 March 2010. This

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[91] *Id*. at 559.

[92] *Id*. at 565.

[93] *Id*. at 567.

discrepancy indicates that the court had already acted upon the petition even before the case was assigned to it by raffle.

5. Issuance of the decree of nullity of marriage despite absence of proof that the entry of judgment had been registered with the local civil registrar

In 36 cases, the certificate of finality and the decree of nullity were issued on the same day.[94]

6. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

Out of the 88 cases examined, 50 were found to have been granted in six months or less from the date of filing to the rendition of judgment.[95]

In the Resolution dated 12 August 2014,[96] the Court required the following to submit their comments on the findings of the OCA:

RTC Imus 20: Judge Felicen, Clerk of Court Atty. Allan Sly M. Marasigan (Clerk of Court Marasigan), Court Interpreter Juntilla, Court Stenographer Reyes, Sheriff Pagunsan, and Process Server Ferrer;

RTC Imus 21: Judge Quisumbing and Sheriff De Villa;

RTC Imus 22: Judge Mangrobang,[97] Clerk of Court Atty. Seter M. Dela Cruz-Cordez (Clerk of Court Cordez), and Process Server Azcueta;

RTC Dasmariñas 90: Judge Cabrera-Faller and Process Server Pontejos;

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[94] *Id*. at 568-570.

[95] *Id*. at 570-572.

[96] *Id*. at 717-726.

[97] *Id*. at 737-739; Resolution dated 19 August 2014.

Office of the Clerk of Court of the RTC, Imus, Cavite: Clerk of Court Atty. Regalado E. Eusebio (Clerk of Court Eusebio), and Social Worker Serilo.

The Court also referred a copy of the Investigation Report to the Office of the Bar Confidant for appropriate action relative to the findings on the possible involvement of private practitioners in the anomalies relative to the declaration of nullity and annulment of marriage cases.

The charges against all other court personnel were dismissed for insufficiency of evidence.

In their comments, respondents explained:

RTC Imus 20

1. Improper venue

Process Server Ferrer states that his duty as process server is ministerial, and that whatever is referred to him for service on the parties is served by him.[98] He is not in a position to determine or ascertain whether the names or addresses appearing in the court processes are genuine or bogus. Sheriff Pagunsan echoes this argument.[99] Clerk of Court Marasigan states that his duty of signing the summons to be served is also ministerial, for it is not his duty to determine whether the addresses of the parties are valid, existing, certain, and verifiable.[100] He adds that he has no authority to question, much less prevent, the continuation of the trial of particular cases if there is a question on the residence of the parties.[101] The matter rests upon the judicial discretion of the judge.

Judge Felicen insists that the parties who indicated that they resided in Cavite were indeed residents of Cavite. They were

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[98] *Id*. at 845.

[99] *Id*. at 854.

[100] *Id*. at 1085-1086.

[101] *Id*. at 1085.

able to attend the hearings in court.[102] Furthermore, the public prosecutor also sent notices to the parties at their given addresses, and they were able to appear before her for the collusion investigation.[103] He adds that the allegation that a party has resided within the jurisdiction of the court for six months is not part of the "complete facts constituting the cause of action" as provided under A.M. No. 02-11-10-SC.[104] At any rate, a falsified address as stated in the petition constitutes extrinsic fraud and may be the subject of an appeal. In these cases, no appeal was filed by the public prosecutor or the Solicitor General.[105]

As regards Civil Case No. 2785-09, Judge Felicen explains that the statement of the respondent in the latter's Answer that the petitioner was not a resident of Imus, Cavite, was immaterial. It must be noted that the respondent submitted himself to the jurisdiction of the court.[106] Furthermore, he did not submit a pretrial brief or present evidence to support his claim. Thus, Judge Felicen found that a discussion in the decision regarding the respondent's allegation was unnecessary. Between the petitioner's affirmative allegation that she was a resident of Imus, Cavite, and the respondent's baseless denial, the court ruled in favor of the petitioner.

Judge Felicen also emphasizes that the petitioner appeared in all stages of the proceedings and testified in open court.[107] He does not know about the alleged certification from the Bureau of Immigration showing that the petitioner had no record of arrival in or departure from the country from January 1993 to 28 May 2013. But when the petitioner testified, she gave her name and personal circumstances under oath. With her counsel,

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[102] *Id*. at 234, 240.

[103] *Id*. at 234-235, 240-241.

[104] *Id*. at 1009.

[105] *Id*. at 1010.

[106] *Id*.

[107] *Id*. at 1010-1011.

an officer of the court, assisting her, the court had no reason to doubt her identity.[108]

For their part, Interpreter Juntilla and Stenographer Reyes explain that on 3 March 2010, a verbal oath was administered to the witness, who identified herself as the petitioner in Civil Case No. 2785-09.[109] She was even asked to state her name and other personal circumstances for the record. After her testimony, she signed the minutes of the proceedings, and a visual comparison of the signatures therein and the verification of the petition showed a match. Interpreter Juntilla and Stenographer Reyes argue that they were in no position to question the identity of the witness, who appeared before the court and testified under pain of criminal prosecution. If it later turns out that the witness is a charlatan, any falsity committed with respect to the latter's personal circumstances should not be attributed to them.[110]

As regards Civil Case No. 3141-09, Judge Felicen explains that the mere allegation of the respondent that the petitioner was not a resident of Cavite is not supported by any evidence whatsoever.[111] The court could not have ordered the outright dismissal of the petition because of respondent's bare allegation. It does not matter that mail matters addressed to the petitioner at her given Cavite address were returned with the notation "RTS-address is unknown and incomplete," because she was able to appear and fully participate in the proceedings of the case.[112]

2. Questionable jurisdiction/improper service of summons

Process Server Ferrer insists that he personally served summons on parties at their given addresses in Cavite.[113] The

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[108] *Id*. at 1011.

[109] *Id*. at 838.

[110] *Id*. at 839.

[111] *Id*. at 1011.

[112] *Id*. at 1012.

[113] *Id*. at 1078.

fact that the notation "returned to sender" was made on the subsequent orders of the court sent to the same addresses may be explained by the possibility that the parties no longer resided there at the time. He laments that, considering the nature of these cases in which the parties were at odds with each other, the respondents and their next of kin may not have been inclined to sign or acknowledge their receipt of summons, much less entertain him as process server.[114] Still, he exerted diligent efforts to serve the summons by returning on two separate occasions. But when they still refused to sign the summons, he had no choice but to reflect in the return that the recipient received the summons but refused to sign or acknowledge receipt.

Sheriff Pagunsan believes that when he made a substituted service of summons on the respondents by leaving copies thereof at the front door of their houses, he was merely doing his duties and functions, because there was no one who would receive them.[115] It was actually an act of prudence on his part in anticipation of the actual receipt of the summons by the respondents at a later time. He echoes the lament of Process Server Ferrer regarding the cold treatment that the latter gets from the respondents and their next of kin.[116] Sheriff Pagunsan also admitted that in Civil Case No. 3259-09, he served summons on the respondent in Camarines Sur. His travel expenses were shouldered by the petitioner therein.

For his part, Clerk of Court Marasigan claims that he does not possess any express authority to reject or order the amendment of a return of summons if the service thereof was done with a procedural lapse by the process server and the sheriff.[117]

With regard to Civil Case No. 3222-09, Judge Felicen states that the mere existence of the respondent's request letter for a copy of the petition should not be construed as indicative of

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[114] *Id*. at 1079.

[115] *Id*. at 1397.

[116] *Id*. at 1398.

[117] *Id*. at 1086-1087.

the sheriff's failure to tender a copy thereof upon the respondent through Gino Uson.[118] The respondent eventually secured a copy of the petition when he went to court, but he never filed a responsive pleading, nor did he participate in the proceedings of the case.[119]

3. Questionable raffling of cases

Judge Felicen and Clerk of Court Marasigan point out that the raffling of cases is a process under the direct control of the Office of the Clerk of Court and Ex-Officio Sheriff and under the supervision of the executive judge.[120] Clerk of Court Marasigan states that, as such, the process was beyond the regular scope of his duty, so he had no participation therein whatsoever.[121] On the other hand, Judge Felicen emphasizes that the judges of the RTC Imus 20, 21, 22 and RTC Dasmariñas 90 have no option or privilege to choose or select cases to be assigned to their courts.[122]

They explain that with regard to Civil Case No. 1852-08 – the records of which were received by RTC Imus 20 on 4 February 2008 – the allegation of irregularity originated from the erroneous stamp of the Office of the Clerk of Court stating that the case was filed on 24 February 2008.[123] Based on the receipts for the payment of legal fees, the case was actually filed on 1 February 2008.

The alleged irregularity in Civil Case No. 3309-09 stems from the return stating that although an attempt to serve the summons was made on 6 November 2009, the case was transmitted to RTC Imus 20 only on 23 November 2009.[124]

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[118] *Id*. at 1013.

[119] *Id*. at 1013-1014.

[120] *Id*. at 1014, 1088.

[121] *Id*. at 1089.

[122] *Id.* at 1014.

[123] *Id*. at 1015, 1089.

[124] *Id*. at 1016, 1089-1090.

Again, it is claimed that there was an error in the date of the return of the summons, caused by the use of an old return and the mistaken use of the "copy and paste" functions of the word processor.[125]

4. No categorical finding on whether collusion existed between the parties/no collusion report at all

Judge Felicen explains that the statement of the public prosecutor that "she is not in a position to tell whether collusion exists or not" is always accompanied by a manifestation that she will actively participate in the proceedings to safeguard against collusion or fabricated evidence.[126] The court relies on the regular performance of duties by the public prosecutor and proceeds to hear and try the petition. The judge has no control over how the public prosecutor conducts the investigation.[127] To reject the latter's report would result in an unreasonable and indefinite deferment of trial.[128]

5. Finality of judgment despite non-service of the copies of the decisions to the respondents

Judge Felicen and Clerk of Court Marasigan explain that the certificate of finality is only given to them for signature by the clerk in charge, who is tasked with verifying the records in order to determine whether the decision has indeed attained finality.[129] At any rate, Clerk of Court Marasigan notes that copies of the decisions were not served on the respondents, because the returns bore the notation "RTS-moved out/moved."[130] Respondents are duty-bound to inform the court of any change in their addresses, and the finality of the decisions cannot be held hostage by the absence of forwarding addresses.

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[125] *Id*. at 894, 1016, 1090.

[126] *Id*. at 227, 1016.

[127] *Id*. at 1017.

[128] *Id*. at 227-228, 1016.

[129] *Id*. at 1017-1018, 1090-1091.

[130] *Id*. at 1091.

6. Issuance of the decree of nullity of marriage despite absence of proof that the entry of judgment had been registered with the local civil registrar

Judge Felicen points out that under Section 19 of A.M. No. 02-11-10-SC, the immediate issuance of a decree of nullity of marriage upon the finality of the decision is mandated if the parties have no properties.[131] Thus, there was no need for prior registration of the entry of judgment with the civil registrar, considering that the parties in the identified cases had no properties declared in their petitions.[132]

7. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

Judge Felicen argues that because the petitions in these cases were uncontested,[133] only the petitioners presented evidence. Furthermore, the court is tasked to render a decision within 90 days from the time the case is submitted for decision. Thus, the early disposition of cases should not be taken against the judge, as it is just in keeping with the mandate of speedy administration of justice.

RTC Imus 21

1. Improper venue

Judge Quisumbing alleges that there is no merit in the observation of the OCA that 19 out of the 62 cases examined showed vague addresses indicating improper venue. He explains that the addresses in Cavite and other provinces do not have house numbers.[134] Some addresses are identified only by their block and lot numbers.

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[131] *Id*. at 1018.

[132] *Id*. at 1019.

[133] *Id*. at 230, 1019.

[134] *Id*. at 1033-1034.

In Civil Case No. 2329-08, Judge Quisumbing states that the verification of the petition expressly stating that the petition was to be filed in Pasay City did not mean that the petitioner was a resident of that city.[135] What was controlling was her allegation in the petition that she was a resident of Cavite, a fact she repeated when she testified in court. Judge Quisumbing explains that the same is true regarding the verification in Civil Case No. 2691-09, in which the petitioner stated that she was a resident of Silang, Cavite. He, however, points out that the respondent in that case was a resident of Kawit, Cavite, which was within the jurisdiction of his *sala*.[136]

As regards those instances when a party in one case had the same address as a party in another case, Judge Quisumbing offers the possibility that the petitioners really lived in the same house, because they were both separated from their respective spouses.[137] Also, considering that two of these parties had addresses that did not contain house numbers, it was possible that they only lived in the same street.[138]

Finally, with regard to the observation in Civil Case No. 3026-09 that the petitioner therein had no record of travel back to the Philippines since 18 July 2002, Judge Quisumbing only knows that on 19 July 2010, a person who introduced herself as the petitioner in the case testified under oath in open court in his presence and that of his court staff, the public prosecutor, and the petitioner's counsel.[139]

2. Questionable jurisdiction/improper service of summons

Sheriff De Villa explains that he only resorts to substituted service when he is able to talk with the addressee over the phone.[140]

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[135] *Id*. at 1033.

[136] *Id*.

[137] *Id*. at 1034-1035.

[138] *Id*. at 1035.

[139] *Id*. at 816-817.

[140] *Id*. at 1057.

He confirms the identity of the addressee through the details in the petition and its annexes. The latter usually advises him to give the summons to the person present in the house.[141] Afterwards, he also interviews the person present and verifies that person's relationship with the addressee. He believes that this procedure fulfils the requirement that he exert all efforts to serve the summons. He also points out that no party in the cases examined by the OCA ever complained that there was an improper service of summons.[142] He admits that he even went as far as Nueva Ecija to serve a summons on the respondent in Civil Case No. 2908-09. As the summons was given to him for service, he believed that he was duty-bound to obey the order of the court.[143]

Judge Quisumbing explains that he reminds Sheriff De Villa to be careful in the service of summons. The judge also points out that the immediate resort to substituted service is the problem not only of his court, but of all other courts as well. However, he believes that this practice should not be branded as a "blatant irregularity."[144]

In Civil Case No. 2963-09, Sheriff De Villa says that it is not true that summons was returned unserved. According to the sheriff's return, the summons was received by the respondent's brother after several failed attempts to serve it on the respondent himself.[145]

Sheriff De Villa says it is only now that he realizes that the respondents in Civil Case Nos. 3208-09 and 2733-09 have the same address, because his main concern then was to obey the order to serve the summons.[146] Judge Quisumbing offers the

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[141] *Id*. at 830.

[142] *Id*. at 1057.

[143] *Id*. at 1051.

[144] *Id*. at 1036.

[145] *Id*. at 1035.

[146] *Id*. at 1050.

possibility that one respondent lived in that address after the other had left it.[147]

3. No collusion report

Judge Quisumbing explains that in the 13 cases where there was no investigation report regarding collusion, the public prosecutor manifested that he would forego the submission of that report and instead actively participate in the proceedings.[148] At times, the nonexistence of collusion is determined by the public prosecutor through a cross-examination of the petitioner during the latter's court testimony or deposition. Judge Quisumbing stresses that these manifestations are clearly stated in the records.

4. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

Judge Quisumbing explains that it is the practice of his court to resolve cases as soon as they are submitted for decision, especially where there is no reason to delay the resolution of uncontested cases.[149] He states that judges are always reminded to devise means for the quick disposition of cases. At any rate, A.M. No. 02-11-10-SC does not prescribe a period within which to decide cases for the declaration of nullity of void marriages and annulment of voidable marriages, except that provided in the Constitution and the Rules of Court.[150]

RTC Imus 22

1. Improper venue

Judge Mangrobang submits that it is not within his bounden duty to ascertain whether the parties are truthful in their

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[147] *Id*. at 1035.

[148] *Id*. at 1038-1039.

[149] *Id*. at 1039.

[150] *Id*. at 1040.

allegations as to their respective residences.[151] Assuming it were so, the court may not dismiss an action *motu proprio* on the mere ground of improper venue.[152] He stresses that no motion to dismiss on that ground was filed either by the respondent or the public prosecutor on behalf of the Solicitor General.[153]

Clerk of Court Cordez submits that her duties to receive pleadings, motions and other court-bound papers is purely ministerial.[154] While it is possible that parties feigned their addresses in their petitions, she is not in a position to determine the veracity thereof.[155]

Process Server Azcueta argues that he did not allow the petitioner in Civil Case No. 1256-07 to use his address in Cavite.[156] He says that he did not serve court processes on the petitioner because these were coursed through her counsel. Neither did he have any chance to catch a glimpse of the address when he served the summons on the respondent; otherwise, he would have called the attention of the court.[157] At any rate, he offers the possibility that the encoding of the address may have been due to a typographical error.[158]

2. Questionable jurisdiction/improper service of summons

Clerk of Court Cordez emphasizes that she was not remiss in her duties to constantly remind the process server of the proper service of summons.[159] She believes that the process server complied in good faith pursuant to the doctrine of

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[151] *Id*. at 1327.

[152] *Id*. at 1328-1329.

[153] *Id*. at 1329.

[154] *Id*. at 934.

[155] *Id*. at 934-935.

[156] *Id*. at 945.

[157] *Id*. at 945-946.

[158] *Id*. at 945.

[159] *Id*. at 937.

regularity in the performance of official duties. The fact that subsequent orders sent to the addresses of the parties were returned with the notation "unknown addressee or moved out" might only mean that the addressees had indeed moved out, or that the postal worker had not diligently performed his duties.[160]

This opinion was echoed by Judge Mangrobang.[161] He adds that it is not within the power of the court to ensure that respondents remain in their residence in the course of the proceedings. They are considered to have waived their right to present evidence if they do not participate in the proceedings, or if they transfer to another residence without informing the court.

He also submits that the rules provide that if the respondent refuses to receive or sign the summons, it is enough that the same is tendered to the latter.[162] Indeed, if the service of summons was questionable, the court's attention should have been called by the public prosecutor.[163] The court is not required to conduct a hearing *motu proprio* on the validity of the service of summons in view of the presumption of regularity in the performance of official functions.

Process Server Azcueta claims that he normally serves a summons personally, and only when he cannot locate the person after several attempts does he resort to substituted service.[164] He also believes that he prepares the returns for substituted service in accordance with the rules, because he indicates therein the reason for the substituted service and the dates when he attempted personal service.[165] He argues that none of the parties in the cases before RTC Imus 22, and not even the public

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[160] *Id*. at 938.

[161] *Id*. at 1331.

[162] *Id*. at 1331-1332.

[163] *Id*. at 1334.

[164] *Id*. at 944, 1174.

[165] *Id*. at 1177.

prosecutor or the Solicitor General, complained about any improper service of summons.[166] This argument is echoed by Clerk of Court Cordez.[167]

Process Server Azcueta also points out that the format of the return of summons under the 2002 Revised Manual for Clerks of Court allows process servers or sheriffs to indicate that the recipient of the summons refused to sign or acknowledge receipt.[168] The reason for behind this format is that they have no power to coerce the recipient to sign the summons being served. Contrary to the allegation of the OCA, he says that he made a substituted service on a person named "Shiela G. Villanueva" only in Civil Case No. 3170-09, because the summons in Civil Case No. 3151-09 was received by one "Ma. Paz C. Baun."[169] He made a substituted service on a person named "Rosemarie Magno" only in Civil Case No. 2942-09, because the summons in Civil Case No. 2946-09 was received by one "Rosan M. Aringo."[170] He admits, though, that he has indeed served a summons in Cagayan de Oro City, but that he did so in good faith. Based on his mistaken reading of Supreme Court Administrative Circular No. 12 dated 12 October 1985,[171] he thought that the directive applies only to the execution of writs, garnishments and attachments.[172] He apologizes for the mistake and undertakes to never again serve a summons outside the jurisdiction of Imus, Cavite.

He states that attaching the returns to the records is the job of the clerk in charge of civil cases. However, the fact that no returns of summons were attached to the records of some cases

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[166] *Id*. at 944, 1175.

[167] *Id*. at 937-938.

[168] *Id*. at 1174-1175.

[169] *Id*. at 1176.

[170] *Id*.

[171] Guidelines and Procedure in the Service and Execution of Court Writs and Processes in the Reorganized Courts.

[172] *Rollo* (A.M. No. RTJ-11-2302), p. 1176.

does not mean that there was an improper service of summons on respondents. Evidence shows that they were able to file answers or receive subsequent orders from the court.[173] This statement was echoed by Clerk of Court Cordez, who attached to her comment the summonses bearing the signature of the respondents who received them.[174] She and Judge Mangrobang add that it is not impossible for the summonses and returns to be accidentally detached from the records, considering that the folders of closed and terminated cases are packed and cramped in a small space inside the courtroom.[175] Numerous instances of retrieval and photocopying might have damaged the folders and their contents.

3. No collusion report

Judge Mangrobang explains that despite repeated orders from the court, the public prosecutor failed to submit a collusion report. Nevertheless, the latter actively participated in the court proceedings. In an effort to resolve the cases with dispatch, the court proceeded with trial despite the non-submission of a collusion report. While this tack may be a deviation from the rules, it does not constitute grave misconduct; it is, instead, an error of judgment that may be properly raised in a judicial forum and not in administrative proceedings against the judge.[176]

4. In one case, the rendition of the decision even before the admission of exhibits

Judge Mangrobang explains that because of a typographical error, the order admitting all documentary exhibits and submitting the case for decision bore the date 31 August 2010.[177] In truth, it was issued earlier than the decision, which was dated 27 August 2010.

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[173] *Id*. at 1180-1181.

[174] *Id*. at 1110-1114.

[175] *Id*. at 1110, 1335-1336.

[176] *Id*. at 1336-1337.

[177] *Id*. at 1338.

5. In another, the absence of a verification and certification against forum shopping

Judge Mangrobang offers the possibility that, since the verification and certification against forum shopping are usually on in one page, that page was accidentally detached from the records.[178] The lack of a verification and certification against forum shopping could not have escaped the notice of the Office of the Clerk of Court and the public prosecutor, who would have filed the appropriate pleading to inform the court of the deficiency.

6. Finality of judgment despite non-service of copies of the decisions on the respondents

Clerk of Court Cordez emphasizes that she never issued a certificate of finality unless there was proof of receipt of the decision by the parties and the Solicitor General.[179] She states that she cannot be blamed if the copy of the decision sent to the parties were "UNSERVED" with the added notation "unknown address or moved out," because they should have informed the court of their new addresses.[180] Nevertheless, she says that her issuance of the certificates of finality was not motivated by any ill motive, but by an honest belief that the procedure she followed did not violate any law, rule or administrative order.[181]

For his part, Judge Mangrobang states that there is nothing amiss in the issuance of a certificate of finality when the records reveal that notices and copies of the decisions were sent to the parties at their last known addresses.[182] Failure of the parties to be vigilant in monitoring their cases should not be blamed on the court.

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[178] *Id*. at 1339.

[179] *Id*. at 938.

[180] *Id*. at 939.

[181] *Id*. at 1117.

[182] *Id*. at 1341.

7. Issuance of the decree of nullity of marriage despite absence of proof that the entry of judgment had been registered with the local civil registrar

Judge Mangrobang submits that the requirement that the entry of judgment be registered with the local civil registrar before the issuance of a decree of nullity is applicable only when the grounds for the declaration of nullity are Articles 40 and 45 of the Family Code.[183] It is not required for marriages declared void *ab initio* under Article 36.

8. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

Judge Mangrobang explains that cases involving the declaration of nullity of marriage are not difficult to decide. Hence, he finds no reason to delay the promulgation of the decision after the parties have terminated the presentation of their evidence.[184] He laments the possibility that judges would be penalized for resolving cases with dispatch rather than for unreasonable delay in resolving them.

RTC Dasmariñas 90

1. Improper venue

Social Worker Serilo states that she has no knowledge as to how or why her address was used as the address of the petitioners in Civil Case Nos. 2893-09 and 3179-09.[185] She explains that she is not acquainted with the parties or their counsels, and that she does not know how they came to know her address. However, she points out that she testifies in open court in adoption cases, and that her personal circumstances – including her address – have become part of the records of these cases.

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[183] *Id*. at 1342-1346.

[184] *Id*. at 1346.

[185] *Id*. at 901, 1383.

2. Questionable jurisdiction/improper service of summons

Process Server Pontejos explains that the "refused to sign" annotation he makes on the summonses just means that the recipient refused to sign the latter's name.[186] He deems it best to make this annotation in order to indicate that the summons was properly served. He even leaves his contact number with the recipients of the summons in case they need to reach him.

He also explains that his failure to abide by the rules on substituted service of summons was due to inadvertence, because he had in mind the immediate service of summons without going through the tedious process provided in the rules.[187] He points out, though, that he zealously seeks the whereabouts of the addressees. He resorts to a substituted service only if they are not around, in which case he explains to the person present the consequences of receiving the summons on behalf of the addressee.[188] As regards Civil Case Nos. 2940-09 and 1860-08, in which he served a summons in Camarines Norte, he explains that he is a Bicolano; as such, he is familiar with the Bicol region.[189]

3. In one case, the grant of the petition for declaration of nullity of marriage even without the appearance of any of the parties

Judge Cabrera-Faller narrates the entire history of the case and insists that, contrary to the observation of the OCA, a hearing was conducted for the presentation of one witness. However, the latter's testimony was later dispensed with pursuant to a stipulation between the public prosecutor and the petitioner's counsel.[190]

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[186] *Id*. at 1044.

[187] *Id*. at 1042.

[188] *Id*. at 1043.

[189] *Id*.

[190] *Id*. at 761-763.

4. Questionable raffling of cases

Judge Cabrera-Faller claims that the raffle and distribution of cases on the same day is not a baffling situation; rather, it is an efficient system of working out the early disposition of cases.[191] In other courts, the distribution of cases to the concerned courts is done a week after the raffle.[192]

With regard to Civil Case No. 3676-10, while it was indeed raffled on 12 April 2010, the return of the summons showed that it was personally received by the respondent on 14 April 2010, and not 25 March 2010 as reported by the OCA.[193]

5. Issuance of the decree of nullity of marriage despite absence of proof that the entry of judgment had been registered with the local civil registrar

Judge Cabrera-Faller explains that the issuance of actual court processes is not always done by the books, and that it sometimes has to give way to the convenience of the court and the requesting persons.[194]

She explains the procedure in her court. After the issuance of a decision granting the declaration of absolute nullity or annulment of marriage, they send copies to the parties, their counsels, the public prosecutor, the Solicitor General, the National Statistics Office, and the local civil registrars of both the place where the parties were married and the place where the court is sitting.[195] Thereafter, the winning party can return to the court to secure the entry of final judgment after the lapse of the appeal period. Usually, the court issues the entry of final judgment and the decree of nullity of marriage on the same day as the request therefor, so that the winning party can have

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[191] *Id*. at 1044-1045.

[192] *Id*. at 1045.

[193] *Id*. at 769-770.

[194] *Id*. at 1044.

[195] *Id*. at 768.

the documents registered with the local civil registrar.[196] This procedure is designed precisely for facility in the registration of these certificates.[197]

6. Grant of petitions for declaration of nullity and annulment of marriage at the extraordinary speed of six months or less

Judge Cabrera-Faller sees nothing "extraordinary" about resolving cases within six months, especially since these cases are uncontroverted even by the State.[198] She explains that she did not want to burden the court's calendar by prolonging the proceedings therein.

As regards the questionable raffling of cases in his office, Clerk of Court Eusebio submits that the raffle of cases are held every Monday at 11:45 a.m. and are attended by the judges of RTC Imus 20, 21 and 22; and RTC Dasmariñas 90.[199] All cases filed in the afternoon of every Monday up to 11:30 in the morning of the following Monday are included in the next raffle.

He and Judge Quisumbing, the executive judge, reiterate the explanation of Judge Cabrera-Faller with regard to the regularity of the raffle of Civil Case No. 3676-10; and of Judge Felicen and Clerk of Court Marasigan with regard to Civil Case Nos. 1852-08 and 3309-09.[200] They aver that those cases, identified to have been filed and raffled on the same day, were indeed filed in the morning of a Monday and, hence, included in the raffle at 11:45 a.m. that day.[201]

For his part, Judge Quisumbing states that he does not have any control over the number of cases filed and raffled.[202] After

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[196] *Id*. at 768-769.

[197] *Id*. at 769.

[198] *Id*. at 770.

[199] *Id*. at 914.

[200] *Id*. at 914-915, 824-825.

[201] *Id*.

[202] *Id*. at 824.

each raffle, the clerk of court distributes the case records not later than 3:00 p.m. of the same day to the branches to which they have been raffled.

In a Resolution dated 20 October 2015,[203] the Court referred this administrative case, together with A.M. Nos. RTJ-11-2301 and 12-9-188-RTC, to the CA for immediate raffle among the members thereof. The investigating CA justice was directed to evaluate the cases and make a report and recommendation thereon within 90 days from notice.

A.M. No. 12-9-188-RTC

In a letter dated 1 June 2012 addressed to the OCA,[204] a "concerned employee" of RTC Dasmariñas 90 claimed to have personal knowledge that the decision rendered by Judge Cabrera-Faller in Civil Case No. 1998-08 was for a cash consideration. According to the letter writer, the petitioner therein, Armando Tunay, was an American citizen who had never been a resident of the Philippines. However, in his petition, he allegedly used a fictitious address in Dasmariñas, Cavite. Despite being fully aware of this fact, Judge Cabrera-Faller granted the petition in less than six months. The letter writer added that the judge did not deserve to be in the judiciary because of her partiality and corruption.

At the time of the receipt of the anonymous letter, a full investigation by the OCA of the proceedings in A.M. No. RTJ-11-2302 was underway; hence, it recommended that the letter be included among the subjects of the investigation.[205] In a Resolution dated 12 November 2012,[206] the Court approved the OCA recommendation and consolidated A.M. No. 12-9-188-RTC with A.M. No. RTJ-11-2302. Judge Cabrera-Faller was likewise required to comment on the anonymous letter.

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[203] *Id*. at 1405-1406.

[204] *Rollo* (A.M. No. 12-9-188-RTC), p. 4.

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

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

In her comment dated 6 February 2013,[207] Judge Cabrera-Faller expressed disbelief that the letter could have been written by her staff in view of the letter writer's impeccable English. She suspected that the real perpetrator of the evil scheme just wanted to put her in even worse light at a time when she was already facing several other administrative complaints. She pointed out that Armando Tunay never hid the fact of his citizenship, as he definitively alleged in his petition that he was a naturalized American citizen. Upon an ocular inspection of the given address in the petition, Judge Cabrera-Faller was able to verify that the address truly existed; hence, it was not true that it was fictitious. Based on the attached affidavit of Armando Tunay,[208] he stayed in that house owned by their family friend six months before the filing of the petition and until a year after the termination of the proceedings. Judge Cabrera-Faller emphasizes that she does not accept cash considerations for favorable decisions in her court.

She points out that the State never questioned the address of the petitioner as stated in the petition, nor did it file any opposition during the proceedings.[209] While admitting that Civil Case No. 1998-08 was indeed decided in less than six months, she emphasizes that she has always observed the rule on the speedy disposition of both civil and criminal cases.

In a Resolution dated 20 October 2015,[210] the Court referred this administrative case, together with A.M. Nos. RTJ-11-2301 and RTJ-11-2302, to the CA for immediate raffle among the members thereof. The investigating CA justice was directed to evaluate the cases and make a report and recommendation thereon within 90 days from notice.

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

[208] *Id*. at 12-13.

[209] *Rollo* (A.M. No. RTJ-11-2302), p. 767.

[210] *Rollo* (A.M. No. 12-9-188-RTC), pp. 66-67.

RECOMMENDATION OF THE INVESTIGATING JUSTICE

The instant administrative cases were raffled to CA Associate Justice Victoria Isabel A. Paredes (Justice Paredes). She submitted her Amended Report[211] on 4 October 2016.[212]

A.M. No. RTJ-11-2301

Justice Paredes agreed with the OCA finding that Judge Cabrera-Faller did not take appropriate action in all the cases that had not been acted upon for a considerable length of time from the dates of their filing, including those without further setting, with pending incidents or submitted for decision.[213] In this light, Justice Paredes recommends that the judge be fined in the amount of ₱10,000 for failure to comply with the Court's Resolution.

On the other hand, OIC Suluen fails to satisfactorily explain why certain cases for declaration of nullity and annulment of marriage pending with the court proceeded despite the absence of vital documents.[214] As OIC branch clerk of court, she was charged with the efficient recording, filing and management of court records besides having administrative supervision over court personnel. For lack of diligence in the performance of administrative functions amounting to simple neglect of duty, Judge Paredes recommends that a fine in the amount of ₱20,000 be imposed on OIC Suluen.

Justice Paredes found the practice of Process Server Pontejos of serving summonses on the immediate relatives of respondents unacceptable.[215] Considering that it is through the service of summons by process servers that courts acquire jurisdiction over respondents, he was duty-bound to discharge his duties

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[211] *Rollo* (A.M. No. RTJ-11-2301), pp. 927-1017.

[212] *Id*. at 888.

[213] *Id*. at 941.

[214] *Id*. at 942.

[215] *Id*. at 943.

with the prudence, caution and attention that careful persons usually exercise in the management of their affairs. His failure to comply with the requirements set in *Manotoc v. CA* amounted to simple neglect of duty. For his offense, Justice Paredes recommends the imposition of a fine in the amount of ₱5,000.

A.M. No. RTJ-11-2302

On the allegation of improper venue for the declaration of nullity and annulment of marriage cases lodged against all four judges, Justice Paredes found only Judge Felicen liable.[216] Justice Paredes recalled that while the plaintiff or the respondent must be residents of the place where the action was instituted at the time it is commenced, improper venue as a ground to dismiss may be raised only by the parties to the action. In this case, none of the parties, or even the State, raised this ground during the proceedings in the audited cases. The only one who raised it was the respondent in Civil Case No. 2785-09 filed before RTC Imus 20.[217] The respondent thereon sought to dismiss the petition on the ground that none of the parties were residents of Cavite. The complaint could have only been filed before the court in the place where the respondent resided because the petitioner had been living in Taiwan and had no residence in the Philippines. Thus, Justice Paredes found that Judge Felicen erred when he failed to dismiss the case.

On the improper service of summons, Justice Paredes clears all four judges.[218] She indicates that while an improper service of summons may mean lack of jurisdiction over the person of the respondent, the latter may waive that defense by voluntarily appearing before the court or by failing to seasonably object to its jurisdiction. In all the audited cases, not one of the respondents upon whom a substituted service of summons was made filed a timely motion to dismiss the action for lack of jurisdiction over the respondent's person.

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[216] *Id*. at 996, 1000.

[217] *Id*. at 995.

[218] *Id*. at 996-997.

However, Justice Paredes finds that Process Server Pontejos, Sheriff Pagunsan, Process Server Azcueta and Sheriff De Villa had failed to comply with the guidelines of *Manotoc*.[219] Sheriff Pagunsan even admitted to leaving copies of the summons at the doors of the houses of respondents in anticipation of their receipt of it at a later time. For this negligence, Justice Paredes finds them guilty of simple neglect of duty.[220] Considering that all of them admitted to serving summons outside the territorial jurisdiction of their courts, Justice Paredes also finds them guilty of abuse of authority.[221] She recommends that Sheriff Pagunsan, Process Server Azcueta and Sheriff De Villa be fined in the amount of ₱5,000 each for simple neglect of duty and another ₱5,000 each for abuse of authority, with a stern warning that a repetition of the same or a similar offense shall be dealt with more severely.

For their failure to properly supervise the court personnel in their respective branches, specifically with regard to the proper service of summons on litigants, Clerks of Court Cordez and Marasigan were likewise found guilty of simple neglect of duty.[222] Justice Paredes recommends that they be fined in the amount of ₱20,000 each, with a stern warning that a repetition of the same or a similar offense shall be dealt with more severely.

As regards Process Server Pontejos, he was already found guilty of simple neglect of duty in A.M. No. RTJ-11-2301. The circumstances in A.M. No. RTJ-11-2302 further reveal his gross and palpable neglect of duty, for which the penalty of dismissal from service should be meted out to him.[223]

All four judges were cleared for issuing certificates of finality simultaneously with the decree of nullity of marriage. Justice Paredes elucidates that pursuant to Section 19(4) of A.M. No. 02-11-10-SC,

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[219] *Id*. at 1006.

[220] *Id*. at 1007.

[221] *Id* at 1007-1008.

[222] *Id*. at 1009-1010.

[223] *Id*. at 1009.

and as illustrated in *Diño v. Diño*,[224] the court shall forthwith issue the decree of nullity upon the finality of the decision, if the parties have no properties.[225]

On the extraordinary speed with which petitions were granted, Justice Paredes found that Judge Felicen carried the highest percentage of petitions granted in six months or less at 77%.[226] She also considered it notoriously impossible and improbable for Judge Mangrobang to decide a case within 25 days from the date of filing, regardless of the fact that it was an uncontested petition.[227] Justice Paredes reminds Judge Cabrera-Faller that petitions for declaration of nullity and annulment of marriage are regular family court cases, and not special proceedings for which jurisdictional requirements need to be established. Yet, despite this unnecessary layer in the conduct of proceedings, Judge Cabrera-Faller was still able to decide 57% of the declaration of nullity and annulment of marriage cases before her in six months or less.

Justice Paredes reminds the judges that they must behave at all times in ways that would promote public confidence in the integrity and impartiality of the judiciary. They must, therefore, avoid impropriety and even the appearance of impropriety in all their activities. Indeed, the judicial audit in these cases was prompted by reports that Cavite was a haven for "paid-for annulments."[228]

Thus, Justice Paredes finds Judge Felicen guilty of grave abuse of authority for failing to dismiss Civil Case No. 2785-09 for improper venue and for granting petitions for declaration of nullity and annulment of marriage with extraordinary speed.[229]

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[224] 655 Phil. 175 (2011).

[225] *Rollo* (A.M. No. RTJ-11-2301), pp. 997-999.

[226] *Id*. at 1000.

[227] *Id*. at 1001.

[228] *Id*. at 1000.

[229] *Id*. at 1000-1001.

She recommends that he be fined in the amount of ₱40,000, which is to be deducted from his retirement benefits.

Justice Paredes finds that Judge Mangrobang's cavalier attitude towards marriage – shown when he granted a petition 25 days after its filing – does not speak well of the reverence that the Constitution, society and Filipino culture holds for marriage as the foundation of the family.[230] She finds him guilty of grave abuse of authority and recommends that he be fined in the amount of ₱40,000, to be deducted from his retirement benefits.

Judge Cabrera-Faller was also found guilty of grave abuse of authority for granting petitions for declaration of nullity and annulment of marriage with extraordinary speed. It is recommended that she be fined in the amount of ₱40,000 and permanently enjoined from handling family court cases.[231]

On the other hand, Justice Paredes recommends that the charges against Judge Quisumbing be dismissed.[232] Likewise, she finds no sufficient, clear and convincing evidence to hold Interpreter Juntilla and Stenographer Reyes administratively liable, because they cannot be expected or required to go beyond the usual practice of asking for names and personal circumstances in ascertaining the real identities of the parties appearing before them.[233] At the time that the petitioner in Civil Case No. 2785-09 testified in court, nothing had put them on guard as to the witness's identity.

The charge against Social Worker Serilo is also recommended to be dismissed for insufficiency of evidence.[234] There was no evidence that she was directly involved in the filing of the petitions in which her address was used as the petitioners' own.

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[230] *Id*. at 1001.

[231] *Id*.

[232] *Id*. at 1000.

[233] *Id*. at 1003.

[234] *Id*. at 1003-1004.

Neither was there any clear showing that she had consented to the use of her address in that manner.

Similarly, there was insufficient evidence to hold Process Server Ferrer administratively liable, because a reading of his comments and returns shows that he sufficiently complied with the guidelines in *Manotoc*.[235] Justice Paredes holds that there is a valid tender of summons even if the respondent or another person of suitable age and discretion refuses to sign the original copy of the summons.

Justice Paredes recommends that charges against Clerk of Court Eusebio be dismissed. She believes that he was able to explain that the seemingly questionable raffling of cases among the RTC branches was only brought about by inadvertence or mistakes in the indication of dates.[236]

A.M. No. 12-9-188-RTC

Justice Paredes points out that the issue in this administrative matter is whether money exchanged hands for a favorable judgment in Civil Case No. 1998-08. She holds the considered opinion that the purported graft and corruption reported in the anonymous complaint is just a figment of the letter writer's imagination.[237]

During the clarificatory hearing conducted on 12 January 2016, Mrs. Orlinda Ojeda-Tunay testified that the letter writer was her brother. He had allegedly been against her marriage with Armando Tunay, whose remarriage was made possible by the grant of the petition in Civil Case No. 1998-08.[238] For Justice Paredes, this testimony – as against the amorphous, undefined and unsupported charge in the anonymous letter – should be upheld. Thus, she recommends that the charge against Judge Cabrera-Faller be dismissed.

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[235] *Id*. at 1006.

[236] *Id*. at 1010-1011.

[237] *Id*. at 1012.

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

OUR RULING

In the present administrative disciplinary proceedings against judges and court personnel, respondents spring the defense that no objection from the parties, the public prosecutor, the Solicitor General, or the State was ever raised against these alleged irregularities. To our mind, the fact that respondent judges and court personnel are using judicial arguments does not speak well of the strength of their position in these administrative complaints. The waiver of venue of civil actions or the waiver of the defense of lack of jurisdiction over persons – or, for that matter, any failure to raise an objection – is relevant only to the judicial proceedings where that waiver was made.

Court personnel are, first and foremost, public officials.[239] They are held to a high standard of ethics in public service and exhorted to discharge their duties with utmost responsibility, integrity, competence, and loyalty, as well as to uphold public interest over personal interest.[240] As professionals, they are expected to perform their duties with the highest degree of excellence, intelligence and skill. The presence or absence of objections cannot be the measure by which our public officials should perform their sacred duties. First and foremost, they should be guided by their conscience; and, in the case of those employed in the judiciary, by a sense of responsibility for ensuring not only that the job is done, but that it is done with a view to the proper and efficient administration of justice.

Judges and court personnel are expected to avoid not just impropriety in their conduct, but even the mere appearance of impropriety.[241] In the instant administrative cases, respondents

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[239] Republic Act No. 6713, Section 3(b):

(b) "Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

[240] *Id*. at Section 2.

[241] *See* New Code of Judicial Conduct, Canon 4, Section 1.

miserably failed in this regard. Note must be taken that what prompted the judicial audit in the four courts involved herein are reports that they have become havens for "paid-for annulments."

Improper Venue

A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages), which took effect on 15 March 2003, provides that petitions shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing.[242] In the case of nonresident respondents, it shall be filed where they may be found in the Philippines, at the election of the petitioner.

In *OCA v. Flores*,[243] this Court has ruled that a deliberate disregard of the foregoing rule may be shown by the judge's inexplicable persistence in trying and resolving cases despite glaring circumstances that "should have created doubt as to the veracity of the residential addresses declared in the petitions."[244]

In these cases, the records are replete with glaring circumstances that should have created doubt in the minds of the respondent judges as to the veracity of the residential addresses declared in the petitions. In all four courts, the OCA and the judicial audit teams found that most of the given addresses were vague or incomplete. It may be true, as explained by Judge Quisumbing, that some residential addresses in the provinces have no house numbers. Yet, the fact that most of the court notices sent to the parties by RTC Imus 20 and 22 and RTC Dasmariñas 90 were "returned to sender" shows that there was something amiss in the given addresses. It is even more curious that the notices were "returned to sender" for the reason that

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[242] A.M. No. 02-11-10-SC, Section 4.

[243] A.M. No. RTJ-12-2325 & A.M. OCA IPI No. 11-3649-RTJ, 14 April 2015, 755 SCRA 400.

[244] *Id*. at 429.

the addressees were unknown at the given address or could not be located.

More important, cases where parties have the same address as those in another case cannot be explained away. In fact, out of the four respondent judges, only Judge Quisumbing attempted to give an explanation of this anomaly. But his statement, instead of clarifying the matter, only operated to strengthen the cases against them. He offers the possibility that the petitioners really lived in the same house, because they were separated from their respective spouses. If this is indeed the case, then the fact that these parties were represented by the same counsels shines an even more disturbing light upon the observed irregularity.

In four cases decided by RTC Imus 20, the address of the petitioner in Civil Case No. 3045-09 is the same as that of the petitioner in Civil Case No. 3118-09, while the address of the petitioner in Civil Case No. 3117-09 is the same as that of the petitioner in Civil Case No. 3430-10.[245] The counsel for the petitioners in Civil Case Nos. 3045-09, 3118-09 and 3117-09 was Atty. Allan Rheynier D. Bugayong, while the counsel for the petitioner in Civil Case No. 3430-10 was Atty. J.T. Leonardo Santos.

In RTC Imus 21, the address of the petitioner in Civil Case No. 2729-09 is the same as that of the petitioner in Civil Case No. 3534-10. They were represented by Atty. Ruel B. Nairo.[246] The address of the petitioner in Civil Case No. 2733-09 is the same as that of the petitioner in Civil Case No. 3208-09, and they were represented by Atty. Norman R. Gabriel.[247] The address of the petitioner in Civil Case No. 3490-10, represented by Atty. Aimee Jean P. Leaban, is the same as that of the petitioner in Civil Case No. 3558-10, represented by Atty. Ruel B. Nairo. The address of the petitioner in Civil Case No. 3636-10 is the same as that of the petitioner in Civil Case No. 3786-10, and they were both represented by Atty. Allan Rheynier D. Bugayong.

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[245] *Rollo* (A.M. No. 11-2302-RTC), p. 508.

[246] *Id*. at 526.

[247] *Id*. at 527.

In RTC Imus 22, the address of the petitioner in Civil Case No. 2781-09 is the same as that of the petitioners in Civil Case Nos. 3040-09 and 3370-09.[248] The address of the respondent in Civil Case No. 2781-09 is the same as that of the respondents in Civil Case Nos. 3370-09 and 3371-09. The counsel for petitioners in all of these cases was Atty. Clarissa L. Castro. The address of the petitioner in Civil Case No. 2994-09 is the same as that of the petitioner in Civil Case No. 3092-09, and they were both represented by Atty. Bernard R. Paredes.[249] The address of the petitioner in Civil Case No. 2589-09 represented by Atty. Herminio Valerio, is the same as that of the petitioner in Civil Case No. 3170-09, represented by Atty. Cesar DC Geronimo.

In RTC Dasmariñas 90, the address of the petitioner in Civil Case No. 3623-10 is the same as that of the respondent in Civil Case No. 2815-09.[250] The address of the respondent in Civil Case No. 2991-09 is the same as that of the respondent in Civil Case No. 3456-10, and they were both represented by Atty. Omar Francisco.

It would appear that counsels maintain residences within the jurisdiction of friendly courts for their declaration of nullity and annulment of marriage cases. Considering, however, that the notices sent to most of these addresses were also "returned to sender," we cannot even make the kindest assumption that the parties actually resided in those addresses just for the sole purpose of having their marriages declared null and void or annulled by a friendly court. What is clear is that there is a conspiracy, at least between the counsels of these parties and the four courts, in order to reflect paper compliance with the rule on venue.

In Civil Case No. 2785-09 before RTC Imus 20, it may be true that the respondent did not present any proof to support

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[248] *Id* at 535-536.

[249] *Id*. at 536.

[250] *Id*. at 558.

his allegation in his Answer that the petitioner was not a resident of Imus, Cavite. Nonetheless, Judge Felicen still made a false statement in his decision in that case when he stated therein that "[d]espite the service of summons, no responsive pleading was filed by respondent."[251] He thought perhaps that the addition of the phrase "within the reglementary period" would place the statement within the purview of the truth. Such dishonesty, aggravated by the fact that it was committed in no less than a decision of the court, cannot be countenanced.

On the other hand, the recommendation of Justice Paredes with regard to the dismissal of the charge against Interpreter Juntilla and Stenographer Reyes is well-taken. Indeed, at the time that the petitioner in Civil Case No. 2785-09 testified in open court, there was sufficient basis to believe that she was indeed who she said she was. After all, the witness identified herself under oath, stated her name and other personal circumstances for the record, and signed the minutes of the proceedings. The evidence also shows that the signatures in the minutes of the proceedings and in the verification of the petition are the same.[252] Furthermore, we cannot rely too much on the certification issued by the Bureau of Immigration in this case.[253] While it states that the petitioner did not have any record of arrival in the Philippines from January 1993 to 28 May 2013, it also states that she did not have any record of departure during the same period. To recall, the respondent in the case alleged in his Answer that the petitioner had been living in Taiwan since 1994.

In Civil Case No. 1256-07, before RTC Imus 22, the address of the court's very own Process Server Azcueta appeared as the address of the petitioner therein. In Civil Case Nos. 2893-09 and 3179-09 before RTC Dasmariñas 90, the address of Social Worker Serilo also appeared as the address of the petitioners

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[251] *Id*. at 508.

[252] *Id*. at 841-842.

[253] *Id*. at 609.

therein. We cannot accept their explanation regarding the alleged unauthorized use of their addresses. It should be noted that relative to the majority of the vague and incomplete addresses given by the parties in the other petitions, those given by the petitioners who used the addresses of Process Server Azcueta and Social Worker Serilo stick out in their specificity: the block and lot number, street, subdivision and even the barangay were indicated. Furthermore, the addresses of the respondents in these petitions were not in Cavite. Thus, the addresses of Process Server Azcueta and Social Worker Serilo were the ones that provided the opportunity for these petitions to be in compliance with the venue requirement. This single most important fact negates any declaration that they did not consent to, or that they were even aware of the use of their addresses.

In A.M. No. 12-9-188-RTC, the Court notes that the address given by Armando Tunay in his petition was "c/o Christina B. Toh, xxx Aguinaldo Highway, Dasmariñas, Cavite."[254] As we pronounced in *Re: Report on the Judicial Audit Conducted in the RTC Br. 60, Barili, Cebu*,[255] the use of the abbreviation "c/o" connotes that that petitioner was not an actual resident of the given address. This fact, together with the admission of the petitioner that he is a naturalized American citizen, should have engendered suspicion on the part of Judge Cabrera-Faller that the former did not reside within the territorial jurisdiction of RTC Dasmariñas 90. The affidavit executed by Armando Tunay stating that he resided in that address for six months before the filing of the petition and until a year after the termination of the case is, at best, self-serving. What he stated in his affidavit may be relevant only to the proceedings for his petition for declaration of nullity of marriage. It cannot operate to excuse the gross ignorance of the law committed by Judge Cabrera-Faller with regard to the application of the rules on venue for petitions for declaration of nullity and annulment of marriages.

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[254] *Rollo* (A.M. No. 12-9-188-RTC), p. 18.

[255] 488 Phil. 250 (2004).

Improper Service of Summons

Section 6 of A.M. No. 02-11-10-SC provides that the service of summons shall be governed by Rule 14 of the Rules of Court. Under that Rule, the summons may be served by the sheriff, the deputy sheriff, or other proper court officer, or, for justifiable reasons, by any suitable person authorized by the court issuing the summons.[256] Whenever practicable, the summons shall be served by handing a copy thereof to respondents in person or, if they refuse to receive and sign for it, by tendering it to them.[257] However, if the service cannot be done personally for justifiable causes and within a reasonable time, it may be effected by (a) leaving copies of the summons with some other person of suitable age and discretion then residing at respondent's house; or (b) leaving copies of the summons with some competent person in charge of the respondent's office or regular place of business.[258]

Manotoc v. CA[259] operationalized the provision for a valid substituted service of summons by laying down the following requirements:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a reasonable time to serve the summons to the defendant in person, but no specific time frame is mentioned. Reasonable time is defined as so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party. Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits

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[256] Rules of Court, Rule 14, Section 3.

[257] *Id*. at Section 6.

[258] *Id*. at Section 7.

[259] 530 Phil. 454 (2006).

the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, reasonable time means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, reasonable time means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriffs Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered reasonable time with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. Several attempts [mean] at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriffs Return of Summons on Substituted

Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts, which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

If the substituted service will be effected at defendant's house or residence, it should be left with a person of suitable age and discretion then residing therein. A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. Discretion is defined as the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed. Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the relation of confidence to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipients relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

If the substituted service will be done at [defendant's] office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects

arising from inaction on the summons. Again, these details must be contained in the Return.[260]

The return for a substituted service should state, with more particularity and detail, the facts and circumstances such as the number of attempts at personal service, dates and times of the attempts, inquiries made to locate the respondent, names of occupants of the alleged residence, and reasons for failure in order to satisfactorily show the efforts undertaken.[261] The exertion of efforts to personally serve the summons on respondent, and the failure of those efforts, would prove the impossibility of prompt personal service.[262]

Manotoc also emphasized that while substituted service of summons is permitted, it is extraordinary in character and a departure from the usual method of service.[263] As such, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules.[264]

In these cases, it was clear that no faithful and strict compliance with the requirements for substituted service of summons was observed by Sheriffs De Villa and Pagunsan and Process Servers Ferrer, Azcueta, and Pontejos.

Contrary to the findings of Justice Paredes, those arrived at by this Court show that the returns made by Process Server Ferrer did not sufficiently comply with the guidelines in *Manotoc*. To illustrate, he submitted the following return in Civil Case No. 2511-09:

This is to certify that on January 29, 2009, the undersigned personally served the Summons together with the copy of a Petition and its annexes in the above-entitled case upon the respondent thru

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[260] *Id*. at 468-471.

[261] *Id*. at 473.

[262] *Id*. at 474.

[263] *Id*. at 468.

[264] *Id*.

Candy Socorro, house maid but she refuse[d] to affix by [sic] her name and signature in the original copy of the Summons.

That all diligent efforts were exerted to serve the said Summons as the undersigned went also to the above stated address on January 21 and 24, 2009 but the same proved ineffectual.

The original copy of the Summons is therefore respectfully returned duly served.[265]

Notably, this return fails to establish the impossibility of prompt personal service. Although it states that he went to the respondent's address three times on three different dates, it does not show that efforts were made to find the respondent personally or cite why those efforts "proved ineffectual." Neither does it show that he ascertained whether or not the recipient comprehended the significance of the receipt of the summons and the duty to deliver it to the respondent or at least to notify the latter about the receipt of the summons.

In Civil Case Nos. 2216-08 and 2243-08, Process Server Ferrer indicated in his returns that he had made a personal service of summons on the respondents at their given addresses. However, subsequent orders sent to the same addresses were "returned to sender." Indeed, it is possible that after personal service of summons on respondents, they moved to another residence, but it is a different matter if the subsequent orders were returned to sender because respondents were "unknown at given address."[266] This notation overturns whatever presumption of regularity in the performance of official duties may be accorded to the prior return of Process Server Ferrer stating that personal service on the respondent was made at that address. Furthermore, Civil Case No. 2216-08 was decided by RTC Imus 20 in three months and 10 days and Civil Case No. 2243-08 in four months and 17 days from filing.[267] It would be hard to imagine that in such a short span of time, the

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[265] *Rollo* (A.M. No. RTJ-11-2302), p. 320.

[266] *Id*. at 510.

[267] *Id*. at 523.

respondents would be "unknown at given address," if they had really been found there just a few months previously.

Sheriff Pagunsan was in the habit of stating in his returns that "no one was around to receive the court process. Hence, a copy of the summons was left at the door of the defendant's place."[268] The Court cannot even begin to describe how far-off this practice is from the prescribed requirements and circumstances authorized by the rules. It does not even fall under the category of substituted service of summons, which, as we have said, is already a departure from the usual method of service. The following is an example of Sheriff Pagunsan's return for a substituted service of summons:

> THIS IS TO CERTIFY that on November 8, 2009, the undersigned personally served the copy of Summons together with the Petition and its annexes in the above captioned case to the defendant VINCENT CHRISTIAN OBLENA at xxx Parañaque City thru Gino Uson [who] claims to be a relative of the defendant, of sufficient age and discretion to receive the court process as [sic] however refused to affix his signature on the original copy of the Summons.
>
> Earnest efforts were made by the undersigned in the morning and afternoon of the said date to serve the summons personally upon the respondent but failed on the grounds that respondent was always out at the time of the said service, hence, substituted service was resorted to in accordance with the Rules of Court.
>
> The original copy of the summons is, therefore, respectfully returned DULY SERVED.[269]

The foregoing return clearly shows that while there were two attempts to serve the summons personally, they were made on the same day. He does not mention if he made any inquiry to locate the respondent; or if the recipient, who "claims to be a relative" of the respondent, comprehended the significance of the receipt of the summons and the duty to deliver it to the respondent or at least to notify the latter about the receipt thereof.

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[268] *Id.* at 511-512.

[269] *Id.* at 627.

The blatant nonobservance of the rule regarding personal and substituted service of summons was shown by Sheriff De Villa in Civil Case No. 2693-09 when he resorted to substituted service of summons on the very same day that it was issued.[270] He was also found to have served summons – one was personal and the other substituted – on two different respondents in two different cases at the same address in Makati.[271] We cannot countenance his alleged practice of resorting to substituted service after being advised by the respondent over the phone to leave the summons with the person present in the house. Contrary to his belief, this practice does not fulfill the requirement that he exert all efforts to personally serve the summons. In these instances, since he had already contacted the respondent by phone, it would have been more prudent and dutiful to have set an appointment for another day to enable him to personally serve the summons on the respondent himself, rather than to resort to a substituted service at the first instance.

The following is an example of a return that he submitted for a substituted service of summons:

> Respectfully returned to ATTY. MARIA CRSITITA A. RIVAS-SANTOS, Clerk of Court V, RTC Br. 21, Imus, Cavite the enclosed original copy of the Summons issued in the above-captioned case to respondent, PAUL JEFFREY R. SANTOS of xxx, Pasig City with the information that copy of the Summons together with the attached Petition and its Annexes was received by respondent's mother, LINA R. SANTOS on March 10, 2010, as evidenced by her signature appearing at the face bottom of said summons.[272]

Again, this return fails to establish the impossibility of a prompt personal service. It does not show that Sheriff De Villa went to the respondent's address three times on at least two different dates, or that he exerted efforts to find the respondent and serve the summons personally. Neither does the return show

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[270] *Id*. at 528.

[271] *Id*.

[272] *Id*. at 1070.

that he ascertained whether the recipient comprehended the significance of receiving the summons and the duty to deliver it to the respondent or at least to notify the latter about the receipt of the summons.

In a number of the returns submitted by Process Server Azcueta, he claimed to have made a substituted service of summons to recipients who refused to sign or acknowledge receipt thereof. However, subsequent orders sent to the same addresses were "returned to sender," because "no such defendant/ name" or "unknown address;" or, worse, the address was "unlocated, no such name and number of house on given address."[273] Again, these notations overturn whatever presumption of regularity in the performance of official duties may be accorded to the prior return of Process Server Azcueta that substituted service on respondents was made at the given addresses.

No return of summons was attached to the records of five cases before RTC Imus 22.[274] Process Server Azcueta explains that attaching the returns to the case records was not his job. On the other hand, Judge Mangrobang and Clerk of Court Cordez offer the possibility that the returns were accidentally detached from the records due to numerous instances of retrieval and photocopying. All of them claim that just because no returns were attached to the records did not mean that there was an improper service of summons. Curiously, whether it was a matter of failure to attach the returns to the records or accidental detachment of the returns therefrom, no evidence of the actual existence of the missing returns has been shown. If it was a matter of failure to attach the returns, their submission to the judicial audit team would have been easy. In any event, the accidental detachment of the returns could have been proven by a gap in the pagination of the records.

The following is an example of a return that Process Server Azcueta submitted for a substituted service of summons:

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[273] *Id*. at 538-540.

[274] *Id*. at 549.

Respectfully return[ed] to the Honorable Court the attached original copy of the summons and petition dated September 29, 2009 issued by this Honorable Court with the following information:

1. That on October 1, 2009, the undersigned caused the service of Summons to the respondent but said respondent was not around on the said date.

2. That earnest effort to personally serve the summons failed as the said respondent is still not around at the given address when service was effected on October 10, 2009. To satisfy the Rules, substituted service was made by tendering a copy of the summons with petition and its annexes thru MA. PAZ C. BAUN, a person of competent age and discretion as evidenced by her signature appearing on the original copy of summons.

WHEREFORE, the original copy of the summons is hereby respectfully returned DULY SERVED.[275]

From a reading of the return, it evidently fails to establish the impossibility of prompt personal service. While it shows that Process Server Azcueta went to the respondent's address twice on two different dates, it does not show that he exerted efforts to find the respondent and serve the summons personally. Despite its use of the phrase "[t]o satisfy the Rules," it does not indicate the relation of the recipient with the respondent or whether the former comprehended the significance of the receipt of the summons and the duty to deliver it to the respondent or at least to notify the latter about the receipt of the summons.

As regards Process Server Pontejos, it bears noting that there were findings of improper service of summons in both A.M. Nos. RTJ-11-2301 and RTJ-11-2302. Out of the 32 cases in A.M. No. RTJ-11-2301 and 45 in A.M. No. RTJ-11-2302 in which he made a substituted service of summons without compliance with the mandatory requirements of *Manotoc*, only one case overlapped – Civil Case No. 3746-10.

In A.M. No. RTJ-11-2302, the service of summons in 18 out of the 45 cases audited was made personally. However, all

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[275] *Id.* at 1191.

the returns in these 18 cases indicate that respondents refused to sign the original copy of the summons. Below is an example of such returns:

> THIS IS TO CERTIFY that on February 19, 2010, the undersigned caused the service of summons issued by the Clerk of Court of this Court together with the copy of complaint in the above-entitled case upon respondent Aurora T. Frias at xxx Dasmariñas, Cavite, who received the summons personally, but she refused to sign in the original copy of summons.
>
> The original copy of summons is, therefore, respectfully returned, DULY SERVED.[276]

In the other cases in which substituted service of summons was made, Process Server Pontejos did not even indicate the relation of the recipient with the respondent.[277] Below is an example of a return for a substituted service of summons:

> THIS IS TO CERTIFY that on August 5, 2009, the undersigned caused the service of summons issued by the Clerk of Court of this Court together with the copy of complaint in the above-entitled case upon respondent Shirly Manzana-Luzarraga at xxx Camarines Norte thru Lydia Brayus, a person residing thereat of sufficient age and discretion to receive summons, as evidenced by her signature appearing in the original copy of summons.
>
> That all diligent efforts were exerted to serve the said summons personally upon respondent Shirly Manzana-Luzarraga, but the same proved ineffectual.[278]

Then again, even Process Server Pontejos admits that he only had in mind the immediate service of summons "without going through the tedious process"[279] provided under Administrative Circular No. 12 dated 1 October 1985.[280]

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[276] *Id*. at 699.

[277] *Id*. at 562-563.

[278] *Id*. at 1047.

[279] *Id*. at 1042.

[280] Guidelines and Procedure in the Service and Execution of Court Writ and Processes in the Reorganized Courts.

As borne out by the records and admitted by Sheriffs De Villa and Pagunsan and Process Servers Ferrer, Azcueta, and Pontejos, they have all served summons outside the territorial jurisdictions of their respective courts. Process Server Ferrer has served summons in Makati and Muntinlupa City,[281] Sheriff Pagunsan in Camarines Sur,[282] Process Server Pontejos in Camarines Norte,[283] Sheriff De Villa in Nueva Ecija,[284] and Process Server Azcueta in Cagayan de Oro City.[285]

Their service of summons outside the territorial jurisdiction of their respective courts is regrettable for two reasons. First, it was contrary to Administrative Circular No. 12 dated 1 October 1985, which provides that the service of all court processes and the execution of writs issued by the courts shall only be made within their territorial jurisdictions. Second, the level of industry, commitment and diligence that went into the service of summons in places very far from the territorial jurisdictions of the courts in question unfortunately failed to find its way into the service of summons *within* the territorial jurisdictions of the concerned courts or into the preparation of the corresponding returns.

The purpose of a summons is twofold: to acquire jurisdiction over the person of respondents and to notify them that an action has been commenced, so that they may be given an opportunity to be heard on the claim being made against them.[286] The importance of the service and receipt of summons is precisely the reason why the Court has laid down very strict requirements for undertaking substituted service of summons. As we said in *Manotoc*, to allow sheriffs and process servers to describe the facts and circumstances of substituted service in inexact terms

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[281] *Rollo* (A.M. No. RTJ-11-2302), pp. 510-511.

[282] *Id*. at 1398.

[283] *Id*. at 559, 751-752.

[284] *Id*. at 1051.

[285] *Id*. at 1176.

[286] *Sagana v. Francisco*, 617 Phil. 387 (2009).

would encourage routine performance of their precise duties. It would be quite easy for them to shroud or conceal carelessness or laxity in such broad terms.[287]

Having administrative supervision over court personnel, Clerks of Court Marasigan and Cordez in A.M. No. RTJ-11-2302 and OIC Suluen in A.M. No. RTJ-11-2301 had the responsibility to monitor compliance with the rules and regulations governing the performance of their duties. Their responsibility gains more significance considering that they are the ones who issue the summons[288] and receive the returns from the sheriffs and process servers.[289] They should have insisted on strict compliance with the rules and imposed a corresponding punishment for repeated violations.

The same is true with regard to the four respondent judges in these cases. That they allowed and tolerated noncompliance with the strict requirements of the rules for a long period of time shows their unfitness to discharge the duties of their office. Despite the improper service of summons, they continued with the conduct of the proceedings in the petitions for declaration of nullity and annulment of marriage. These findings tie up with the allegation of the OCA and the judicial audit teams that a conspiracy existed and thereby turned the courts in Cavite into havens for "paid-for annulments."

Lack of Collusion Report

Under Section 8(1) of A.M. No. 02-11-10-SC, the respondent is required to submit an Answer within 15 days from receipt of the summons. If no answer is filed, the court shall order the public prosecutor to investigate whether collusion exists between the parties.[290] Within one month from receipt of the order of the court, the public prosecutor shall submit a report to the

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[287] *Manotoc v. CA*, *supra* note 259; at 474.

[288] Rules of Court, Rule 14, Section 1.

[289] *Id*. at Section 4.

[290] A.M. No. 02-11-10-SC, Section 8(3).

court stating whether the parties are indeed in collusion.[291] If it is found that collusion exists, the public prosecutor shall state the basis of that conclusion in the report.[292] The court shall then set the report for hearing; and if convinced that the parties are in collusion, it shall dismiss the petition. If the public prosecutor reports that no collusion exists, the court shall set the case for pretrial.[293]

Notably, the rules do not merely ask whether the public prosecutor is in a position to determine whether collusion exists. They require that the investigating prosecutor determine whether or not there is collusion. In A.M. No. RTJ-11-2301, Judge Cabrera-Faller tolerated the public prosecutor's practice of submitting investigation reports stating merely that "the undersigned Prosecutor is not in the position to tell whether collusion exists."[294] Judge Cabrera-Faller still proceeded with the hearing of the cases.

Furthermore, in declaration of nullity and annulment of marriage cases, the investigation report of the prosecutor on whether there is collusion between the parties is a condition *sine qua non* for setting the case for pretrial or further proceedings.[295]

Thus, it matters not that the public prosecutors manifested before Judges Felicen, Quisumbing and Mangrobang that they would just actively participate in the proceedings to safeguard against collusion or fabricated evidence, in lieu of an investigation report on collusion. No further proceedings should have been held without the investigation report.

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[291] *Id*. at Section 9(1).

[292] *Id*. at Section 9(2).

[293] *Id*. at Section 9(3).

[294] *Rollo* (A.M. No. RTJ-11-2301), p. 19.

[295] *OCA v. Aquino*, 699 Phil. 513 (2012); *Corpus v. Ochotorena*, 479 Phil. 355 (2004).

In *Corpus v. Ochotorena*,[296] the Court found the respondent judge therein administratively liable for failure to observe the mandatory requirement of ordering the investigating public prosecutor to determine whether collusion existed between the parties. The Court emphasized that the active participation of the public prosecutor in the proceedings of the case could not take the place of the investigation report:

> While the record shows that Public Prosecutor Arturo M. Paculanag had filed a *Certification* dated May 04, 2001 with the respondent judge's court, stating, among others, that he appeared in behalf of the Solicitor General during the *ex-parte* presentation of plaintiff's evidence, even cross-examining the plaintiff and his witness, the psychiatrist Dr. Cheryl T. Zalsos, and that he had no objection to the granting of the petition for declaration of nullity of marriage, such *Certification* does not suffice to comply with the mandatory requirement that the court should order the investigating public prosecutor whether a collusion exists between the parties. Such directive must be made by the court before trial could proceed, not after the trial on the merits of the case had already been had. Notably, said *Certification* was filed after the respondent judge had ordered the termination of the case.[297]

There is no merit either in the contention that the active participation of the public prosecutor in the proceedings in lieu of an investigation report facilitates the speedy disposition of the cases. In *OCA v. Aquino*,[298] we enunciated that shortcuts in judicial processes cannot be countenanced, because speed is not the principal objective of a trial.

It is the considered opinion of this Court that the reason why the public prosecutors are not in a position to determine whether there is collusion between the parties is that one or both of them cannot be summoned to appear before the public prosecutor. Presumably, the irregularity regarding the non-submission of collusion investigation reports is likewise tied

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[296] 479 Phil. 355 (2004).

[297] *Id*. at 363.

[298] 699 Phil. 513 (2012).

with the anomalous addresses of the parties. Hence, the non-submission of the reports is another manifestation of the conspiracy to reflect paper compliance with the rule on venue.

Failure to Serve Copies of the Decisions on Respondents

If a counsel or party moves to another address without informing the court of that change, the former's failure to receive a copy of the decision sent to the last known address will not stay the finality of the decision.[299] It is a different matter, however, if from the very inception of the proceedings there is already doubt as to the genuineness of a party's given address.

In Civil Case No. 2904-09 filed before RTC Imus 20, summons was served on the respondent through substituted service. A copy of the order setting the pretrial was sent to respondent's address, but was returned to sender for the reason "no such name at given address."[300] A copy of the decision granting the petition for the annulment of marriage sent to the respondent's address was again returned to sender for the reason "unknown at given address." Nevertheless, a certificate of finality and decree of absolute nullity was issued by the court.

In Civil Case No. 1799-08 filed before RTC Imus 22, a copy of the order setting the pretrial was sent to the respondent's address, but was returned to sender for the reason "unlocated, no such name and number of house on given address."[301] A copy of the decision granting the petition for the annulment of marriage sent to the respondent's address was again returned to sender for the reason "unlocated/unknown." Nevertheless, a certificate of finality was issued by the court. In other cases before RTC Imus 22, copies of the decision sent to the respondents' addresses were returned to sender with the notations

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[299] *R Transport Corp. v. Philippine Hawk Transport Corp.*, 510 Phil. 130 (2005); *Macondray & Co. Inc. v. Provident Insurance Corp.*, 487 Phil. 158 (2004).

[300] *Rollo* (A.M. No. RTJ-11-2302), p. 519.

[301] *Id*. at 551.

"unknown," "no such name," or "no such address." Yet, certificates of finality were issued by the court.

These notations should have put Judges Felicen and Mangrobang and Clerks of Court Marasigan and Cordez on guard regarding the propriety of issuing a certificate of finality, considering that the notations meant that this was not just a simple matter of failure of the parties to inform the court of their new addresses. At best, their failure to be circumspect constituted neglect of duty. At worst, it was another manifestation of the conspiracy to grant fast and easy annulments to those who needed it.

Grant of Petitions at Extraordinary Speed

In RTC Imus 20, 50 out of the 65 cases examined were granted in six months or less from filing.[302] Sixteen cases were granted in three months, 12 in four months, 13 in five months, and nine in six months.

In RTC Imus 21, 15 out of the 62 cases examined were granted in six months or less from filing.[303] One case each was granted in two, three or four months; seven cases in five months; and five cases in six months.

In RTC Imus 22, 46 out of the 118 cases examined were granted in six months or less from filing.[304] One case was granted in record 25 days. Five cases were granted in two months, 6 in three months, 21 in four months, 7 in five months, and 6 in six months.

In RTC Dasmariñas 90, out of the 88 cases examined, 50 were granted in six months or less from filing.[305] Three cases were granted in three months, 10 in four months, 14 in five months, and 23 in six months.

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[302] *Id*. at 523-524.

[303] *Id*. at 531.

[304] *Id*. at 552-554.

[305] *Id*. at 570-572.

Considering that this Court continuously reminds our judges to resolve cases with dispatch, we cannot be so quick to reprove the practice of the four respondent judges herein. After all, as we said in *Santos-Concio v. Department of Justice*:[306]

> Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration, with particular regard of the circumstances peculiar to each case.[307]

However, the surrounding circumstances in these cases for the declaration of nullity and annulment of marriage render the speed with which they were decided suspect.

More important, the findings in A.M. No. RTJ-11-2301 involving Judge Cabrera-Faller include those of the judicial audit team showing a number of criminal and civil cases pending before RTC Dasmariñas 90 that have not been acted upon for a considerable length of time; some of them, even as far back as the time of their filing.

During the material period when Judge Mangrobang was deciding the declaration of nullity and annulment of marriage cases with extraordinary speed, he failed to resolve two pending motions before his *sala* within the 90-day reglementary period. In *Castro v. Mangrobang*,[308] this Court found him guilty of undue delay in resolving pending matters and fined him in the amount of ₱10,000. In another case, he was admonished for his failure to decide a motion on time.[309]

Judge Felicen had also been previously admonished to be more mindful of his duties, particularly in the prompt disposition

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[306] 567 Phil. 70 (2008).

[307] *Id*. at 81.

[308] A.M. No. RTJ-16-2455, 11 April 2016.

[309] *Cadiliman v. Mangrobang*, RTJ-10-2222, 10 February 2010.

of cases pending and/or submitted for decision and resolution before his sala.[310]

These independent findings lend weight to the conclusion of the OCA and the judicial audit teams that the irregularities in the proceedings before the four courts were systemic and deliberate, rather than caused by inadvertence or mere negligence. If it is true that the four judges are committed to the speedy resolution and disposition of cases, this commitment should have been reflected in all the cases pending before their courts, and not just in the declaration of nullity and annulment of marriage cases.

Lack of Registration with the Local Civil Registrar

Under Section 19(3) of A.M. No. 02-11-10-SC, a decision of the court granting the petition for declaration of nullity or annulment of marriage becomes final upon the expiration of 15 days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal, is filed by any of the parties, the public prosecutor, or the Solicitor General. If the parties have no properties, the court shall forthwith issue the corresponding decree of declaration of absolute nullity or annulment of marriage upon the finality of the decision.[311] Otherwise, upon the finality of the decision, the court shall observe the procedure prescribed for the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children, and delivery of their presumptive legitimes.

In both cases, the entry of judgment shall be registered in the civil registry where the marriage was recorded and in the civil registry where the family court granting the petition for the declaration of absolute nullity or annulment of marriage is located.[312]

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[310] *Dumdum v. Felicen*, A.M. No. RTJ-13-2345, 19 June 2013.

[311] A.M. No. 02-11-10-SC, Section 19(4).

[312] *Id*. at Section 19(4) and Section 22(1).

If the parties have properties, the decree of declaration of absolute nullity or annulment of marriage shall be issued only after the registration of the approved partition and distribution of the properties of the spouses in the proper Register of Deeds where the real properties are located; and after the delivery of the children's presumptive legitimes in cash, property, or sound securities.[313] The approved deed of partition shall be attached to the decree.[314]

Again, in both cases in which the parties have or do not have properties, the decree shall be registered in the civil registry where the marriage was registered, the civil registry of the place where the family court is situated, as well as in the National Census and Statistics Office.[315]

In these administrative cases, absent a finding by the OCA and the judicial audit teams that the parties in the identified cases have properties, the Court cannot condemn the practice of the issuance on the same day of the certificate of finality and the decree of declaration of absolute nullity or annulment of marriage. The rule is clear that courts shall forthwith issue the corresponding decree upon the finality of the decision if the parties have no properties. Considering further that both the entry of judgment and the decree must be registered with the civil registry where the marriage was registered and the civil registry of the place where the family court is situated, it is in fact easier for the parties to secure both from the courts on the same day and have them registered at the same time.

Questionable Raffling of Cases

The recommendation of Justice Paredes regarding the dismissal of charges against Clerk of Court Eusebio is well taken. Records show that Civil Case No. 1852-08 was filed on 1 February 2008 and received by RTC Imus 20 on 4 February 2008. The stamp

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[313] *Id*. at Section 22(a).

[314] *Id*. at Section 22(b).

[315] *Id*. at Section 23(a).

of the Office of the Clerk of Court indicating that it was filed on 24 February 2008 was only due to inadvertence.

The same is true with Civil Case No. 3309-09. The case was raffled and transmitted to RTC Imus 20 on 23 November 2009, and the statement in the return of summons that an attempt to serve the summons was made on 6 November 2009 was merely due to Sheriff Pagunsan's failure to update the old return format. With regard to Civil Case No. 3676-10, summons was personally received by the respondent on 14 April 2010, not 25 March 2010.

The finding that most of the cases were filed and raffled on the same day, without more, cannot make the judges and court personnel administratively liable. Under Supreme Court Circular No. 7-74 dated 23 September 1974,[316] the notice of the day and hour of the raffle should be posted prominently on the bulletin boards of the courts and at a conspicuous spot on the main door of the session hall of the executive judge. Thus, it is not impossible for counsels to habitually choose the date of the raffle as the date on which to file their petitions for whatever reason.

Other Irregularities

In A.M. No. RTJ-11-2301, other irregularities committed in RTC Dasmariñas 90 include the continuation of proceedings even without the appearance of the Solicitor General, the continuation of the pretrial despite the non-submission of pretrial briefs by the parties, the lack of formal offer of evidence in two cases submitted for decision, the non-attachment of the minutes to the records, the submission of unsigned and photocopied psychological evaluation reports of the psychiatrist/psychologist, and the submission of an unsigned *jurat* in the judicial affidavit of the petitioner in one case.

These irregularities speak for themselves and require no in-depth discussion. In *Maquilan v. Maquilan*,[317] we enunciated that the appearances of the Solicitor General and/or the public

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[316] Rule on Raffle of Cases.

[317] 551 Phil. 601 (2007).

prosecutor in proceedings for the declaration of nullity and annulment of marriage are mandatory. Under A.M. No. 02-11-10-SC, the failure of the petitioner to file a pretrial brief or even comply with its required contents has the same effect as the failure to appear at the pretrial,[318] which means the dismissal of the case.[319] While an oral offer of evidence is allowed by the Rules of Court,[320] the offer should be reflected at least in the minutes of the proceedings or in the court order issued at the end of each proceeding covering what transpired during the court session. As against the finding of the judicial audit team that no formal offer of evidence was made in two cases submitted for decision, no minutes of the proceedings or court order was submitted by Judge Cabrera-Faller to controvert the finding.

In A.M. No. RTJ-11-2302, other irregularities committed in RTC Imus 22 include the rendition of judgment ahead of the issuance of the order admitting the documentary exhibits and the giving of due course to a petition without a verification and certification against forum shopping. We find no merit in the explanation of Judge Mangrobang regarding the date indicated in the order admitting the documentary exhibits. He says that the date, which shows that the order admitting the exhibits was issued four days after the date of the decision, was a mere typographical error. As keenly observed by the OCA and the

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[318] A.M. No. 02-11-10-SC, Section 12.

[319] *Id.* at Section 13:

Section 13. *Effect of Failure to Appear at the Pre-trial.* — (a) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.

(b) If the respondent has filed his answer but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within fifteen days thereafter a report to the court stating whether his non-appearance is due to any collusion between the parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

[320] Rules of Court, Rule 132, Section 35.

judicial audit teams, even the stitching and the pagination of these two rulings show that the decision is ahead of the order admitting the documentary exhibits.[321] As regards the missing page containing the verification and certification against forum shopping, its alleged accidental detachment from the records could have been proven by a gap in the pagination of the records. No evidence of this sort was offered by Judge Mangrobang.

Again, in RTC Dasmariñas 90, one petition for the declaration of nullity of marriage was granted even without the appearance of the parties. Judge Cabrera-Faller merely explained that a hearing was conducted, but she did not belie the finding that the parties had not at all appeared before her during the entire proceedings.

LIABILITY AND APPROPRIATE PENALTIES

Judges Felicen, Quisumbing, Mangrobang and Cabrera-Faller

A blatant disregard of the provisions of A.M. No. 02-11-10-SC constitutes gross ignorance of the law.[322] This Court has ruled that for a judge to be liable for gross ignorance of the law, it is not enough that the decision, order or actuation in the performance of official duties is contrary to existing law and jurisprudence.[323] It must also be proven that the judge was moved by bad faith, fraud, dishonesty or corruption; or committed an error so egregious that it amounted to bad faith.[324]

In *Department of Justice v. Mislang*,[325] we said:

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties

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[321] *Rollo* (A.M. No. RTJ-11-2302), p. 550.

[322] *OCA v. Castañeda*, 696 Phil. 202 (2012).

[323] *Lorenzana v. Austria*, A.M. No. RTJ-09-2200, 2 April 2014.

[324] *Id*.

[325] A.M. Nos. RTJ-14-2369 & RTJ-14-2372, 26 July 2016.

must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.

But when there is persistent disregard of well-known rules, judges not only become liable for gross ignorance of the law, they commit gross misconduct as well.[326] It is then that a mistake can no longer be regarded as a mere error of judgment, but one purely motivated by a wrongful intent.[327]

The four courts herein have allowed themselves to become havens for "paid-for annulments." Their apparent conspiracy with the counsels of the parties in order to reflect paper compliance with the rules if not complete disregard thereof, as well as their failure to manage and monitor the regularity in the performance of duties by their court personnel, shows not only gross ignorance of the law but also a wrongful intention that smacks of misconduct.

Misconduct refers to any unlawful conduct on the part of a judge prejudicial to the rights of parties or to the right

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[326] *OCA v. Flores*, A.M. No. RTJ-12-2325 & A.M. OCA IPI No. 11-3649-RTJ, 14 April 2015, 755 SCRA 400.

[327] *Id*.

determination of the cause.[328] It entails wrongful or improper conduct motivated by a premeditated, obstinate or deliberate purpose.[329] Simple misconduct is defined as an unacceptable behavior that transgresses the established rules of conduct for public officers.[330] On the other hand, gross misconduct connotes something "out of all measure; beyond allowance; not to be excused; flagrant; shameful."[331]

The four judges also violated the following Canons of the New Code of Judicial Conduct for the Philippine Judiciary:[332]

CANON 2

Integrity

Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Section 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

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CANON 6

Competence and Diligence

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Section 3. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of

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[328] *OCA v. Paderanga*, 505 Phil. 143 (2005).

[329] *Id*.

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

[331] *Canson v. Garchitorena*, 370 Phil. 287, 306 (1999).

[332] A.M. No. 03-05-01-SC, 27 April 2004.

the training and other facilities which should be made available, under judicial control, to judges.

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Section 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

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Section 7. Judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

As judges, more than anyone else, they are required to uphold and apply the law. They should maintain the same respect and reverence accorded by the Constitution to our society's institutions, particularly marriage. Instead, their actuations relegated marriage to nothing more than an annoyance to be eliminated. In the process, they also made a mockery of the rules promulgated by this Court.

Gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct are serious charges under Section 8, Rule 140 of the Rules of Court. Justices and judges found guilty of these charges may be penalized by any of the following:

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

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

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[333]

We have had occasion to impose the penalty of suspension for a period of three months on judges found guilty of gross

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[333] Rules of Court, Rule 140, Section 11(A).

ignorance of the law and gross misconduct.[334] However, in a line of cases[335] where the judges found guilty of the same offenses had already compulsorily retired from service and therefore could no longer be penalized with suspension, a fine was ordered deducted from their retirement benefits.

In *Marcos v. Cabrera-Faller*,[336] Judge Cabrera-Faller was ordered dismissed from the service for gross ignorance of the law. As stated above, Judge Mangrobang was found guilty of undue delay in resolving pending matters in *Castro v. Mangrobang*.[337] He was also previously reprimanded in *Miranda v. Mangrobang*[338] for conduct prejudicial to the best interest of the judiciary. In *Bartolome v. Maranan*,[339] Judge Felicen was also involved in an alleged pattern of corruption involving the annulment of marriage cases in RTC Imus 20.

Considering that Judge Cabrera-Faller has already been dismissed from service, and Judges Mangrobang and Felicen have already compulsorily retired, the penalty of suspension can no longer be imposed on them. Thus, they are hereby ordered to pay a fine in the amount of ₱80,000 each. Notably, Judge Mangrobang had already passed away. At any rate, the fine shall be deducted from the retirement benefits of Judges Mangrobang and Felicen. The same fine shall be deducted from whatever amounts may still be due Judge Cabrera-Faller.

The irregularities committed in these administrative cases took place and festered under the watch of Judge Quisumbing. As executive judge, he performs the functions of a court

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[334] *Uy v. Javellana*, 694 Phil. 159 (2012); *Loss of Court Exhibits at MTC-Dasmariñas, Cavite*, 498 Phil. 353 (2005).

[335] *Bautista v. Causapin*, 667 Phil. 574 (2011); *Land Bank of the Philippines v. Pagayatan*, 615 Phil. 18 (2009); *Sinsuat v. Hidalgo*, 583 Phil. 38 (2008).

[336] A.M. No. RTJ-16-2472, 24 January 2017.

[337] A.M. No. RTJ-16-2455, 11 April 2016.

[338] 422 Phil. 327 (2001).

[339] A.M. No. P-11-2979, 18 November 2014.

administrator within his administrative area.[340] He was supposed to provide leadership and coordinate the management of the courts, as well as implement policies concerning court operations laid down by the Supreme Court.[341] Unfortunately, instead of exercising his prerogatives in order that those under his management be kept in line, he joined in the commission of some of the reprehensible practices described in these administrative cases.

Thus, the Court cannot adopt the recommendation of Justice Paredes to completely absolve Judge Quisumbing of all liability. To note, the *sala* of Judge Quisumbing was also involved in the irregularities regarding cases where parties had the same address as those in another case. Of the four pairs of parties before the RTC Imus 21 who had the same addresses, three were represented by the same counsels. Judge Quisumbing also failed to observe the mandatory requirement of ordering the investigating public prosecutor to determine whether collusion existed between the parties in cases for the declaration of nullity and annulment of marriage.

Nevertheless, considering that his infractions are not as grave as those of the other three judges, he shall be liable for gross ignorance of the law and simple misconduct. In *Adriano v. Villanueva*,[342] a judge found guilty of gross ignorance of the law, simple misconduct, and undue delay in deciding a case was ordered to pay a fine in the amount of ₱40,000. In the case of Judge Quisumbing, a fine in the amount of ₱21,000 shall suffice. Considering that he had retired from judicial service, this amount shall be deducted from his retirement benefits.

Sheriffs Pagunsan and De Villa; and Process Servers Ferrer, Azcueta and Pontejos

We have had occasion to emphasize the importance of the responsibilities of process servers in the efficient and proper administration of justice:

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[340] Supreme Court Administrative Order No. 6-75, dated 30 June 1975.

[341] *Id*.

[342] A.M. No. MTJ-99-1232, 445 Phil. 675 (2003).

A process server should be fully cognizant not only of the nature and responsibilities of his task but also of their impact in the speedy administration of justice. It is through the process server that a defendant learns of the action brought against him by the complainant. More importantly, it is through the service of summons of the process server that the trial court acquires jurisdiction over the defendant. As a public officer, the respondent is bound *virtute oficii* to bring to the discharge of his duties the prudence, caution, and attention which careful men usually exercise in the management of their affairs. Relevant in the case at bar is the salutary reminder from this Court that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[343]

Sheriffs and process servers are required to exercise utmost care in seeing to it that all notices assigned to them are duly served upon the parties.[344] Their failure to perform their duties can never be excused by a heavy work load.[345]

Again, in a line of cases,[346] we have ruled that the failure to serve court processes promptly and properly amounts to simple neglect of duty. It is the failure of employees to give their attention to a task expected of them, which thereby shows a disregard of duty resulting from carelessness or indifference.[347] On the other hand, there is gross neglect of duty when, from the gravity of the case or the frequency of instances, the neglect becomes so serious in character as to endanger or threaten public welfare.[348]

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[343] *Ulat-Marrero v. Torio, Jr.*, 461 Phil. 654, 661 (2003).

[344] *Tan v. Azcueta*, 746 Phil. 1 (2014).

[345] *Id*.

[346] *Tan v. Azcueta*, 746 Phil. 1 (2014); *OCA v. Castañeda*, 696 Phil. 202 (2012); *Laguio, Jr. v. Amante-Casicas*, 537 Phil. 180 (2006).

[347] *Cabigao v. Nery*, A.M. No. P-13-3153, 14 October 2013.

[348] *Rodrigo-Ebron v. Adolfo*, 550 Phil. 449 (2007).

Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[349] simple neglect of duty is punishable by suspension for one month and one day to six months for the first offense and dismissal from service for the second offense. Gross neglect of duty is punishable by dismissal from service for the first offense.

We find Sheriffs Pagunsan and De Villa and Process Servers Ferrer, Azcueta, and Pontejos guilty of simple neglect of duty.

In *Holasca v. Pagunsan*,[350] Sheriff Pagunsan was found guilty of gross inefficiency, for which he was suspended for a period of nine months and one day without pay. Since gross inefficiency is closely related to gross neglect, as both involve specific acts of omission on the part of the employee,[351] that previous administrative liability shall make this instant administrative infraction a second offense that should merit the severe penalty of dismissal from service.

In *Espero v. De Villa*,[352] Sheriff De Villa was found guilty of simple neglect of duty for his failure to file a return of a writ of execution and to make periodic reports to the court. The penalty of suspension for a period of one month and one day was meted out to him. As this is already his second offense, Sheriff De Villa should be dismissed from service.

In *Tan v. Azcueta*,[353] Process Server Azcueta was found guilty of simple neglect of duty and was accordingly reprimanded and warned that a repetition of the same or a similar act shall be dealt with more severely. While mitigating circumstances were appreciated in that case, making the penalty imposed lower than that prescribed by the Revised Uniform Rules on Administrative Cases in the Civil Service, there is no question

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[349] CSC Memorandum Circular No. 19-99, dated 14 September 1999.

[350] A.M. Nos. P-14-3198 & P-14-3199, 23 July 2014.

[351] *Guerrero-Boylon v. Boyles*, 674 Phil. 565 (2011).

[352] OCA IPI No. 10-3566-P, 21 April 2014.

[353] A.M. No. P-14-3271, 22 October 2014.

that this is already his second offense. Accordingly, Process Server Azcueta should also be dismissed from service.

In the case of Process Server Pontejos, he is hereby found guilty of two counts of simple neglect of duty in A.M. Nos. RTJ-11-2301 and RTJ-11-2302. Again under the Revised Uniform Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two charges or counts, the penalty to be imposed shall correspond to the more serious charge or count, and the other shall be considered as an aggravating circumstance.[354] The presence of an aggravating circumstance shall increase the penalty to the maximum provided under the rules.[355] As the maximum of the penalty for simple neglect of duty is dismissal from service, that penalty should be imposed on Process Server Pontejos.

The foregoing notwithstanding, we have always taken advantage of every opportunity to show compassion and leniency in the imposition of administrative penalties on erring court employees. This is because work is as much a source of one's dignity as it is of one's income. While this Court will never tolerate any act of wrongdoing in the performance of duties, it would not be remiss in its mandate, should it extend just one more chance for court employees to improve their ways. That chance shall be given to Sheriffs Pagunsan and De Villa and to Process Servers Azcueta and Pontejos. They would do well not to waste it.

The penalty of suspension for a period of one year shall instead be imposed on Sheriff Pagunsan. On the other hand, the penalty of suspension for a period of six months shall be imposed on Sheriff De Villa and Process Servers Azcueta and Pontejos.

The penalty of suspension for one month and one day shall be meted out to Process Server Ferrer for the instant first offense of simple neglect of duty.

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[354] CSC Memorandum Circular No. 19-99, dated 14 September 1999, Section 55.

[355] *Id*. at Section 54(c).

Clerks of Court Cordez and Marasigan and OIC Suluen

Clerks of Court Marasigan and Cordez in A.M. No. RTJ-11-2302 and OIC Suluen in A.M. No. RTJ-11-2301 are likewise found guilty of simple neglect of duty. They failed to monitor compliance with the rules and regulations governing the performance of duties by court personnel under their administrative supervision. Also, Clerks of Court Marasigan and Cordez failed to exercise the required circumspection prior to issuing certificates of finality in declaration of nullity and annulment of marriage cases, considering that notices of the court's decisions had not been served at the time upon the respondents.

The penalty of suspension for one month and one day shall be meted out to them for the instant first offense of simple neglect of duty.

Considering that Clerk of Court Cordez has transferred to another government agency, the penalty of suspension can no longer be imposed on her. Accordingly, in lieu of suspension, a penalty of fine equivalent to her salary for a period of one month shall be imposed.

Process Server Azcueta and Social Worker Serilo

In *Japson v. Civil Service Commission*,[356] the petitioner therein was a former senior member services representative assigned at the Social Security System (SSS) branch in Baguio City. In conspiracy with others, the petitioner enticed benefit claimants to file their claims before SSS Baguio, where he could guarantee prompt releases because he was assigned at the claims section. As the claimants were residing in outlying provinces, they used in their claim forms the address of the petitioner in Baguio City. When the claims were released, the petitioner was able to secure a chunk of each claimant's benefits.

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[356] 663 Phil. 665 (2011).

In a case for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service against the petitioner, the SSS found him guilty on all counts. It ruled that it was not necessary to show concrete proof of the receipt of a consideration for the arrangement, following the principle of *res ipsa loquitur*. On appeal, the Civil Service Commission ruled that while there was no strong evidence showing that the petitioner received, collected, or took a share from the benefits awarded to the claimants, he was still liable. His irregular conduct and indiscriminate judgment relative to the handling of the claims were found to have caused a serious breach in the integrity of the system observed by the SSS, as well as endangered the welfare of the public at large.

After the denial of his petition for review before the CA, the petitioner therein came to this Court claiming, among others, that there was no evidence showing that he had specifically authorized any of the claimants involved to use his address. The Court denied the petition for lack of merit. We ruled that his acts clearly reflected his dishonesty and grave misconduct. He was less than forthright in his dealings and led claimants to believe that he could give them undue advantage by processing their claims faster than others without the same connection.

The surrounding facts in *Japson* are analogous to those in the case of Process Server Azcueta and Social Worker Serilo. Both involve the use of a government employee's address in order for others to comply with the residence requirement laid down by the rules. In their defense, the petitioner therein and Process Server Azcueta and Social Worker Serilo herein claim that they did not authorize anyone to use their address. As in Japson, the Court's conclusion here shall be the same.

Considering, however, that the infraction committed by Process Server Azcueta and Social Worker Serilo is not directly connected with the performance of their official duties, they are liable not for misconduct but for conduct prejudicial to the best interest of the service. "The word 'prejudicial' means 'detrimental or derogatory to a party; naturally, probably or

actually bringing about a wrong result.'"[357] Their conduct placed the entire judiciary in a bad light;[358] that our rules are easily circumvented by our very own.

Under the Revised Uniform Rules on Administrative Cases in the Civil Service, conduct prejudicial to the best interest of the service is punishable by suspension for six months and one day to one year for the first offense and dismissal from service for the second offense. Accordingly, the penalty of suspension for six months and one day shall be meted out to Social Worker Serilo for the instant first offense of conduct prejudicial to the best interest of the service.

As regards Process Server Azcueta, in addition to his suspension for six months for the second offense of simple neglect of duty, the penalty of suspension for six months and one day shall be meted out to him for conduct prejudicial to the best interest of the service.

WHEREFORE, premises considered, the Court has arrived at the following findings:

1. Judge Fernando L. Felicen, Presiding Judge, Regional Trial Court of Imus, Cavite, Branch 20, is found **GUILTY** of gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct. A **FINE** in the amount of ₱80,000 shall be deducted from his retirement benefits.

2. Judge Norberto J. Quisumbing, Jr., Presiding Judge, Regional Trial Court of Imus, Cavite, Branch 21, is found **GUILTY** of gross ignorance of the law and simple misconduct. A **FINE** in the amount of ₱21,000 shall be deducted from his retirement benefits.

3. Judge Cesar A. Mangrobang, Presiding Judge, Regional Trial Court of Imus, Cavite, Branch 22, is found **GUILTY** of gross ignorance of the law and gross misconduct constituting

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[357] *OCA v. Corea*, A.M. No. P-11-2992, 9 November 2015, 774 SCRA 13, 27.

[358] *Id*.

violations of the Code of Judicial Conduct. A **FINE** in the amount of ₱80,000 shall be deducted from his retirement benefits.

4. Judge Perla V. Cabrera-Faller, Presiding Judge, Regional Trial Court of Dasmariñas, Cavite, Branch 90, is found **GUILTY** of gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct. Considering that she had been previously dismissed from service in A.M. No. RTJ-16-2472 (Formerly OCA IPI No. 13-4141-RTJ), a **FINE** in the amount of ₱80,000 shall be deducted from whatever amounts may still be due her.

5. Atty. Allan Sly M. Marasigan, Clerk of Court V, Regional Trial Court of Imus, Cavite, Branch 20, is found **GUILTY** of simple neglect of duty. He is ordered **SUSPENDED** for a period of one month and one day.

6. Atty. Seter M. Dela Cruz-Cordez, Clerk of Court V, Regional Trial Court of Imus, Cavite, Branch 22, is found **GUILTY** of simple neglect of duty. She is ordered to pay a **FINE** equivalent to her salary for a period of one month to be taken from whatever sums may be due her as retirement, leave or other benefits.

7. Ophelia G. Suluen, Officer-in-Charge and Legal Researcher, Regional Trial Court of Dasmariñas, Cavite, Branch 90, is found **GUILTY** of simple neglect of duty. She is ordered **SUSPENDED** for a period of one month and one day.

8. Anselmo P. Pagunsan, Jr., Sheriff IV, Regional Trial Court of Imus, Cavite, Branch 20, is found **GUILTY** of simple neglect of duty. He is ordered **SUSPENDED** for a period of one year.

9. Hipolito O. Ferrer, Process Server, Regional Trial Court of Imus, Cavite, Branch 20, is found **GUILTY** of simple neglect of duty. He is ordered **SUSPENDED** for a period of one month and one day.

10. Wilmar M. De Villa, Sheriff IV, Regional Trial Court of Imus, Cavite, Branch 21, is found **GUILTY** of simple neglect of duty. He is ordered **SUSPENDED** for a period of six months.

11. Elmer S. Azcueta, Process Server, Regional Trial Court of Imus, Cavite, Branch 22, is found **GUILTY** of simple neglect of duty and conduct prejudicial to the best interest of the service. He is ordered **SUSPENDED** for a period of one year and one day.

12. Rizalino Rinaldi B. Pontejos, Process Server, Regional Trial Court of Dasmariñas, Cavite, Branch 90, is found **GUILTY** of two counts of simple neglect of duty. He is ordered **SUSPENDED** for a period of six months.

13. Alma N. Serilo, Social Worker Officer II, Office of the Clerk of Court, Regional Trial Court of Imus, Cavite, is found **GUILTY** of conduct prejudicial to the best interest of the service. She is ordered **SUSPENDED** for a period of six months and one day.

Atty. Allan Sly M. Marasigan, Atty. Seter M. Dela Cruz-Cordez, Ophelia G. Suluen, Anselmo P. Pagunsan, Jr., Hipolito O. Ferrer, Wilmar M. De Villa, Elmer S. Azcueta, Rizalino Rinaldi B. Pontejos and Alma N. Serilo are **STERNLY WARNED** that a repetition of the same or similar acts shall warrant a more severe penalty.

The complaints against Atty. Regalado E. Eusebio, Clerk of Court VI, Office of the Clerk of Court, Regional Trial Court of Imus, Cavite; Imelda M. Juntilla, Court Interpreter; and Teresita P. Reyes, Court Stenographer, both of the Regional Trial Court of Imus, Cavite, Branch 20, are **DISMISSED** for lack of merit.

The Court hereby **ORDERS** the Office of the Bar Confidant to submit, within 30 days from notice, its compliance with the Resolution dated 12 August 2014, which required its appropriate action relative to the findings on the possible involvement of private practitioners in the anomalies in the declaration of nullity and annulment of marriage cases.

Let a copy of this Decision be furnished to the Secretary of Justice, the Solicitor General, and the Prosecutor-General for their information and possible remedial action to prevent further

irregularities, including possibly by persons under their supervision. The Clerk of Court of the Court En Banc shall prepare the appropriate cover letter therefor.

SO ORDERED.

Carpio, Velasco, Jr., Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Leonardo-de Castro, J., see concurring and dissenting opinion.

Jardeleza, J., joins the concurring and dissenting opinion of J. Leonardo-de Castro.

Peralta, J., on leave.

CONCURRING AND DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur with the majority opinion but dissent only insofar as the fine imposed on Judge Norberto J. Quisumbing, Jr. who should be exonerated as recommended by Justice Victoria Isabel A. Paredes (Justice Paredes) of the Court of Appeals who, after conducting her investigation, recommended the dismissal of the complaint against Judge Quisumbing. The pertinent portion of the Amended Report of Justice Paredes reads:

Exec. Judge Norberto *J.* Quisumbing, Jr., RTC, Branch 21, Imus, Cavite

The judicial audit examined 62 case records, of which 19, or 30% have indications of improper venue. In **Civil Case No. 2329-08** *(Cruz vs. De la Vega),* the petitioner therein claimed that she is a resident of Dasmariñas, Cavite, while the respondent is a resident of Valenzuela City; however, the verification portion stated that the petition is to be filed in the RTC of Pasay City which could only mean that the petitioner is a resident of Pasay City. In **Civil Case No. 2691-09** *(Quiamson vs. Quiamson),* the petitioner claims to be a resident of Dasmariñas, Cavite, but in the verification portion, the petitioner stated that she is a resident of Silang,Cavite, a place outside the

jurisdiction of the court. Nine (9) cases had vague addresses albeit there is no indication that mail matters were "returned to sender"; while in eight (8) petitions, three (3) pairs showed that petitioners had the same addresses, and one (1) pair had respondents sharing the same address. In **Civil Case No. 3026-09** *(Ramales vs. Ramales),* the petition states that both parties are already based in Italy. The judicial affidavit of petitioner was allegedly taken before petitioner's counsel in Salcedo Village, Makati City; however, verification from the Bureau of Immigration shows that petitioner left for abroad on July 18, 2002 with no record of having returned to the country thereafter. The judicial affidavit was admitted without the appearance of petitioner.

Exec. Judge Quisumbing, Jr. comments that three (3) cases were raffled to RTC-Branch 90 presided by Judge Faller. On the other hand, cases mentioned in pages 59-62 (Records, A.M. No. RTJ-11-2302, pp. 555-558) were those handled by his Branch (21).

Commenting on Civil Cases No. 2329-08, 2733-09, 2057-09 and 3441-10, Exec. Judge Quisumbing, Jr. claims that venue was properly laid as the petitioners were residents of Dasmariñas, Cavite, and respondents were duly notified either personally or by substituted service, and those who received the summons and copy of the petition indicated receipt with their signatures; moreover, none of the respondents or the public prosecutor questioned the venue. In Civil Case No. 2329-08, the audit team observed that the verification portion states that the petition is to be filed in Pasay City; however, the verification is not controlling; the address stated in the petition, as well as petitioner's testimony in open court, is that she is a resident of Unit 142 Orchard Townhomes, Salawag, Dasmariñas, Cavite. In Civil Case No. 2691-09, the audit team observed that the verification portion shows that petitioner is a resident of Silang, Cavite; however, the petition states that petitioner is a resident of Dasmariñas, Cavite and the residence of the respondent is at 348 B. Ocullo St., Wakas I, Kawit, Cavite, which is within the territorial jurisdiction of the Imus, Cavite RTC courts. In Civil Case No. 2136-08, the audit team observed that petitioner gave a vague address — San Juan St., Dasmariñas, Cavite; however, at the given street address, houses thereat have no numbers.

With respect to **Civil Case No. 3026-09** *(Elizabeth Ramales vs. Aquilino Ramales)* where the petitioner swore to her judicial affidavit

before the notary public who also happened to be her counsel, and that petitioner could not have testified in court for, per records of the BI, petitioner left on July 18, 2002 and has no record of travel back to the country, Exec. Judge Quisumbing, Jr. sees no irregularity in the execution of the judicial affidavit of petitioner for what is prohibited by the Rules is the lawyer who executes a judicial affidavit, signs it and notarizes it; in such a case, the affidavit must be notarized by another notary public. He disavows knowledge of the BI certification, but he knows that on July 19, 2010, a person who introduced herself as the petitioner, swore under oath and testified in open court; no one questioned her identity and the court cannot be required to look into the identity of each and every witness who testifies in court.

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The cases mentioned in pages 32-34, Table 2.2 of the OCA Memorandum (Records, A.M. No. RTJ-11-2302, pp. 528-30), pertain to cases handled by RTC-Branch 90 under Judge Faller; while the cases mentioned in pages 66-69 (Records, A.M. No. RTJ-11-2302, pp. 562-5) were handled by Judge Mangrobang of RTC-Branch 22. In **Civil Case No. 2329-08**, summons was received by respondent thru his mother, Shirley de la Vega, on October 15, 2008 as evidenced by her signature at the bottom of the summons; in **Civil Case No. 2733-09**, summons was served to the respondent thru his niece, Irene P. Siglos, on April 23, 2009 as evidenced by her signature at the bottom of the summons. In **Civil Case No. 2136-09**, the audit team observed that the petitioner's address at San Juan St., Dasmarifias, Cavite, is vague; however, the street really do not have house numbers, and the marriage certificate likewise states the same address for petitioner. In nos. 10-15, pp. 30-31 (Records, A.M. No. RTJ-11-2302, pp. 526-27) of the OCA Memorandum, the audit team found the addresses in Cavite, vague; however, the addresses are by Block no. And Lot no., the way addresses in Cavite are stated. In nos. 16 and 17, p. 31 (Records, A.M. No. RTJ-11-2302, p. 527), referring to **Civil Case Nos. 3490-10** and **3558-10**, where petitioners allegedly reside at the same address, Exec. Judge Quisumbing, Jr. claims that there is a possibility that petitioners did live in the same address since they have the same action for declaration of nullity of their marriage, and they live separately from their spouses. In nos. 18-19, p. 31 (Records, A.M. No. RTJ-11-2302, p. 527), **Civil Case Nos. 3636-10** and **3786-10**, where the audit team observed that the

petitioners bear the same address in these cases, since the address given does not bear a house number, it is possible that the petitioners lived in the same street but at different houses. In **Civil Case Nos. 2733-09** and **3208-09**, where respondents were observed to have the same address, Exec. Judge Quisumbing, Jr. explains that at one time, one of the petitioners may have lived in that address on a given date.

The investigation reports usually state that no collusion exists; however, in five cases where publication was resorted to in the service of summons, the investigation reports mentioned that the public prosecutor cannot determine whether collusion exists, but the public prosecutor undertakes to participate in the prosecution of the case; while in five (5) other cases, the public prosecutor only made reservations to actively prosecute the case. In 13 cases, no investigation report could be found.

The proceedings in the office of the Provincial Prosecutor are not under the direct control and supervision of the court; moreover, Section 9 of the Rule on Marriage does not provide any form or procedure in the conduct of the collusion investigation, and it does not provide the manner the investigation is conducted. And, although the Rule requires the public prosecutor to state the basis of his finding that collusion exists, it is silent if his finding is that no collusion exists. In his manifestation, the public prosecutor stated that: *He deems it best to pursue the investigation of this case by active participation in the hearing and trial of the case, this,considering the inability of the respondent to file (a response to the petition).*

> Of the 62 cases examined, 15 cases or 24% of petitions were granted at extraordinary speed: 1 case was decided in a little over 2 months; 1 case decided in 3 months; and 1 case in 4 months; 7 cases in a little over 5 months; while 5 cases were decided in a little over 6 months. [The comparative finding of Justice Paredes on this matter states:]
>
> In this case, the four (4) judges, to a man, although in varying percentages, granted petitions for the declaration of nullity of marriage in less than six (6) months. Judge Felicen was 77%; Exec. Judge Quisumbing, Jr. had 24%; Judge Mangrobang was 39%, and having the dubious title of granting a petition in 25

days from its filing [re: **Civil Case No. 2434-08** *(Olarte vs. Olarte)];* finally, Judge Faller was 57%.[1]

Executive Judge Quisumbing, Jr. finds nothing wrong with adhering to the exhortations of the Supreme Court for the speedy disposition of cases in order to unclog the court's dockets. He pleads that the alleged "irregularities" found by the audit team are neither gross, blatant nor flagrant, but more of inadvertence and oversight which could have been easily corrected; thus, he prays that he be accorded the presumption of regularity in the faithful performance of his duties, and the charge against him be dismissed.

With respect to the findings regarding the questionable raffling of cases, he disavows any participation in the issuance of summons as these pertain to the particular branches (RTC-Branch 20 for Judge Felicen, and RTC-Branch 90 for Judge Faller). As Executive Judge, he supervises the raffle of cases, sees to it that a report is made after the raffle, signs the minutes of raffle and oversees the transmittal of the cases to the concerned court. In **Civil Case No. 1852-08** *(Resco-Del Rosario vs. Del Rosario),* he admits that the stamp "February 24, 2008" was an oversight. The petition was filed with the OCC on February 1, 2008; and the official receipts showing payment of legal fees and other fees and dues were made on February 2, 2008; the additional number "4" in "24" is a clear case of oversight. **SP No. 680-09** *(In Re Petition for the Adoption of Minor Paulo Lebaste)* was mistakenly transmitted to RTC-Branch 20, instead of RTC-Branch 22 whish has original and exclusive jurisdiction over family court cases; the Branch Clerk of Court (BCC) of RTC-Branch 20 sent a transmittal letter dated January 26, 2009 to the BCC of RTC-Branch 22; and although there is no stamp received on the face of the record, a notice of hearing was sent on March 5, 2009 by RTC-Branch 22.[2]

It bears to stress that the acts of a judge which pertain to his/her judicial functions are not subject to disciplinary power unless they are committed with fraud, dishonesty, corruption or bad faith.[3] As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his/her judicial capacity

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[1] *Rollo* (A.M. No. RTJ-22-2302), p. 1825.

[2] *Id.* at 1785-1790.

[3] *Quinto v. Vios,* 472 Phil. 877, 883 (2004).

are not subject to disciplinary action even though such acts are erroneous.[4] Otherwise, a judicial office would be untenable, for "no one called upon to try the facts or interpret the law in the administration of justice can be infallible."[5] He/she cannot be subjected to liability — civil, criminal, or administrative — for any of his/her official acts, no matter how erroneous, as long as he/she acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction,[6] because an administrative complaint is not an appropriate remedy where judicial recourse is still available.[7] The court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial.[8] Not every error or mistake that a judge committed in the performance of his/her duties renders him/her liable, unless he/she is shown to have acted in bad faith or with deliberate intent to do an injustice.[9] Otherwise, perhaps, no judge, however competent, honest or dedicated he/she may be, can ever hope to retire from the judiciary with an unblemished record.[10]

Regarding the improper service of summons, the same falls within the responsibility of Sheriff Wilmar M. de Villa of RTC-Branch 21, Imus, Cavite.Investigating Justice Paredes found Sheriff de Villa guilty of simple neglect of duty and abuse of authority and recommended that a fine of ₱5,000.00 be imposed on him for each of the charges with stern warning that a repetition of the same or similar offense shall be dealt with more severely.

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[4] *Daracan v. Natividad,* 395 Phil. 392, 368 (2000).

[5] *Villanueva-Fabella v. Lee,* 464 Phil. 548, 563 (2004).

[6] *Castaños v. Escaño, Jr.*, 321 Phil. 527, 549-550 (1995).

[7] *Cepeda v. Cloribel-Purugganan,* 479 Phil. 365, 370 (2004).

[8] *Abdula v. Guiani,* 382 Phil. 757, 769 (2000).

[9] *Rallos v. Gako, Jr.,* 385 Phil. 4, 18 (2000).

[10] *Guerrero v. Villamor,* 357 Phil. 90, 99 (1998).

Unlike in the case of Judge Fernando L. Felicen, Judge Cesar A. Mangrobang and Judge Perla V. Cabrera-Faller who were found by Investigating Justice Paredes to be guilty of grave abuse of authority, for which they should be administratively sanctioned, Executive Judge Quisumbing was recommended for exoneration as follows:

II. (Ret.) EXECUTIVE JUDGE NORBERTO J. QUISUMBING, JR., the complaint/charge in A.M. No. RTJ-11-2302 be **DISMISSED**.[11]

There was no proof at all that Executive Judge Quisumbing was guilty of grave abuse of authority nor of fraud, dishonesty, corruption or bad faith to merit the extreme penalty of forfeiture of all his retirement benefits.

Moreover, it is unfair to hold Executive Judge Quisumbing who was the Executive Judge administratively liable for the offenses or infraction committed by Judges Felicen, Mangrobang, and Faller, over whom he had no control and supervision. The aforesaid Judges exercised jurisdiction over cases raffled to them independently of the Executive Judge. To hold Executive Judges administratively responsible for the conduct of Judges within their respective area will send a chilling effect on Executive Judges as it will go far beyond the official duties imposed on them by Supreme Court regulations.

WHEREFORE, I respectfully reiterate my opinion that as recommended by Investigating Justice Victoria Isabel A. Paredes the complaint/charge in A.M. No. 11-2302 against Executive Judge Norberto J. Quisumbing, Jr. be **DISMISSED.**

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[11] *Rollo* (A.M. No. RTJ-22-2302), p. 1839.

THIRD DIVISION

[G.R. No. 190289. January 17, 2018]

THE CITY OF BACOLOD, HON. MAYOR EVELIO R. LEONARDIA, ATTY. ALLAN L. ZAMORA and ARCH. LEMUEL D. REYNALDO, in their personal capacities and in their capacities as Officials of the City of Bacolod, *petitioners, vs.* **PHUTURE VISIONS CO., INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATE; PRINCIPLE OF IMMUNITY FROM SUIT; THE STATE CANNOT BE SUED WITHOUT ITS CONSENT; THE POWER TO GRANT LICENSES AND BUSINESS PERMITS IS NOT AN EXERCISE OF THE GOVERNMENT'S PROPRIETARY FUNCTION, THUS, NO CONSENT TO BE SUED OR BE LIABLE FOR DAMAGES CAN THUS BE IMPLIED THEREFROM; CASE AT BAR.— The principle of immunity from suit is embodied in Section 3, Article XVI of the 1987 Philippine Constitution which states that "[t]he State cannot be sued without its consent." The purpose behind this principle is to prevent the loss of governmental efficiency as a result of the time and energy it would require to defend itself against lawsuits. The State and its political subdivisions are open to suit only when they consent to it. Consent may be express or implied, such as when the government exercises its proprietary functions, or where such is embodied in a general or special law. In the present case, respondent sued petitioners for the latter's refusal to issue a mayor's permit for bingo operations and for closing its business on account of the lack of such permit. However, while the authority of city mayors to issue or grant licenses and business permits is granted by the Local Government Code (LGC), which also vests local government units with corporate powers, one of which is the power to sue and be sued, this Court has held that the power to issue or grant licenses and business permits is not an exercise of the government's proprietary function. Instead, it is in an exercise of the police power of the State, ergo a governmental act. x x x No consent to be sued and be

liable for damages can thus be implied from the mere conferment and exercise of the power to issue business permits and licences. Accordingly, there is merit in petitioners' argument that they cannot be sued by respondent since the City's consent had not been secured for this purpose. This is notwithstanding petitioners' failure to raise this exculpatory defense at the first instance before the trial court or even before the appellate court.

2. ID.; ID.; ID.; A GOVERNMENT AGENCY OR INSTRUMENTALITY CANNOT BE ESTOPPED BY THE OMISSION, MISTAKE OR ERROR OF ITS OFFICIALS OR AGENTS.— As this Court has repeatedly held, waiver of immunity from suit, being in derogation of sovereignty, will not be lightly inferred. Moreover, it deserves mentioning that the City of Bacolod as a government agency or instrumentality cannot be estopped by the omission, mistake or error of its officials or agents. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers. Hence, we cannot hold petitioners estopped from invoking their immunity from suit on account of having raised it only for the first time on appeal.

3. CIVIL LAW; DAMAGES; IN ORDER THAT THE LAW WILL GIVE REDRESS FOR AN ACT CAUSING DAMAGE, THERE MUST BE *DAMNUM ET INJURIA* THAT ACT MUST BE NOT ONLY HURTFUL, BUT WRONGFUL.— In this jurisdiction, we adhere to the principle that injury alone does not give respondent the right to recover damages, but it must also have a right of action for the legal wrong inflicted by petitioners. In order that the law will give redress for an act causing damage, there must be *damnum et injuria* that act must be not only hurtful, but wrongful. The case of *The Orchard Golf & Country Club, Inc., et al. v. Ernesto V. Yu and Manuel C. Yuhico*, citing *Spouses Custodio v. Court of Appeals*, is instructive, to wit: x x x [T]he mere fact that the plaintiff suffered losses does not give rise to a right to recover 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. 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. x x x Considering that respondent had no legal right to operate the bingo operations

at the outset, then it is not entitled to the damages which it is demanding from petitioners.

APPEARANCES OF COUNSEL

Office of the City Legal Officer for petitioners.
Calleja Law Office for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court of the Decision[1] dated February 27, 2009 and the Resolution[2] dated October 27, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 03322. The assailed rulings reversed the dismissal of respondent's *Petition for Mandamus and Damages with Prayer for Issuance of a Temporary Mandatory Order and/or Writ of Preliminary Mandatory Injunction* (Petition for Mandamus and Damages) by the Regional Trial Court of Bacolod City, Branch 49.[3]

The Facts

The instant case stems from the *Petition for Mandamus and Damages* filed by respondent Phuture Visions Co., Inc. (Phuture) on March 5, 2007 against petitioners City of Bacolod, Hon. Mayor Evelio R. Leonardia, Atty. Allan L. Zamora (now deceased) and Arch. Lemuel D. Reynaldo. In the *Petition for Mandamus and Damages*, Phuture alleged the following:

Phuture was incorporated in 2004. In May 2005, its Articles of Incorporation (AOI) was amended to, among others, include

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[1] *Rollo*, pp. 45-62. Penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Amy C. Lazaro-Javier and Francisco P. Acosta.

[2] *Id*. at 82-87.

[3] Records, pp. 1-23.

the operation of lotto betting stations and/or other gaming outlets as one of its secondary purposes. Eventually, it applied with the Philippine Amusement and Gaming Corporation (PAGCOR) for an authority to operate bingo games at the SM City Bacolod Mall (SM Bacolod), as well as with SM Prime Holdings (SM Prime) for the lease of a space in the said building. Phuture was issued a provisional Grant of Authority (GOA) on December 5, 2006 by PAGCOR, subject to compliance with certain requirements, and received an Award Notice from SM Prime on January 10, 2007.[4]

Thereafter, Phuture processed, completed and submitted to the Permits and Licensing Division of the City Mayor of Bacolod City its Application for Permit to Engage in Business, Trade or Occupation to operate bingo games at SM Bacolod and paid the fees therefor. It was then issued a claim slip for its permit on February 19, 2007, which was to be claimed on March 16, 2007.[5] In the meantime, Phuture further amended its AOI on February 27, 2007 to reflect its engagement in bingo operations as its primary purpose.

Phuture commenced bingo operations at SM Bacolod on March 2, 2007, prior to the issuance of the actual hard copy of the mayor's permit. However, at around 6:10 a.m. of March 3, 2007, respondent learned that its bingo outlet was padlocked by agents of the Office of the City Legal Officer and that a copy of a Closure Order dated March 2, 2007 was posted at the entrance of the bingo outlet.[6]

Phuture claimed that the closure of its bingo outlet at SM Bacolod is tainted with malice and bad faith and that petitioners did not have the legal authority to shut down said bingo operations, especially since PAGCOR itself had already issued a provisional GOA in its favor.

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[4] *Rollo*, pp. 101-104.

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

[6] *Id.* at 106.

On March 7, 2007, the RTC conducted a summary hearing to determine the sufficiency of the form and substance of the application for the issuance of a temporary mandatory order and/or preliminary mandatory injunction to remove the padlock installed at respondent's place of business at SM Bacolod and allow it to conduct unhampered bingo operations.[7] In the course of the summary hearing, specifically on March 9, 2007, petitioners released in open court to respondent's counsel the hard copy of the Mayor's Permit dated February 19, 2007 which indicated the kind of business allowed is "Professional Services, Band/Entertainment Services." Phuture's counsel, however, refused to receive the same, protesting that it was not the Mayor's Permit which respondent had applied for.[8]

On March 19, 2007, petitioners filed their Comment and Answer with Counterclaim, denying the allegations set forth in the *Petition for Mandamus and Damages* and presenting a slightly different set of facts,[9] as follows:

On January 10, 2007, Phuture applied for the renewal of its mayor's permit with "professional services, band/entertainment services" as its declared line of business, providing the address of the business as "RH Building, 26 Lacson Street, Barangay 5" instead of SM Bacolod where respondent's bingo operations was located.[10]

Upon submission of the requirements on February 19, 2007 and while the application was being processed, Phuture was issued a "claim slip" for it to claim the actual mayor's permit on March 16, 2007 if the requirements were found to be in order.[11] However, petitioners found discrepancies in Phuture's submitted requirements, wherein the application form was notarized earlier than the amendment of its AOI to reflect the

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[7] *Id*. at 149.

[8] *Id*. at 152.

[9] *Id*. at 121-142.

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

[11] *Id*. at 24.

company's primary purpose for bingo operations. Aside from this, respondent failed to pay the necessary permit fee/assessment fee under the applicable tax ordinances of the City of Bacolod.[12]

Also, without waiting for the release of the mayor's permit, respondent started the operation of its bingo outlet at SM Bacolod. This prompted the former City Legal Officer, Atty. Allan Zamora, to issue a Closure Order dated March 2, 2007, pursuant to City Tax Ordinance No. 93-001, Series of 1993,[13] which declares unlawful for any person to operate any business in the City of Bacolod without first obtaining a permit therefor from the City Mayor and paying the necessary permit fee and other charges to the City Treasurer.

The Closure Order was presented by petitioners' representative to respondent's lawyers to negotiate a possible peaceful solution before its implementation. However, respondent simply ignored the information relayed to them and thus, at around 6:00 a.m. on March 3, 2007, the Composite Enforcement Unit under the Office of the City Legal Officer implemented the Closure Order.[14]

Petitioners contended that the claim slip so heavily relied upon by respondent was a mere oversight or human error of the City Government's employee who processed the same, who was likewise duped by the tampered entries that respondent's application was for a permit for bingo operations when, in truth,

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[12] *Id*. at 24-25.

[13] Enacted on December 22, 1993, its pertinent portions read:

Section 47. Imposition of Fee. It shall be unlawful for any person or juridical entity to conduct or engage in any of the business, trade or occupation enumerated in this Code, and other business, trade or occupation for which a permit is required without first obtaining a permit therefore from the City Mayor and paid the necessary permit fee and other charges to the City Treasurer. x x x

Section 48. Imposition of Fee. The fee imposed in the preceding section shall be paid to the City Treasurer upon application for a Mayor's Permit before any business or activity can commence and within the first twenty (20) days of January of each year in case of renewal thereof.

[14] *Rollo*, p. 27.

it was only for the renewal of a previously-issued permit albeit for a different line of business, i.e., "professional services, band/ entertainment services."[15]

Ruling of the Regional Trial Court

In a Decision[16] dated March 20, 2007, the RTC denied the prayer for the issuance of a temporary mandatory order and dismissed the case for lack of merit, to wit:

> In view of the foregoing disquisitions, it follows that the prayer for issuance of a temporary mandatory order prayed for must be denied.
>
> WHEREFORE, in the light of all the foregoing discussions, the instant petition is ordered DISMISSED for lack of merit, without prejudice to filing an application of a Mayor's Permit specifically for bingo operation. Respondents' counterclaim is ordered DISMISSED, without prejudice to filing appropriate action with a court of competent jurisdiction.
>
> Without pronouncement as to costs.
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> SO ORDERED.[17]

Phuture filed an Urgent Motion for Partial Reconsideration on April 2, 2007, but the same was denied by the RTC in its Order dated September 6, 2007.[18] Thus, respondent elevated the matter to the CA on appeal.[19]

Ruling of the Court of Appeals

In the assailed Decision dated February 27, 2009, the CA partially granted the appeal by affirming the trial court's denial of the application for a temporary mandatory order but reversing the dismissal of the suit for damages and ordering the case to be reinstated and remanded to the court of origin for further

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[15] *Id*. at 48.

[16] *Id*. at 143-160. Rendered by Presiding Judge Ramon D. Delariarte.

[17] *Id*. at 159.

[18] *Id*. at 160.

[19] *Id*. at 161-162.

proceedings. The dispositive portion of the assailed Decision reads:

> **WHEREFORE,** based on the foregoing premises, the appeal is **PARTLY GRANTED.** The Decision of Branch 49 of the Regional Trial Court of Bacolod City dated 20 March 2007 and Order dated 06 September 2007, denying the application for a Temporary Mandatory Order is **AFFIRMED.** The dismissal of the main action is **REVERSED** and is hereby **REINSTATED** and **REMANDED** to the court of origin for further proceedings.
>
> **SO ORDERED.**[20]

The CA pronounced that the issue of whether the RTC erred in dismissing the prayer for temporary mandatory order for the removal of the padlock allegedly installed illegally at respondent's place of business at SM Bacolod, as well as the prayer ordering petitioners to allow respondent to conduct unhampered bingo operations during the pendency of the case, had already been rendered moot since, with the onset of another year, it was necessary to apply for another business permit with the Mayor's Office.[21]

Nevertheless, the CA proceeded to rule on the issue on whether the closure of respondent's bingo operations at SM Bacolod was effected in a manner consistent with law. While it ruled that the Mayor's power to issue licenses and permits is discretionary, and thus, cannot be compelled by mandamus, it found that respondent was not given due notice and hearing as to the closure of its business establishment at SM Bacolod. Based on the CA's finding on the manner by which the closure of the bingo operations was effected, it concluded that respondent was denied its proprietary right without due process of law. Accordingly, the CA ordered the case to be reinstated and remanded to the RTC to determine if damages should be awarded.[22]

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[20] *Id*. at 61.

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

[22] *Id*. at 55-61.

Petitioners timely interposed a Motion for Reconsideration,[23] protesting the CA's order to remand the case to the RTC for trial on the aspect of damages. The CA, however, maintained its position, issuing the now assailed Resolution. Agggrieved, petitioners brought the matter before this Court through the present recourse.

The Petition

Petitioners again limit their argument to the CA's order to remand the case to the RTC for trial on the aspect of damages. According to petitioners, hearing the action for damages effectively violates the City's immunity from suit since respondent had not yet obtained the consent of the City Government of Bacolod to be included in the claim for damages. They also argue that the other petitioners, the City Mayor and other officials impleaded, are similarly immune from suit since the acts they performed were within their lawful duty and functions.[24] Moreover, petitioners maintain that they were merely performing governmental or sovereign acts and exercised their legal rights and duties to implement the provisions of the City Ordinance.[25] Finally, petitioners contend that the assailed Decision contained inconsistencies such that the CA declared mandamus to be an inappropriate remedy, yet allowed the case for damages to prosper.[26]

In its Comment,[27] respondent Phuture argues that the grounds raised by petitioners should not be considered since these were only invoked for the first time on appeal. Aside from this, respondent asserts that the case for damages should proceed since petitioners allegedly caused the illegal closure of its bingo outlet without proper notice and hearing and with obvious discrimination.

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[23] *Id*. at 63-80.

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

[25] *Id*. at 36-38.

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

[27] *Id*. at 168-188.

In their Reply to the Comment dated August 26, 2010, petitioners oppose respondent's arguments, saying that the issues they raised in the instant petition cannot be considered as having been raised for the first time since they are intertwined and bear relevance and close relation to the issues resolved by the trial court. They further reiterate that they cannot be held liable for damages since they were merely performing governmental or sovereign acts in the issuance of a mayor's permit. Thus, they argue that whatever damages that respondent may have incurred belong to the concept of *damnum absque injuria* for which the law provides no remedy.[28]

The Issues

Stripped of the verbiage, the sole issue in this case is whether petitioners can be made liable to pay respondent damages.

The Court's Ruling

The petition is meritorious.

Petitioners have not given their consent to be sued

The principle of immunity from suit is embodied in Section 3, Article XVI of the 1987 Philippine Constitution which states that "[t]he State cannot be sued without its consent." The purpose behind this principle is to prevent the loss of governmental efficiency as a result of the time and energy it would require to defend itself against lawsuits.[29] The State and its political subdivisions are open to suit only when they consent to it.

Consent may be express or implied, such as when the government exercises its proprietary functions, or where such is embodied in a general or special law.[30] In the present case,

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[28] *Id*. at 191-197.

[29] *Providence Washington Insurance Co. v. Republic of the Philippines*, No. L-26386, September 30, 1969, 29 SCRA 598, 601-602.

[30] *The Municipality of Hagonoy, Bulacan v. Dumdum, Jr.*, G.R. No. 168289, March 22, 2010, 616 SCRA 315.

respondent sued petitioners for the latter's refusal to issue a mayor's permit for bingo operations and for closing its business on account of the lack of such permit. However, while the authority of city mayors to issue or grant licenses and business permits is granted by the Local Government Code (LGC),[31] which also vests local government units with corporate powers, one of which is the power to sue and be sued, this Court has held that the power to issue or grant licenses and business permits is not an exercise of the government's proprietary function. Instead, it is in an exercise of the police power of the State, ergo a governmental act. This is clearly elucidated by the Court in *Acebedo Optical Company, Inc. v. The Honorable Court of Appeals*:[32]

> The Court of Appeals erred in adjudging subject business permit as having been issued by respondent City Mayor in the performance of proprietary functions of Iligan City. As hereinabove elaborated upon, **the issuance of business licenses and permits by a municipality or city is essentially regulatory in nature. The authority, which devolved upon local government units to issue or grant such licenses or permits, is essentially in the exercise of the police power of the State** within the contemplation of the general welfare clause of the Local Government Code. (emphasis supplied)

No consent to be sued and be liable for damages can thus be implied from the mere conferment and exercise of the power to issue business permits and licences. Accordingly, there is merit in petitioners' argument that they cannot be sued by respondent since the City's consent had not been secured for this purpose. This is notwithstanding petitioners' failure to raise this exculpatory defense at the first instance before the trial court or even before the appellate court.

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[31] Sec. 171, par. 2 (n) of the LGC reads:

The City Mayor shall:

x x x x x x x x x

n) Grant or refuse to grant, pursuant to law, city licenses or permits, and revoke the same for violation of law or ordinance or the conditions upon which they are granted.

[32] G.R. No. 100152, March 31, 2000, 329 SCRA 314, 335.

As this Court has repeatedly held, waiver of immunity from suit, being in derogation of sovereignty, will not be lightly inferred.[33] Moreover, it deserves mentioning that the City of Bacolod as a government agency or instrumentality cannot be estopped by the omission, mistake or error of its officials or agents.[34] Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers.[35] Hence, we cannot hold petitioners estopped from invoking their immunity from suit on account of having raised it only for the first time on appeal. On this score, Justice Barredo's Opinion in *Insurance Co. of North America v. Osaka Shosen Kaisha*[36] is particularly illuminating:

> x x x [T]he real reason why, from the procedural point of view, a suit against the state filed without its consent must be dismissed is because, necessarily, any such complaint cannot state a cause of action, since, as the above decision confirms, "there can be no legal right as against the authority that makes the law on which the right depends." x x x
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> The question that arises now is, may failure to state a cause of action be alleged as a ground of dismissal for the first-time on appeal?
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> x x x x x x x x x
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> x x x Indeed, if a complaint suffers from the infirmity of not stating facts sufficient to constitute a cause of action in the trial court, how could there be a cause of action in it just because the case is already on appeal? Again, if a complaint should be dismissed by the trial court because it states no cause of action, how could such a complaint be the basis of a proceeding on appeal? The answer, I submit, is found in Section 2 of Rule 9 which provides:

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[33] *Universal Mills Corp. v. Bureau of Customs*, 150 Phil. 57, 66 (1972); *Union Insurance Society of Canton, Ltd. v. Republic*, 150-B Phil. 107, 116 (1972); *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*, 125 Phil. 270, 279 (1966).

[34] *Republic v. Galeno*, G.R. No. 215009, January 23, 2017.

[35] *Intra-Strata Assurance Corp. v. Republic*, 579 Phil. 631, 648 (2008).

[36] 137 Phil. 194, 203 (1969).

x x x x x x x x x

x x x The requirement that this defense should be raised at the trial is only to give the plaintiff a chance to cure the defect of his complaint, but if, as in this case, the lack of consent of the state cannot be cured because it is a matter of judicial notice that there is no law allowing the present suit, (only Congress that can give such consent) the reason for the rule cannot obtain, hence it is clear that such non-suability may be raised even on appeal. After all, the record on appeal can be examined to find out if the consent of the state is alleged in the complaint.

x x x x x x x x x

x x x It is plain, however, that as far as the date is concerned, this rule of waiver cannot apply, for the simple reason that in the case of the state as already stated, the waiver may not be made by anyone other than Congress, so any appearance in any form made on its behalf would be ineffective and invalid if not authorized by a law duly passed by Congress. Besides, the state has to act thru subalterns who are not always prepared to act in the premises with the necessary capability, and instances there can be when thru ignorance, negligence or malice, the interest of the state may not be properly protected because of the erroneous appearance made on its behalf by a government lawyer or some other officer, hence, as a matter of public policy, the law must be understood as insulating the state from such undesirable contingencies and leaving it free to invoke its sovereign attributes at any time and at any stage of a judicial proceeding, under the principle that the mistakes and ommissions of its officers do not bind it.

Petitioners are not liable for damages

As to the primary issue of whether petitioners are liable to respondent for damages, respondent Phuture alleged that petitioners are guilty of surreptitiously padlocking its SM bingo outlet in a "patently arbitrary, whimsical, capricious, oppressive, irregular, immoral and shamelessly politically motivated" manner and with clear discrimination since the majority owners of the company are the sons of petitioner Mayor Leonardia's political

rival, then Congressman Monico Puentevella.[37] Such contention is clearly but *non sequitur*, grounded as it is in pure conjecture.

Sticking closely to the facts, it is best to recapitulate that while the CA ruled that respondent was not given due notice and hearing as to the closure of its business establishment at SM Bacolod, it nevertheless remanded the issue of the award of damages to the trial court for further proceedings. Such action would only be an exercise in futility, as the trial court had already ruled in its September 6, 2007 Decision that respondent Phuture had no right and/or authority to operate bingo games at SM Bacolod because it did not have a Business Permit and has not paid assessment for bingo operation. Thus, it held that **petitioners acted lawfully in stopping respondent's bingo operation** on March 2, 2007 and closing its establishment for lack of any business permit.

The trial court further found that the Mayor's Office had already decided and released a Business Permit for "Professional Services, Band/Entertainment Services" dated January 19, 2007 to respondent, which cannot reasonably expect to receive a Mayor's Permit for "Bingo Operations" unless and until it files a new application for bingo operations, submit the necessary requirements therefor, and pay the corresponding assessment.[38]

Aside from this, the RTC had also found that respondent's reliance on the GOA issued by PAGCOR, the SM Award Notice, and the "questionable" Claim Slip and Application paper tainted with alteration/falsification did not appear to be a right that is clear and unmistakable. From this, the trial court concluded that the right being claimed by respondent to operate bingo games at SM Bacolod was, at the very least, doubtful.[39]

Based on the above observations made by the trial court, it appears that respondent had no clear and unmistakable legal right to operate its bingo operations at the onset. Respondent

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[37] Records, p. 71.

[38] *Rollo*, p. 157.

[39] *Id*.

failed to establish that it had duly applied for the proper permit for bingo operations with the Office of the Mayor and, instead, merely relied on the questionable claim stub to support its claim. The trial court also found that the application form submitted by respondent pertained to a renewal of respondent's business for "Professional Services, Band/Entertainment Services" located at "RH Bldg., 26th Lacson St." and not at SM Bacolod. These factual findings by the trial court belie respondent's claim that it had the right to operate its bingo operations at SM Bacolod.

Certainly, respondent's claim that it had applied for a license for bingo operations is questionable since, as it had admitted in its *Petition for Mandamus and Damages*, the primary purpose in its AOI was only amended to reflect bingo operations on February 14, 2007 or more than a month after it had supposedly applied for a license for bingo operations with the Office of the Mayor. It is settled that a judicial admission is binding on the person who makes it, and absent any showing that it was made through palpable mistake, no amount of rationalization can offset such admission.[40] This admission clearly casts doubt on respondent's so-called right to operate its business of bingo operations.

Petitioners, in ordering the closure of respondent's bingo operations, were exercising their duty to implement laws and ordinances which include the local government's authority to issue licenses and permits for business operations in the city. This authority is granted to them as a delegated exercise of the police power of the State. It must be emphasized that the nature of bingo operations is a form of gambling; thus, its operation is a mere privilege which could not only be regulated, but may also very well be revoked or closed down when public interests so require.[41]

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[40] *Seastar Marine Services, Inc. v. Bul-an, Jr.*, 486 Phil. 330, 347 (2004).

[41] *Danilo A. Du v. Venancio R. Jayoma, then Municipal Mayor of Mabini, Bohol, Vicente Gulle, Jr., Joveniano Miano, Wilfredo Mendez, Agapito Vallespin, Rene Bucio, Jesus Tutor, Crescencio Bernales, Edgardo Ybanez, and Rey Pagalan, then members of the Sangguniang Bayan (SB) of Mabini, Bohol*, G.R. No. 175042, April 23, 2012, 670 SCRA 333.

In this jurisdiction, we adhere to the principle that injury alone does not give respondent the right to recover damages, but it must also have a right of action for the legal wrong inflicted by petitioners. In order that the law will give redress for an act causing damage, there must be *damnum et injuria* that act must be not only hurtful, but wrongful. The case of *The Orchard Golf & Country Club, Inc., et al. v. Ernesto V. Yu and Manuel C. Yuhico*,[42] citing *Spouses Custodio v. Court of Appeals*,[43] is instructive, to wit:

> x x x [T]he mere fact that the plaintiff suffered losses does not give rise to a right to recover 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. 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.
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> x x x x x x x x x
>
> In order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff – a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering.
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> x x x x x x x x x
>
> In other words, in order that the law will give redress for an act causing damage, that act must be not only hurtful, but wrongful. There must be *damnum et injuria*. If, as may happen in many cases, a person sustains actual damage, that is, harm or loss to his person or property, without sustaining any legal injury, that is, an act or omission which the law does not deem an injury, the damage is regarded as *damnum absque injuria.*

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[42] G.R. No. 191033, January 11, 2016, 778 SCRA 404, 421.

[43] G.R. No. 116100, February 9, 1996, 253 SCRA 483.

Considering that respondent had no legal right to operate the bingo operations at the outset, then it is not entitled to the damages which it is demanding from petitioners.

WHEREFORE, the petition is hereby **GRANTED**. The Decision dated February 27, 2009 and the Resolution dated October 27, 2009 of the Court of Appeals in CA-G.R. SP No. 03322 are hereby **ANNULLED** and **SET ASIDE**. The Decision dated March 20, 2007 of the Regional Trial Court of Bacolod City, Branch 49 is hereby **REINSTATED**.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192396. January 17, 2018]

STEPHEN A. ANTIG, as representative of AMS BANANA EXPORTER, INC. [formerly AMS Farming Corporation**], BERNARDITA S. LEMOSNERO, JEMARIE J. TESTADO, THOMAS BERNARD C. ALLADIN, AND GERARDO ARANGOSO,** *petitioners, vs.* **ANASTACIO ANTIPUESTO, in his own capacity and as representative of AMS KAPALONG AGRARIAN REFORM BENEFICIARIES MULTI-PURPOSE COOPERATIVE (AMSKARBEMCO) and its members,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATIONS; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF

1988); THE SPECIAL AGRARIAN COURT (SAC) HAS NO JURISDICTION OVER THE PETITION FOR INJUNCTION AND, CORRESPONDINGLY, HAS NO AUTHORITY TO ISSUE INJUNCTION FOLLOWING THE EXPRESS PROHIBITORY PROVISIONS OF R.A. NO. 6657; CASE AT BAR.— The SAC has no jurisdiction over the subject petition for injunction and, correspondingly, has no authority to issue the subject injunction. We so rule following the express prohibitory provisions in R.A. No. 6657, which were accordingly cited by the CA. The CA's ratiocination in the assailed resolutions is thus on point. It first scrutinized the allegations in the petition, thereby determining its subject matter, and then juxtaposed them against Sections 50, 56, and 57 of R.A. No. 6657, which sections provide for the quasi-judicial powers of the DAR and the limitations and scope of the jurisdiction of the SAC, respectively. We quote with approval the CA's discussion on this score, particularly the reference to our Administrative Circular Nos. 29-2002 and 38-2002, dated 1 July 2002 and 28 August 2002: x x x Given the explicit and categorical prohibitions contained in Sections 55 and 68 of R.A. No. 6657, this Court is bewildered as to why the SAC still entertained petitioners' case and issued the prohibited writ, in seeming defiance not just of Sections 55 and 68 but of our Administrative Circulars Nos. 29-2002 and 38-2002 as well. As previously noted, copies of the subject Orders of the SAC were not attached to the Petition for Review; neither were they attached to the other submissions in this case, making the SAC's stated rationale for the Orders unavailable for our direct scrutiny. Which is not to say, however, that these orders need to be scrutinized. Needless to state, the Orders of the SAC, dated 21 August 2003 and 6 October 2003, in DAR Case No. 98-2003 are absolutely null and void.

APPEARANCES OF COUNSEL

Remie A. Calatrava for petitioners.
Jabez T. Vegafria for respondents.

RESOLUTION

MARTIRES, *J.*:

THE CASE

Petitioners assail, by way of a Petition for Review on Certiorari,[1] the 27 August 2009[2] Decision and the 29 March 2010 Resolution[3] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 82287-MIN through which the CA set aside the Orders, dated 21 August 2003 and 6 October 2003, of the Regional Trial Court *(RTC)*, Branch 2, in Tagum City, which was designated as Special Agrarian Court *(SAC)* in DAR Case No. 98-2003.

With the Orders, the SAC assumed jurisdiction over petitioners' Petition for Injunction and issued the injunction prayed for, thereby enjoining the Department of Agrarian Reform (*DAR*) from entering agricultural lands previously acquired under the Comprehensive Agrarian Reform Program (CARP) and installing respondents thereon as the beneficiaries of the program.

The CA ruled that the SAC acted in grave abuse of discretion.

In compliance as required,[4] the parties filed their Comment[5] and Reply.[6]

THE FACTS

Petitioners Bernadita S. Lemosnero (*Lemosnero*), Jemarie J. Testado (*Testado*), Thomas Bernard C. Alladin (*Alladin*),

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[1] *Rollo*, pp. 25-44. Rule 45 of the Rules of Court.

[2] *Id*. at 45-53; penned by Associate Justices Romulo V. Borja, Elihu A. Ybañez, and Danton Q. Bueser. Promulgated by the Twenty-First Division.

[3] *Id*. at 55-56; penned by Associate Justices Romulo V. Borja, Danton Q. Bueser and Leoncia R. Dimagiba. Promulgated by the Special Former Twenty-First Division.

[4] *Id*. at 81, resolution dated 22 September 2010; *Rollo*, p. 143, resolution dated 5 September 2011.

[5] *Id*. at 86-92.

[6] *Id*. at 145-151.

and Gerardo C. Arangoso (*Arangoso*) (collectively, *the landowners*) were registered owners of four agricultural lots, located at Barangay Sampao, Municipality of Kapalong, Province of Davao del Norte, which are described as follows:[7]

Landowner	Certificate of Title No.	Land Area	Area planted to Bananas
Lemosnero	T-167015	5 has.	4,6915 has.
Testado	T-167016	5 has.	4,2856 has.
Alladin	T 167017	5 has.	4,8508 has.
Arangoso	T-167014	5 has.	5 has.

Pursuant to separate lease contracts, AMS Farming Corporation (*AMS Farming*, presently petitioner AMS Banana Exporter, Inc.), a domestic corporation engaged in the business of cultivating and exporting Cavendish bananas, had been leasing, developing, and operating portions of the lots as banana plantations since the 1970s;[8] the leased portions totaled 18,828 square meters. As lessee, developer, and operator of these banana plantations, AMS Farming asserts ownership over the standing crops (banana trees) and other improvements found thereon. Correspondingly, AMS Farming had been declaring such ownership for taxation purposes.[9]

In 2002, during the effectivity of the lease contracts, the landowners offered their respective lots for agrarian reform, and availed of the Voluntary Offer to Sell (*VOS*) scheme under the CARP. They proposed that as the just compensation for the lots, the standing crops, and the improvements should be computed at ₱903,857.15 per hectare.[10]

Pursuant to its mandate as the duly designated financial intermediary of the CARP, the Land Bank of the Philippines

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[7] *Id*. at 31.

[8] *Id.*

[9] *Id*. at 46.

[10] *Id*. at 31.

(*LBP*) arrived at its own valuation. Petitioners disagreed with the LBP valuation as it allegedly did not include the value of the standing crops and the improvements.[11] Thus, they protested[12] before the DAR Adjudication Board (*DARAB*), prompting the Office of the Provincial Adjudicator, Tagum City, to conduct summary proceedings for the administrative determination of the just compensation for the lots, in accordance with the primary jurisdiction conveyed unto DAR by Section 16 (d)[13]of Republic Act. No. 6657, or the Comprehensive Agrarian Reform Law of 1988. Before the DARAB, petitioners specifically prayed that the value of the standing crops and improvements be included in the determination of the just compensation.[14] Meanwhile, Certificates of Land Ownership Awards over the lots were issued in favor of the agrarian reform beneficiaries (*ARBs*), including herein respondents, the members of AMS Kapalong Agrarian Reform Beneficiaries Multi-Purpose Cooperative (*the cooperative*).[15]

The case before the DARAB

As petitioners alleged before the Office of the Provincial Adjudicator, LBP's computation is as follows:[16]

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[11] *Id*.

[12] *Id*. at 32. Docketed as DARAB Case Nos. LV-XI-0470-Dn-03, LV-XI-0432-Dn-02, LV-XI-0446-Dn-02, LV-XI-0382-Dn-02.

[13] Section 16 (d) of R.A. No. 6657 states: "Section 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed: x x x x (d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision."

[14] *Rollo*, p. 32.

[15] *Id*. at 47.

[16] *Id*. at 32.

Per Hectare Valuation		
Lemosnero	₱76,463.46 x 4.6915	= ₱358,728.34
Testado	₱49,092.49 x 4.2856	= ₱210,390.78
Alladin	₱71,394.58 x 4.8508	= ₱346,320.84
Arangoso	₱78,709.24 x 5.000	= ₱393,546.20

Petitioners claim that the valuation as shown in the above table takes into consideration only the value of the "RAW LAND." They present a separate computation, which they say accurately accounts for the value of the standing crops and improvements as well:[17]

	Standing Crops	Other Improvements	Area	Total
Testado	₱760,910.32	₱89,500.38	4.2856	₱3,644,519.77
Alladin	₱760,910.22	₱89,500.38	4.85.8	₱4,125,171.74
Lemosnero	₱778,056.10	₱89,500.38	4.6915	₱4,070,141.23
Arrangoso	₱760,910.22	₱89,500.38	5.0000	₱4,252,053.00
			Total:	₱16,091,885.64

The case before the SAC

In a Letter dated 1 August 2003, the Provincial Agrarian Reform Officer[18] (PARO) notified AMS Farming of the impending "physical takeover" of the lots by the ARBs, scheduled on 5 August 2003.[19]

On the day of the intended "takeover," and when the administrative proceedings before the DARAB were pending, petitioners filed before the Regional Trial Court, Tagum City, designated as SAC, a Petition for Injunction with an Application

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[17] *Id*.

[18] *Id*. at 47; PARO II Pedro P. Gumbao.

[19] *Id*. at 47.

for the Issuance of a Temporary Restraining Order (*TRO*). The case was docketed as DAR Case No. 98-2003.

Incidentally, no copy of the Petition for Injunction was attached to the present Petition for Review. Nonetheless, in the petition for review before this Court, petitioners readily disclosed the reason for why they filed such a petition, and we quote:

> 5.10 Petitioners AMSFC [AMS Farming Corporation] filed such application to restrain the DAR and the private respondents from taking over the subject parcels of land, considering that individual petitioners-landowners **rejected the valuations made on their property by the LBP and the DAR**, where at that time summary proceedings for the determination of the just compensation were pending before the Department of Agrarian Reform Adjudication Board (DARAB), Tagum City, and, likewise, considering the **TOTAL ABSENCE** of the valuations of the standing crops and other improvements owned by petitioner AMSFC.[20]

As petitioners had argued before the SAC, the "installation/ physical takeover" of the lots when no valuation and deposit had been made on the standing crops and improvements, would violate their constitutional rights against being deprived of property without due process of law and just compensation. They insisted that the just compensation for the properties should be ₱16,091,885.64.[21] Incidentally, they also alleged that herein individual respondent Anastacio Antipuesto had declared that he, the cooperative he represented, and its members do not intend to make use of the standing crops of AMS Farming because they planned to plant another crop on the lots.[22] Petitioners impleaded the cooperative in their petition for injunction, together with the PARO[23] and the Municipal Agrarian Reform Officer[24] (MARO).

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[20] *Id*. at 33.

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

[22] *Id*. at 29.

[23] *Id*. at 47; Pedro P. Gumabao.

[24] *Id*.; Emiliano Alamillo, Jr.

The Orders of the SAC

The SAC took cognizance of the petition for injunction and granted its prayer for a TRO, in an 8 August 2003 Order.[25]

The Bureau of Agrarian Legal Assistance, DAR Provincial Office, Tagum City, filed an answer[26] praying that the petition be denied on the ground that the SAC had no jurisdiction to enjoin the implementation of the CARP. The bureau moved for the reconsideration of the order on the same ground. On its part, the cooperative also filed an answer, echoing the defenses of lack of jurisdiction and lack of cause of action, and pleading a compulsory counterclaim for damages.[27]

Undaunted by these defenses, the SAC[28] issued the subject injunction, in its 21 August 2003 and 6 October 2003 Orders.[29] It directed the petitioners to post a bond in the amount of One Hundred Thousand Pesos.[30]

No copies of the orders were attached to the present petition.

Separate motions for the reconsideration of the injunctive order were filed by the DAR and the cooperative.[31] Both were denied.[32] Hence, the DAR and the cooperative elevated their case to the CA, under Rule 65 of the Rules of Court, impleading the Presiding Judge of the SAC together with herein petitioners. Their petition for certiorari was docketed as CA-G.R. SP No. 82287-MIN.[33]

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[25] *Id*. at 48.

[26] *Id*.; Dated 21 August 2003.

[27] *Id*.

[28] Judge Erasto D. Salcedo, acting Presiding Judge of RTC Branch 2, Tagum City.

[29] *Rollo*, pp. 48-49.

[30] *Id*. at 34.

[31] *Id*.

[32] *Id*.; Order dated 6 October 2003.

[33] *Id*. at 45. The Petition for *Certiorari* was titled *Anastacio Antipuesto, in his own capacity and representing AMAS Kapalong Agrarian Reform*

The Ruling of the Court of Appeals

As already noted, the appellate court granted the petition for certiorari. The dispositive portion of the assailed 27 August 2009 Decision reads:

> WHEREFORE, premises considered, the petition is GRANTED. Public respondent's order taking cognizance of the petition for injunction in DAR Case No. 98-2003 and its August 21, 2003 and October 6, 2003 Orders granting preliminary injunction against the "installation/ physical takeover" of the subject landholdings, are SET ASIDE. The petition for injunction filed before public respondent, docketed as DAR Case No. 98-2003, entitled "*AMS Farming Corporation, et al. v. Anastacio Antipuesto, et al.*" is ordered DISMISSED.
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> SO ORDERED.[34]

The CA ruled that the SAC had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the petition for injunction.

The CA denied petitioners' motion for reconsideration in its 29 March 2010 Resolution.[35]

The Present Petition

In assailing the CA's resolutions before this Court, petitioners reiterate the reason that had compelled them to seek injunction from the SAC: the alleged violation of their constitutional rights that would have occurred had the DAR not been so enjoined by the SAC from physically "takingover" the subject lots.

Beneficiaries' Multi-Purpose Cooperative (AMSKARBEMCO) and its members, petitioners, versus Hon. Erasto Salcedo, Special Agrarian Court of Davao Province, AMS Farming Corporation, Bernadita S. Lemosnero, Jemarie J. Testado, Thomas Bernard C. Alladin and Gerardo C. Arangoso, duly represented by Mr. Alberto M. Soriano and/or Mr. Stephen A. Antig, respondents.

[34] *Id*. at 53.

[35] *Id*. at 55-56; penned by Associate Justices Romulo V. Borja, Danton Q. Bueser, and Leoncia R. Dimagiba. Promulgated by the Special Former Twenty-First Division.

Petitioners reiterate that AMS Farming had not been paid for the standing crops and other improvements on the subject lots.[36] They emphasize this latter point in this tenor:

> 4.11 Although, petitioner AMSFC admits there were initial deposits on the land taken over by the DAR in the names of individual petitioners Testado, Alladin, Lemosnero and Arangoso. However, petitioner AMSFC being the lessee of the properties of the individual petitioners **vehemently protested being the owner of the standing crops and other improvements** worth PhP16,091.885.65 exclusive of **WHICH WERE NOT VALUED/PAID**; not even an initial deposit. What is being exported abroad is the box of bananas which is worth $2.80 per box; what is being exported is not a box of soil. It is the standing crops that make the land valuable. It is the position of the private petitioners that all of these PhP16,091,885.64 worth of petitioner's property would fall in their [the private respondents'] laps FREE of CHARGE. Private respondents declare they only wanted to take the land, not the standing crops and improvements planted and built by petitioner AMSFC since 1970. But RA 6657 was a compulsion to all property owners. Petitioner AMSFC as cultivator and who developed the standing crops had no choice even if it availed of the VOS scheme under the CARP Law.[37]

While petitioners agree that the scope of the SAC's jurisdiction was limited, they nevertheless submit that the said court was correct in issuing injunction in their case, as it was being "... faithful to the constitutional command that a person may not be deprived of its life, liberty or property without due process of law,"[38] and considerate of the maxim that "... constitutional rights are superior to any law, administrative, or executive order."[39]

Elsewhere in the Petition, petitioners argue as follows:

> The instant case is an example of serious violations of our constitution which makes the same an extreme case which Congress

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[36] *Id*. at 37.

[37] *Id*. at 30.

[38] *Id*. at 37.

[39] *Id*. at 36.

may not deprive the judiciary of its sacred duty to determine the constitutionality of the intended take-over of the subject landholdings of the individual petitioners, including, the standing crops and other improvements of petitioner AMSFC.[40]

x x x x x x x x x

However, in spite of the "no injunction" rule against government projects, the Supreme Court in a landmark decision in Malaga vs. Penachos, G.R. No. 86695, took cognizance of the case and ruled:

> "P.D. 1818 was not intended to shield from judicial scrutiny, irregularities committed by administrative agencies such as anomalies above described. Hence, the challenged restraining order was not improperly issued by the respondent judge and the writ of preliminary injunction should not have been denied."

Congress may not rob the judiciary of its judicial power vested upon the latter by the Constitution; otherwise, it would be tantamount to a martial law of sort. Petitioner submits the provision of Sec. 55 of R.A. No. 6657 which provides that "No court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against PARC or any of its duly authorized or designated agencies... did not constitute a total abdication of judicial power vested by the constitution upon the judicial branch of the government. [*sic*.][41]

In fine, petitioners plead that this Court declare the subject injunctive order as just, valid, and constitutional.[42]

Comment

Respondents' objections against the present petition are mainly technical, to wit: *First*, petitioners failed to comply with Section 2, Rule 45 of the Rules of Court, having filed their petition for review beyond the 15 day-filing and 30 day-extension periods; *Second*, they failed to file a timely motion for reconsideration of the appellate court's 27 August 2009

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[40] *Id*. at 37.

[41] *Id*. at 38.

[42] *Id*. at 39.

resolution, having filed their motion for reconsideration only on 12 October 2009, when it should have been filed on 7 October; *Third*, the Verification and Certificate of Non-Forum Shopping attached to the petition are invalid, given that there is no proof on the authority of Stephen Antig to represent AMS Banana Exporter, Inc. and the landowners. Respondents posit that as a consequence of these failings, the CA ruling had already attained finality and could no longer be the subject of an appeal.[43]

ISSUE

Under Rule 45, the issue to be resolved is whether the CA committed reversible error with the assailed resolutions. Said differently, and reflecting on petitioners' own formulation of the issue as well,[44] the issue is whether the CA correctly ruled that the SAC had committed grave abuse of discretion amounting to lack or excess of jurisdiction when it took cognizance of petitioner's Petition for Injunction. This issue, in turn, pivots on the question of whether the SAC had the jurisdiction to issue the injunction in this case.

OUR RULING

The petition has no merit. We sustain the resolutions of the CA.

DISCUSSION

The SAC has no jurisdiction over the subject petition for injunction and, correspondingly, has no authority to issue the subject injunction. We so rule following the express prohibitory provisions in R.A. No. 6657,[45] which were accordingly cited

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[43] *Id*. at 86-92.

[44] *Id*. at 35. According to petitioners, the issue is "Whether or not public respondent Court of Appeals correctly ruled that the Court *a quo* (RTC Branch 2, Tagum City) committed grave abuse of discretion amounting to lack or excess of jurisdiction when it took cognizance of DAR Case No. 98-2003 and issued the August 21, 2003 and October 6, 2003 Orders granting preliminary injunction against the installation/physical takeover of the subject landholdings of individual petitioners."

[45] *DAR vs. Trinidad Valley Realty, et al.*, 726 Phil. 419, 439 (2014).

by the CA. The CA's ratiocination in the assailed resolutions is thus on point. It first scrutinized the allegations in the petition, thereby determining its subject matter, and then juxtaposed them against Sections 50,[46] 56,[47] and 57[48] of R.A. No. 6657, which

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[46] Section 50, R.A. No. 6657, provides: "Section 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

"It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination for every action or proceeding before it.

"It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue subpoena, and subpoena *duces tecum*, and enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempts in the same manner and subject to the same penalties as provided in the Rules of Court.

"Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR: provided, however, that when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

"Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory."

[47] Section 56, R.A. No. 6657, provides: "Section 56. Special Agrarian Court. — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.

"The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.

sections provide for the quasi-judicial powers of the DAR and the limitations and scope of the jurisdiction of the SAC, respectively. We quote with approval the CA's discussion on this score, particularly the reference to our Administrative Circular Nos. 29-2002 and 38-2002, dated 1 July 2002 and 28 August 2002:

> The foregoing [Sections 50, 56, and 57 of R.A. No. 6657] clearly demonstrate that the jurisdiction of the RTC as a Special Agrarian Court is in the nature of a limited and special jurisdiction, that is, the RTC's authority to hear and determine a class of cases is confined to particular causes or can only be exercised under the limitations and circumstances prescribed by statute, particularly the above-quoted Section 57.
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> Thus, the original and exclusive jurisdiction of the RTC acting as a Special Agrarian Court as delineated by law is to cover only the following controversies:
>
> 1. all petitions for the determination of just compensation to landowners, and
>
> 2. the prosecution of all criminal offenses under RA No. 6657.
>
> A perusal of the petition for injunction filed by private respondents in DAR Case No. 95-2003 shows that it does not raise either of the foregoing issues. The principal averments of the petition and the relief prayed for therein actually assert a cause of action to enjoin the "installation/physical takeover" of the subject landholdings by the ARBs affiliated with the Cooperative, and therefore not within the purview of the limited or special jurisdiction of the public respondent as a Special Agrarian Court.

"The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts.

"The Special Agrarian Courts shall have the powers and prerogatives inherent in or belonging to the Regional Trial Courts."

[48] Section 57, R.A. No. 6657, provides: "Section 57. Special Jurisdiction. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act."

Clearly, public respondent is bereft of any authority to hear the petition for injunction in DAR Case No. 98-2003 as a Special Agrarian Court, and, thus, acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, in taking cognizance of the petition. Consequently, public respondent is also devoid of any authority to issue a preliminary injunction, pursuant to its Orders of August 21, 2003 and October 6, 2003.

Furthermore, the impropriety of filing the main petition for injunction before public respondent and the nullity of the preliminary injunction it issued, against the implementation of the CARP through "installation/physical take-over" of the Subject Landholdings, proceed from the express prohibitory provisions of R.A. No. 6657 and the Supreme Court's Administrative Circular Nos. 29-2002 and 38-2002, dated July 1, 2002 and August 28, 2002, respectively. These Circulars enjoin all trial judges to strictly observe Sections 55 and 68 of RA 6657, which read:

> "Section 55. No Restraining Order Preliminary Injunction. No court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the PARC of any of its duly authorized or designated agencies in any case, dispute or controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform."
>
> "Section 68. Immunity of Government Agencies from Undue Interference. No injunction, restraining order, prohibition or mandamus shall be issued by the lower courts against the Department of Agrarian Reform (DAR), the Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), and the Department of Justice (DOJ) in their implementation of the program."

Given the explicit and categorical prohibitions contained in Sections 55 and 68 of R.A. No. 6657, this Court is bewildered as to why the SAC still entertained petitioners' case and issued the prohibited writ, in seeming defiance not just of Sections 55 and 68 but of our Administrative Circulars Nos. 29-2002 and 38-2002 as well. As previously noted, copies of the subject Orders of the SAC were not attached to the Petition for Review; neither were they attached to the other submissions in this case,

making the SAC's stated rationale for the Orders unavailable for our direct scrutiny.

Which is not to say, however, that these orders need to be scrutinized. Needless to state, the Orders of the SAC, dated 21 August 2003 and 6 October 2003, in DAR Case No. 98-2003 are absolutely null and void.

However, and if only parenthetically, we deem it practical to state that we are not moved by the reason petitioners had advanced for why the SAC granted their petition for injunction, *viz*, that it was to protect their constitutional rights to due process and just compensation. Petitioners failed to expound on this claim substantially or persuasively; instead, they merely stated that such rights were placed at risk by the simple expedient of implementing the CARP in their case. With this rather hackneyed and trite defense, we recall the 2004 case of *DAR v. Cuenca*,[49] where we found occasion to state:

"'[A]ll controversies on the implementation of the Comprehensive Agrarian Reform Program (CARP) fall under the jurisdiction of the Department of Agrarian Reform (DAR), even though they raise questions that are also legal or constitutional in nature."

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"Thus, the DAR could not be ousted from its authority by the simple expediency of appending an allegedly constitutional or legal dimension to an issue that is clearly agrarian."[50]

Indeed, when petitioners *alleged*, as the supposed factual basis for their petition, that the LBP valuation had excluded the value of the standing crops and the other improvements found thereon, it became clear to us that the petition could also have been a quest for the judicial determination of just compensation, ill-veiled as a protest for the protection of petitioners' constitutional rights. We are aware that such allegation remains unsubstantiated, at least insofar as the available

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[49] 482 Phil. 208 (2004).

[50] *Id*. at 211 and 226.

records are concerned, a mere say-so on petitioners' part. We are also mindful that the basic formula used by the LBP and the DAR in determining just compensation factors in the value of the standing crops, as a matter of course, together with several other metrics, including the agricultural land's current value, nature, actual use, and income.[51] In which case, the allegation is a matter best left for the resolution of the DAR, which has administrative expertise and competence on the matter, by way of the DARAB. Also, this Court is not a trier of facts. Considering that the preliminary, administrative determination of just compensation in this case was, at the time of the filing of the Petition for Injunction, pending before the DARAB and was not yet terminated, petitioners' recourse to the SAC in this instance was not only erroneous, it was premature as well.

Finally, a word on petitioners' citation of *Malaga, et al. v. Penachos* [G.R. No. 86695]. Petitioners invoke the case yet fail to discuss how the ruling therein supposedly applies to their controversy. At any rate, with the citation, petitioners seem to suggest that this Court should likewise carve an exception to the rule, set in R.A. No. 6657, against the issuance by a lower court of any injunction, restraining order, prohibition or mandamus against the DAR in its implementation of the agrarian reform program.

We cannot be persuaded.

In *Malaga*, at issue was a prohibition, set in Presidential Decree *(P.D.)* No. 1818,[52] against courts from issuing injunctions in cases involving government infrastructure projects. Suffice it to say that in *Malaga*, among the bases for our ruling that the injunction therein was nevertheless validly issued was that the administrative entity involved in that case, the Pre-

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[51] *Alfonso vs. LBP and DAR*, G.R. Nos. 181912 & 183347, 29 November 2016.

[52] Titled "Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public Utilities Operated by, the Government" and done on 16 January 1981.

qualification, Bids and Awards Committee of the Iloilo State College of Fisheries, had committed such patent irregularities and defects in the conduct of a bidding that the issuance of the injunction therein was justified. Further, we declared that the prohibition in P.D. No. 1818 extended only to the issuance of injunctions or restraining orders against administrative acts in controversies involving facts of the exercise of discretion in technical cases.[53] In the present case, petitioners failed to allege and specify, let alone substantiate, any such irregularities and defects on the part of the LBP and the DAR, which would be helpful in making the citation of *Malaga* a feasible argument. At any rate, we do not find any irregularity on the part of the LBP and the DAR in this case.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. The 27 August 2009 Decision and the 29 March 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 82287-MIN, are **AFFIRMED**, and the Injunction Orders issued in DAR Case No. 98-2003 are **SET ASIDE**.

Further, the Office of the Court Administrator is directed to conduct an inquiry into the possible administrative and/or criminal liabilities of Hon. Erasto D. Salcedo, Presiding Judge of the Special Agrarian Court in DAR Case No. 98-2003, with respect to his issuance of the prohibited injunctive orders.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.*, concur.

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[53] *Malaga v. Penachos*, 288 Phil. 410, 411 (1992); *Zamora vs. Caballero, et al.*, 464 Phil. 471, 486 (2004).

THIRD DIVISION

[G.R. No. 196598. January 17, 2018]

EDITHA B. ALBOR, *petitioner, vs.* **COURT OF APPEALS, NERVA MACASIL joined by her husband RUDY MACASIL and NORMA BELUSO, joined by her husband NOLI BELUSO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; DISTINGUISHED FROM SPECIAL CIVIL ACTION FOR *CERTIORARI*; CASE AT BAR.— The proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45; and such is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which in essence is a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is a limited form of review and is a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. Certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court. x x x Editha received the 15 February 2011 resolution denying her motion for reconsideration on 28 February 2011. Under the rules, she had until 15 March 2011 to file a petition for review on *certiorari* with this Court. Editha allowed the period to lapse without filing an appeal and, instead, filed this petition for certiorari on 29 April 2011. Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. Where the rules prescribe a particular remedy

for the vindication of rights, such remedy should be availed of. Accordingly, adoption of an improper remedy already warrants outright dismissal of this petition.

2. **ID.; ID.; ID.; THE REQUIREMENTS FOR PERFECTING AN APPEAL WITHIN THE REGLEMENTARY PERIOD SPECIFIED IN THE LAW MUST BE STRICTLY FOLLOWED AS THEY ARE CONSIDERED INDISPENSABLE INTERDICTIONS AGAINST NEEDLESS DELAYS.—** It is doctrinally entrenched that the right to appeal is a statutory right and the one who seeks to avail of that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well. The failure to perfect the appeal within the time prescribed by the Rules of Court unavoidably renders the judgment final as to preclude the appellate court from acquiring the jurisdiction to review the judgment. It bears stressing that the statutory nature of the right to appeal requires the appealing party to strictly comply with the statutes or rules governing the perfection of an appeal, as such statutes or rules are instituted in order to promote an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting their relaxation, the statutes or rules should remain inviolable.

3. **ID.; ID.; ID.; THE COURT OF APPEALS ENJOYS A WIDE LATITUDE OF DISCRETION IN GRANTING A FIRST MOTION FOR EXTENSION OF TIME, HOWEVER, ITS AUTHORITY TO GRANT A SECOND MOTION FOR EXTENSION OF TIME IS DELIMITED BY TWO CONDITIONS; NOT PRESENT IN CASE AT BAR.—** While the CA enjoys a wide latitude of discretion in granting a first motion for extension of time, its authority to grant a further or second motion for extension of time is delimited by two conditions: *First*, there must exist a most compelling reason for the grant of a further extension; and *second*, in no case shall such extension exceed fifteen (15) days. So narrow is the discretion accorded to the CA in granting a second extension of time that the word "most" was utilized to underscore the compelling reason demanded by the rule. Editha maintains that

the filing of the second motion for extension of time was prompted by the sudden withdrawal of her previous counsel. The CA, however, did not appreciate such predicament as a most compelling reason to grant her plea for further extension of time. On this score, the Court similarly finds no compelling reason to deviate from the sound conclusion of the CA.

4. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE (REPUBLIC ACT NO. 3822, AS AMENDED BY REPUBLIC ACT NO. 6389); RIGHT OF REDEMPTION BY THE AGRICULTURAL LESSEE; THE FULL AMOUNT OF THE REDEMPTION PRICE SHOULD BE CONSIGNED IN COURT; NOT ESTABLISHED IN CASE AT BAR.— Both the PARAD and the DARAB found that Editha only consigned the amount of ₱216,000.00 as redemption price for Lot 2429. As aptly observed in the PARAD's decision, it was Editha herself who secured a copy of the extrajudicial settlement and deed of sale from the Clerk of Court of the RTC in Roxas City. The purchase price stated in the deed of conveyance was ₱600,000.00, and the administrative tribunals correctly held that absent sufficient evidence to the contrary, it must be accepted as the reasonable price of the land as purchased by the respondents. The full amount of the redemption price should be consigned in court. x x x The redemption price Editha consigned falls short of the requirement of the law, leaving the Court with no choice but to rule against her claim.

APPEARANCES OF COUNSEL

Albert Gregory Potato for petitioner.
Catalan & Fuentes-Bartolome for respondents.

D E C I S I O N

MARTIRES, *J.*:

This petition for certiorari under Rule 65 of the Rules of Court seeks to reverse and set aside the 24 September 2009[1]

[1] *Rollo*, pp. 284-285; penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justice Rodil V. Zalameda and Associate Justice Samuel H. Gaerlan, concurring.

and 15 February 2011[2] Resolutions of the Court of Appeals (*CA*) in CA-G.R. SP No. 03895. The assailed CA Resolutions dismissed herein petitioner Editha B. Albor's (*Editha*) appeal from the 8 October 2008 Decision[3] of the Department of Agrarian Reform Adjudication Board (*DARAB*) in DARAB Case No. 13162, for having been filed out of time.

ANTECEDENTS

Editha was the agricultural lessee of a 1.60 hectare riceland portion and a 1.5110 hectare sugarland portion of Lot 2429 located at Barangay Dinginan, Roxas City. Lot 2429 was covered by Transfer Certificate of Title (*TCT*) No. RT-108 (522),[4] registered in the name of Rosario Andrada (*Rosario*), married to Ramon Gardose. As agricultural lessee, Editha had been paying rent to the agricultural lessors, the heirs of Rosario. On 22 September 2000, the Municipal Agrarian Reform Officer (*MARO*) of Roxas City, invited Editha to appear before the MARO office on 20 October 2000. Editha heeded the invitation and there met respondents who informed her that they had purchased Lot 2429 from the heirs of Rosario. No Deed of Sale, however, was shown to Editha.

On 7 November 2000, Editha was able to obtain from the Clerk of Court of the Regional Trial Court (*RTC*) in Roxas City, a document entitled "Extra-Judicial Settlement with Deed of Sale," purportedly executed by the heirs of Rosario. It appears that on 6 June 1997, the heirs of Rosario adjudicated unto themselves Lot 2429 and thereupon sold the same to respondents for ₱600,000.00. Asserting that she had the right to redeem Lot 2429 from respondents, Editha lodged a complaint for redemption of landholding and damages before the Provincial Agrarian Reform Adjudicator (*PARAD*).

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[2] *Id*. at 294-295; penned by Associate Justice Pampio A. Abarintos, with Associate Justice Ramon A. Cruz and Associate Justice Myra V. Garcia-Fernandez, concurring.

[3] *Id*. at 64-71.

[4] *Id*. at 59.

In the main, Editha alleged that under Section 12 of Republic Act (*R.A.*) No. 3844,[5] as amended by R.A. No. 6389, she had the right to redeem Lot 2429 within 180 days from notice in writing of the sale which shall be served by the vendee on all lessees affected and on the Department of Agrarian Reform upon registration of the sale. Considering that the said extrajudicial settlement with deed of sale had not yet been registered with the Register of Deeds of Roxas City, her 180-period for redemption did not commence. Thus, she prayed that judgment be rendered declaring her entitled to redeem the said lot, at the price of ₱60,000.00.

On their part, respondents asserted that prior to the actual sale of Lot 2429, Editha knew that the selling price was ₱600,000.00 and not ₱60,000.00, as misleadingly alleged in her complaint. Respondents stated that on 21 April 1997,[6] a certain Atty. Alejandro Del Castillo, together with Eva Gardose-Asis, representing the heirs of Rosario, conferred with Editha and her son Bonifacio Albor about the impending sale of Lot 2429. During the conference, Editha was apprised of her right of preemption, and Lot 2429 was offered to her for the price of ₱600,000.00. This notwithstanding, Editha did not exercise her preemptive right to buy the lot; consequently, the sale was consummated between the heirs of Rosario and respondents on 6 June 1997.

Respondents further claimed that Editha was well-informed in writing regarding the sale of Lot 2429. They alleged that Felisa Aga-in and Teresita Gardose, acting in behalf of the other heirs of Rosario, executed a notice, dated 16 March 1998, informing Editha that respondents were interested in buying Lot 2429; and that if she so desired, she could still repurchase the property from respondents.

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[5] R.A. No. 3844, otherwise known as the Agricultural Reform Code.

[6] Erroneously mentioned as 7 April 1997 in the narration of facts in the PARAD decision.

Finally, respondents averred that they sent Editha a written demand for payment of rentals reckoned from 1998. Instead of complying, Editha instituted the complaint for redemption. Accordingly, respondents prayed for collection of back rentals, termination of the agricultural leasehold agreement, moral damages, attorney's fees, and litigation expenses.

In its 30 June 2003 decision,[7] the PARAD found that Editha was not properly notified of the sale. It observed that the 16 March 1998 notice which respondents presented failed to indicate the terms and particulars of the sale. As such, it ruled that Editha's right of redemption did not prescribe for want of a valid written notice.

While the PARAD sustained Editha's right of redemption, it nevertheless resolved to dismiss her complaint after finding that only ₱216,000.00 was consigned as redemption price. Citing jurisprudence on the matter, the PARAD opined that tender of payment must be for the full amount of the repurchase price; otherwise, the offer to redeem would be held ineffectual. It noted that in the extrajudicial settlement and deed of sale which Editha herself procured, the purchase price stated was ₱600,000.00, and that such price was never disputed. Hence, absent evidence to the contrary, there can be no doubt that ₱600,000.00 was the actual amount that respondents paid for Lot 2429. The decretal portion of the PARAD's decision reads:

> WHEREFORE, premises considered, judgement is hereby rendered as follows:
>
> 1) DISMISSING the complaint for redemption;
>
> 2) ORDERING the defendants, their agents or representatives and any other persons acting for and in their names to maintain the complainant and the immediate members of her family in peaceful possession, cultivation and enjoyment of the subject land;

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[7] *Rollo*, pp. 51-63; penned by Provincial Agrarian Reform Adjudicator Myrna O. Del Socorro.

3) ORDERING the complainant to pay the defendants ONE HUNDRED (101) CAVANS of clean palay as back rentals for the riceland portion and TWO THOUSAND FIVE HUNDRED (₱2,500.00) PESOS as back rentals for the sugarland portion representing the rentals in arrears for agricultural crop years 1998-1999 to 2001-2002, and thereafter, 50 cavans of palay and ₱1,000.00 pesos annually until the execution of this decision;

4) ORDERING the parties to seek the assistance of the Department of Agrarian Reform through its Municipal Office concerned and execute an agricultural lease contract over the subject land;

5) DIRECTING the Department of Agrarian Reform through its Provincial and/or Municipal Offices to initiate and conduct mediation between the parties, assist them in the determination and fixing of agricultural lease rentals and in the execution of agricultural lease contract; and

6) DIRECTING further the Department of Agrarian Reform through its Provincial and/or Municipal Offices to conduct a survey on the sugarland portion for the determination of its exact area in aid of their fixing of rentals.

All claims and counterclaims are hereby dismissed for lack of evidence.

SO ORDERED.[8]

Aggrieved, Editha filed an appeal before the DARAB. On 10 November 2008, Editha's erstwhile counsel, Atty. Fredicindo A. Talabucon (*Atty. Talabucon*), received a copy of the DARAB's 8 October 2008 decision which affirmed *in toto* the PARAD's ruling.

On 25 November 2008, Editha filed before the CA a motion for extension of time[9] to file a Rule 43 petition for review. She prayed for an additional fifteen (15) days, or from 25 November 2008 until 10 December 2008.

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[8] *Id*. at 62-63; PARAD decision.

[9] *Id* at 20-22.

Shortly thereafter, on 3 December 2008, a motion to withdraw as counsel,[10] dated 28 November 2008, was filed by Atty. Talabucon. It was alleged that Editha decided to engage the services of another counsel and for said reason, Atty. Talabucon was withdrawing his appearance. Editha signified her conformity to the motion to withdraw as counsel.

On 9 December 2008, Editha's new counsel, Atty. Ferdinand Y. Samillano (*Atty. Samillano*), filed with the CA a notice of appearance[11] and at the same time moved for an extension of thirty (30) days, or from 10 December 2008 until 9 January 2009, within which to file the petition for review. The second motion for extension of time was grounded on heavy workload and the need for more time to study the case.

Eventually, Editha's petition for review was filed on 5 January 2009.

The Assailed CA Resolutions

In the assailed resolution, dated 24 September 2009, the CA dismissed Editha's petition for review for having been filed out of time. The appellate court ratiocinated that while it may grant Editha's first motion for extension of fifteen (15) days within which to file the petition, it was devoid of authority to grant her second motion for extension which asked for an additional time of thirty (30) days.

Editha filed a motion for reconsideration, which was likewise denied by the CA in its 15 February 2011 resolution. Both resolutions denying Editha's petition for review were anchored on Section 4, Rule 43 of the Rules of Court, *viz*:

> Section 4. Period of appeal. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with

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[10] *Id*. at 24-25.

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

the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

In her bid to undo the CA resolutions, Editha comes before this Court via a Rule 65 petition for certiorari.

ISSUE

WHETHER OR NOT THE CA ERRED IN DISMISSING EDITHA'S PETITION FOR REVIEW FOR HAVING BEEN FILED OUT OF TIME.

OUR RULING

Editha's petition fails.

Editha availed of the wrong mode of appeal in bringing her case before this Court.

The proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45; and such is not similar to a petition for certiorari under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which in essence is a continuation of the appellate process over the original case.[12]

On the other hand, a special civil action under Rule 65 is a limited form of review and is a remedy of last recourse.[13] It is

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[12] *PBCOM v. Court of Appeals*, G.R. No. 218901, 15 February 2017.

[13] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 716 Phil. 500, 513 (2013).

an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. Certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.[14] As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.[15]

The 24 September 2009 and 15 February 2011 resolutions of the CA were final and appealable judgments. In particular, the resolution dated 24 September 2009 dismissed Editha's Rule 43 petition for review, while the resolution dated 15 February 2011 denied her motion for reconsideration of the earlier resolution. The assailed resolutions disposed of Editha's appeal in a manner that left nothing more to be done by the CA with respect to the said appeal.[16] Hence, Editha should have filed an appeal before this Court by way of a petition for review on certiorari under Rule 45, not a petition for certiorari under Rule 65.[17]

Editha received the 15 February 2011 resolution denying her motion for reconsideration on 28 February 2011. Under the rules, she had until 15 March 2011 to file a petition for review on certiorari with this Court. Editha allowed the period to lapse without filing an appeal and, instead, filed this petition for certiorari on 29 April 2011. Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.[18] Where the rules prescribe a particular remedy for the vindication of rights,

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[14] *People v. Chavez*, 411 Phil. 482, 492 (2001).

[15] *Marasigan v. Fuentes, et al.*, 778 SCRA 645, 653.

[16] *Sps. Dycoco v. Court of Appeals*, 715 Phil. 550, 561 (2013).

[17] *Id*.

[18] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, *supra* note 13 at 513.

such remedy should be availed of.[19] Accordingly, adoption of an improper remedy already warrants outright dismissal of this petition.[20]

Even if the Court looks beyond Editha's procedural misstep, her petition must fail.

Editha imputes grave abuse of discretion on the part of the CA and argues that it was too technical and constricted in applying the rules of procedure. She insists that Section 4, Rule 43 of the Rules of Court admits of an exception, as the said provision states that a second extension may be granted for compelling reason.

Editha posits that there is a compelling reason to grant a second extension of time because on 3 December 2008, Atty. Talabucon suddenly withdrew as her counsel. It was only on 9 December 2008 that she hired a new counsel, Atty. Samillano. Having just entered the picture, Atty. Samillano needed more time to study the case, and he could not be expected to finish drafting the petition for review in just one (1) day before the expiration of the 15-day extension granted by the CA. In this accord, Editha contends that the filing of the second motion for extension of time was justified; and that the CA's dismissal of her petition for review impinged on her substantive right to due process.

The arguments proffered are specious and deserve scant consideration.

It is doctrinally entrenched that the right to appeal is a statutory right and the one who seeks to avail of that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable

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[19] *Id*. at 512.

[20] *Mercado v. Valley Mountain Mines Exploration, Inc.*, 677 Phil. 13, 51 (2011).

interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well.[21] The failure to perfect the appeal within the time prescribed by the Rules of Court unavoidably renders the judgment final as to preclude the appellate court from acquiring the jurisdiction to review the judgment.[22]

It bears stressing that the statutory nature of the right to appeal requires the appealing party to strictly comply with the statutes or rules governing the perfection of an appeal, as such statutes or rules are instituted in order to promote an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting their relaxation, the statutes or rules should remain inviolable.[23]

The Court quotes the relevant portion of Section 4, Rule 43 of the Rules of Court:

> Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

The provision is straightforward. While the CA enjoys a wide latitude of discretion in granting a first motion for extension of time, its authority to grant a further or second motion for extension of time is delimited by two conditions: *First*, there must exist a most compelling reason for the grant of a further extension; and *second*, in no case shall such extension exceed fifteen (15) days.

So narrow is the discretion accorded to the CA in granting a second extension of time that the word "most" was utilized

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[21] *De Leon v. Hercules Agro Industrial Corp.*, 734 Phil. 652, 660 (2014).

[22] *Prieto v. CA*, 688 Phil. 21, 29 (2012).

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

to underscore the compelling reason demanded by the rule. Editha maintains that the filing of the second motion for extension of time was prompted by the sudden withdrawal of her previous counsel. The CA, however, did not appreciate such predicament as a most compelling reason to grant her plea for further extension of time. On this score, the Court similarly finds no compelling reason to deviate from the sound conclusion of the CA.

Editha's situation is not unique. In *Spouses Jesus Dycoco v. CA*,[24] petitioner-spouses (*Sps. Dycoco*) received on 3 April 2000, a copy of the DARAB decision they sought to assail. Thus, the Sps. Dycoco had until 18 April 2000 to file an appeal. They filed a motion in the CA praying for an extension of thirty (30) days within which to file their intended petition. The CA granted them an extension of fifteen (15) days, or until 3 May 2000 to file their petition. Despite the extension, the Sps. Dycoco filed their petition by registered mail only on 8 May 2000. Not surprisingly, their petition was denied due course and dismissed by the CA.[25]

Like Editha, the Sps. Dycoco erroneously elevated their case to the Court via a Rule 65 petition for certiorari. Seeking liberality, the Sps. Dycoco contended that their appeal was filed after the extension granted by the CA because, on 10 April 2000, they secured the services of a new counsel who still had to study the voluminous records. In dismissing the Sps. Dycoco's petition for certiorari, the Court held that:

> Petitioner-spouses caused their own predicament when they decided to change horses in midstream and engaged the services of their present counsel on April 10, 2000 or just a week before the expiration of the period to appeal in the Court of Appeals, discharging the services of their former counsel who handled the case from the level of the Provincial Adjudicator to the DARAB. They cannot escape the consequences of a belated appeal caused by the need of their new

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[24] *Supra* note 16.

[25] *Id*. at 558-559.

counsel for more time to study voluminous records and familiarize himself with the case.[26]

In juxtaposition, it was alleged in the motion to withdraw as counsel that Editha had decided to engage the services of another counsel; and that for said reason, Atty. Talabucon was withdrawing his appearance. The Court notes that the motion to withdraw as counsel bore Editha's signature[27] which signified her conformity. At this point, the striking parallelism between the present petition and the case of the Sps. Dycoco becomes manifest. The records reveal that it was Editha herself who caused her predicament. As such, her petition for certiorari cannot escape the same outcome entered by the Court in *Spouses Jesus Dycoco v. CA*.

Also, it may be well to recall the Court's pronouncement in *Cesar Naguit v. San Miguel Corp.*[28] The petitioner Cesar Naguit (*Naguit*) failed to timely file before the CA his petition for certiorari against an adverse decision rendered by the National Labor Relations Commission. In his Rule 45 petition for review, Naguit invoked liberality in the construction of the rules. He argued that the CA should not have dismissed his petition by simply denying his motion for extension of time to file the same. To support his plea, Naguit asserted that due to the unavailability of his former lawyer, he retained the services of a new counsel who had a heavy workload; and that the records were forwarded to the latter only a week before the expiration of the period for filing of the petition with the CA.[29]

The Court, unconvinced by Naguit's explanation, reiterated:

> Suffice it to say that workload and resignation of the lawyer handling the case are insufficient reasons to justify the relaxation of the procedural rules.

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[26] *Id.* at 568-569.

[27] *Rollo*, p. 25.

[28] *Naguit v. San Miguel Corporation*, 761 Phil. 184 (2015).

[29] *Id.* at 191.

In addition, it is also the duty of petitioner to monitor the status of his case and not simply rely on his former lawyer whom he already knew to be unable to attend to his duties as counsel. It is settled that litigants represented by counsel should not expect that all they need to do is sit back and relax, and await the outcome of their case. They should give the necessary assistance to their counsel, for at stake is their interest in the case.[30]

Apropos, even if the Court were to believe that Atty. Talabucon's withdrawal was "sudden" as alleged by Editha, it cannot be gainsaid that the corresponding motion to withdraw as counsel was filed with at least seven (7) days remaining from the 15-day extension granted by the CA. Ordinary prudence should have impelled Editha to seek the assistance of a new counsel immediately after signing her conformity to Atty. Talabucon's motion to withdraw as counsel. Yet, regrettably, she hired her new counsel only one (1) day before the expiration of the 15-day extension granted to her. Hence, for failure to exercise vigilance in the prosecution of her case, Editha must be prepared to accept whatever adverse judgment may be rendered against her.

Finally, even on the merits, Editha's petition has no leg to stand on.

Both the PARAD and the DARAB found that Editha only consigned the amount of ₱216,000.00 as redemption price for Lot 2429. As aptly observed in the PARAD's decision, it was Editha herself who secured a copy of the extrajudicial settlement and deed of sale from the Clerk of Court of the RTC in Roxas City. The purchase price stated in the deed of conveyance was ₱600,000.00, and the administrative tribunals correctly held that absent sufficient evidence to the contrary, it must be accepted the reasonable price of the land as purchased by the respondents.

The full amount of the redemption once should be consigned m court.[31] As explained in *Quiño v. CA*:

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[30] *Id.* at 191-192.

[31] *Quiño v. CA*, 353 Phil. 499, 458 (1998).

Only by such means can the buyer become certain that the offer to redeem is one made seriously and in good faith. A buyer cannot be expected to entertain an offer of redemption without the attendant evidence that the redemptioner can, and is willing to accomplish the repurchase immediately. A different rule would leave the buyer open to harassment by speculators or crackpots, as well as to unnecessary prolongation of the redemption period, contrary to the policy of the law in fixing a definite term to avoid prolonged and anti-economic uncertainty as to ownership of the thing sold. Consignation of the entire price would remove all controversies as to the redemptioner's ability to pay at the proper time.[32]

The redemption price Editha consigned falls short of the requirement of the law, leaving the Court with no choice but to rule against her claim.

In fine, there is an abundance of reasons, both procedural and substantive, which has proved fatal to Editha's cause.[33]

WHEREFORE, the petition for certiorari is **DISMISSED**. The assailed CA Resolutions in CA-G.R. SP No. 03895 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen*, and *Gesmundo, JJ.*, concur.

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[32] *Id.* at 458-459.

[33] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, *supra* note 13 at 518.

THIRD DIVISION

[G.R. No. 200401. January 17, 2018]

METRO RAIL TRANSIT DEVELOPMENT CORPORATION, *petitioner, vs.* **GAMMON PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION LAW (EO 1008); JURISDICTION OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC), EXPLAINED.— CIAC was created under Executive Order No. 1008 to establish an arbitral machinery that will settle expeditiously problems arising from, or connected with, contracts in the construction industry. Its jurisdiction includes construction disputes between or among parties to an arbitration agreement, or those who are otherwise bound by the latter, directly or by reference. Thus, any project owner, contractor, subcontractor, fabricator, or project manager of a construction project who is bound by an arbitration agreement in a construction contract is under CIAC's jurisdiction in case of any dispute. CIAC is a quasi-judicial body exercising quasi-judicial powers. x x x CIAC exercises quasi-judicial powers over arbitration disputes concerning construction contracts. Thus, its findings are accorded respect because it comes with the presumption that CIAC is technically proficient in efficiently and speedily resolving conflicts in the construction industry.

2. ID.; ID.; ID.; EO 1008 *VIS-À-VIS* RULES OF COURT; CIAC DECISIONS ARE APPEALABLE TO THE COURT OF APPEALS UNDER RULE 43; FACTUAL FINDINGS OF THE CIAC ON CONSTRUCTION DISPUTES ARE FINAL AND CONCLUSIVE SUBJECT TO CERTAIN EXCEPTIONS.— [U]nder the Construction Industry Arbitration Law, arbitral awards are binding and shall be final and unappealable, except on pure questions of law: Section 19. *Finality of Awards*. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court. Initially, CIAC decisions are appealable only to this Court. However, when

the Rules of Court were enacted, appeals from CIAC decisions became appealable to the Court of Appeals under Rule 43[.] x x x While Rule 43 petitions may pertain to questions of fact, questions of law, or both questions of law and fact, it has been established that factual findings of CIAC may not be reviewed on appeal. In *CE Construction v. Araneta*, this Court explained that appeals from CIAC may only raise questions of law[.] x x x CIAC's factual findings on construction disputes are final, conclusive, and not reviewable by this Court on appeal. The only exceptions are when: (1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

3. CIVIL LAW; CONTRACTS; REQUISITES OF A VALID CONTRACT; THREE STAGES IN A CONTRACT, ELABORATED.— The requisites of a valid contract are provided for in Article 1318 of the Civil Code: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established. A contract is perfected when both parties have consented to the object and cause of the contract. There is consent when the offer of one party is absolutely accepted by the other party. The acceptance of the other party may be express or implied. However, the offering party may impose the time, place, and manner of acceptance by the other party, and the other party must comply. Thus, there are three (3) stages in a contract: negotiation, perfection, and consummation. Negotiation refers to the time the parties signify interest in the contract up until the time the parties agree on its terms and conditions. The perfection of the contract occurs when there is a meeting of the minds of the parties such that there is a concurrence of offer and acceptance, and all the essential elements of the

contract—consent, object and cause—are present. The consummation of the contract covers the period when the parties perform their obligations in the contract until it is finished or extinguished. To determine when the contract was perfected, the acceptance of the offer must be unqualified, unconditional, and made known to the offeror. Before knowing of the acceptance, the offeror may withdraw the offer. Moreover, if the offeror imposes the manner of acceptance to be done by the offerree, the offerree must accept it in that manner for the contract to be binding. If the offeree accepts the offer in a different manner, it is not effective, but constitutes a counter-offer, which the offeror may accept or reject. x x x In bidding contracts, this Court has ruled that the award of the contract to the bidder is an acceptance of the bidder's offer. Its effect is to perfect a contract between the bidder and the contractor upon notice of the award to the bidder. x x x Thus, the award of a contract to a bidder perfects the contract. Failure to sign the physical contract does not affect the contract's existence or the obligations arising from it.

4. ID.; ID.; ID.; ID.; CIRCUMSTANCES SHOW THAT THERE WAS A PERFECTED CONTRACT BETWEEN THE PARTIES IN CASE AT BAR.— [T]his Court finds that there is a perfected contract between the parties. MRT has already awarded the contract to Gammon, and Gammon's acceptance of the award was communicated to MRT before MRT rescinded the contract. x x x MRT had already accepted the offered bid of Gammon and had made known to Gammon its acceptance when it awarded the contract and issued it the First Notice to Proceed on August 27, 1997. The First Notice to Proceed clearly laid out the object and the cause of the contract. In exchange for ₱1,401,672,095.00, Gammon was to furnish "labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with [its bid]." This acceptance is also manifested in the First Notice to Proceed when it authorized Gammon to proceed with the work seven (7) days from its receipt or from the time the site is de-watered and cleaned up. x x x Gammon fully consented to the contents and accepted the prestations of the First Notice to Proceed. Gammon's acceptance is also manifested in its undertakings to mobilize resources, to prepare the Performance and Advance Payment Bonds, and to procure materials necessary

for the Project. All that remained was the formality of returning the contract documents and the Letter of Comfort, which eventually was complied with by Gammon. Thus, there is already mutual consent on the object of the contract and its consideration, and an absolute acceptance of the offer. x x x Additionally, when the parties were discussing the change of plans, MRT did not mention that no contract was executed between them. Instead, it sought to modify its terms and conditions. Thus, Gammon was made to believe that the First Notice to Proceed was in force and effect, albeit temporarily suspended. Given these circumstances, it cannot be said that no contract was perfected between the parties.

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF LAW OF THE CASE, APPLIED; CIAC HAS JURISDICTION OVER THE DISPUTE BETWEEN THE PARTIES IN THIS CASE IRRESPECTIVE OF WHETHER OR NOT THEIR CONTRACT IS VALID OR IN FORCE BEFORE IT MAY ARBITRATE THE MATTER, SO LONG AS THERE IS AN AGREEMENT TO ARBITRATE.— This Court rules that the doctrine of the law of the case applies in this case. There is a distinction between the agreement to arbitrate and the contract which may be the subject matter of the dispute between the parties. While the agreement to arbitrate may be in the same subject matter contract, it is a separate agreement in itself. Under the Construction Industry Arbitration Law, CIAC acquires jurisdiction when the parties agree to submit the matter to voluntary arbitration. x x x [I]n *Gammon v. Metro Rail Transit Development Corporation*, this Court ruled that CIAC does *not* have jurisdiction over construction *contracts*. Rather, it has jurisdiction over the *dispute* arising from or connected to construction contracts, such that it still acquires jurisdiction even if the contract has been breached, abandoned, terminated, or rescinded. On the basis of this ruling, this Court concluded that CIAC has jurisdiction over the dispute between MRT and Gammon. Their contract need not be valid or in force before CIAC may arbitrate the matter, so long as there is an agreement to arbitrate. Thus, the agreement to arbitrate is separate from the construction contract entered into by parties. Nonetheless, the doctrine of the law of the case applies in the case at bar. While *Gammon* did not expressly state that the contract was perfected, it concluded that both the construction contract and the arbitration contract existed between the parties.

6. ID.; EVIDENCE; JUDICIAL ADMISSION; CONCEPT AND BINDING EFFECT; PETITIONER IS BOUND BY ITS JUDICIAL ADMISSION AND IS ESTOPPED FROM DENYING ITS REPRESENTATION.— Judicial admissions may be made by a party in his or her pleadings, during the trial, through verbal or written manifestations, or in other stages of the judicial proceeding. They are binding such that no matter how much the party rationalizes it, the party making the admission cannot contradict himself or herself unless it is shown that the admission was made through a palpable mistake. In this case, MRT alleges that it is willing to pay Gammon the total amount of ₱5,493,639.27, which comprises the latter's claim for cost of engineering and design services, and de-watering and clean-up works. MRT's allegation was not qualified. It neither stated that Gammon must first present proof of its claims for the cost of engineering and design services, and of de-watering and clean-up works nor amended the Answer with Compulsory Counterclaim to either correct this allegation or to qualify that Gammon must first present official receipts. Thus, CIAC correctly held that MRT is bound by this admission and is estopped from denying its representation.

7. CIVIL CODE; DAMAGES; ACTUAL DAMAGES; NATURE AND REQUIRED PROOF; LOST PROFIT CANNOT BE BASED ON THE SOLE TESTIMONY OF THE CLAIMANT.— Actual damages constitute compensation for sustained measurable losses. It must be proven "with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable." It is never presumed or based on personal knowledge of the court. x x x Although official receipts are the best evidence of payment, this Court has acknowledged that actual damages may be proved by other forms of documentary evidence, including invoices. x x x For lost profits, x x x This Court has ruled that the award of unrealized profits cannot be based on the sole testimony of the party claiming it.

8. REMEDIAL LAW; APPEALS; RULE 45 PETITION; CANNOT RAISE FACTUAL ISSUES EXCEPT WHEN COMPELLING REASON EXISTS; FACTUAL FINDINGS OF THE CIAC AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT AND FINALITY.— MRT is raising questions of fact. Questions of fact are not proper in a Petition for Review under Rule 45. This Court can no longer entertain

> factual issues, unless there are compelling and cogent reasons, as when the findings were "drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd." The findings of fact in the case at bar was arrived at by CIAC, a quasi-judicial body, the jurisdiction of which is confined to construction disputes. "[F]indings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals." x x x Thus, the findings of fact of CIAC are binding, respected, and final. They are not reviewable by this Court, especially when affirmed by the Court of Appeals. "A review of the CIAC's findings of fact would have had the effect of 'setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.'"

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals October 14, 2011 Decision[2] and January 25, 2012 Resolution[3] in CA-G.R. SP No. 98569. The assailed

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[1] *Rollo,* pp. 49-91. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id*. at 8-38. The Decision was penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jane Aurora C. Lantion and Ramon A. Cruz of the Special Twelfth Division, Court of Appeals, Manila.

[3] *Id*. at 40-41. The Resolution was penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jane Aurora C. Lantion

Decision affirmed the Construction Industry Arbitration Commission (CIAC) Decision,[4] which awarded Gammon Philippines, Inc. (Gammon) its monetary claims for lost profits and reimbursements for engineering services, design work, and site de-watering and clean up, due to breach of contract.[5] The assailed Resolution denied Metro Rail Transit Development Corporation's (MRT) Motion for Reconsideration.[6]

This case involves MRT's MRT-3 North Triangle Description Project (Project), covering 54 hectares of land, out of which 16 hectares were allotted for a commercial center. Half of the commercial center would be used for a podium structure (Podium), which was meant to provide the structure for the Project's Leasable Retail Development and to serve as the maintenance depot of the rail transit system.[7]

Parsons Interpro JV (Parsons) was the Management Team authorized to oversee the construction's execution.[8]

On April 30, 1997, Gammon received from Parsons an invitation to bid for the complete concrete works of the Podium. The scope of the work involved supplying the necessary materials, labor, plants, tools, equipment, facilities, supervision, and services for the construction of Level 1 to Level 4 of the Podium. [9]

On May 30, 1997, Gammon submitted three (3) separate bids and several clarifications on certain provisions of the Instruction to Bidders and the General Conditions of Contract.[10]

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and Ramon A. Cruz of the Former Special Twelfth Division, Court of Appeals, Manila.

[4] *Id*. at 332-372, Construction Industry Arbitration Commission Decision dated March 27, 2007. The Arbitral Tribunal was composed of Alfredo F. Tadiar as Chairman and Primitivo C. Cal and Joven B. Joaquin as Members.

[5] *Id*. at 371.

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

[7] *Id*. at 9, Court of Appeals Decision.

[8] *Id*. at 10, Court of Appeals Decision.

[9] *Id*.

[10] *Id*. at 10-11, Court of Appeals Decision.

Gammon won the bid. On August 27, 1997, Parsons issued a Letter of Award and Notice to Proceed (First Notice to Proceed) to Gammon.[11] It was accompanied by the formal contract documents. The First Notice to Proceed stated:

> We are pleased to inform [you] that you have been awarded the work on the construction of the Podium Structure for the MRT-3 EDSA-North Triangle Development Project. The formal contract document, which is the product of a series of discussions and negotiation[,] is herewith attached for your signature.
>
> The Work includes the furnishing of labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with contract document, approved drawings, specifications and your over-all Breakdown of Lump Sum Bid (marked Exhibit "A") amounting to ONE BILLION FOUR HUNDRED ONE MILLION SIX HUNDRED SEVENTY[-]TWO THOUSAND NINETY[-] FIVE PESOS (₱1,401,672,095.00). It is understood that due to the existing squatters in the Area, the work shall be divided in two (2) separate geographical areas designated as Phase I and Phase II – but shall be treated as one contract and still totaling to ₱1,401,672,095.00. Further, this award is predicated on the commitments contained in the attached comfort letter (marked Exhibit "B") issued by Gammon Construction Limited, your associate company overseas and receipt of the duly signed letter from the Chief Executive of Gammon Construction Limited that is expected within seven days from the date hereof.
>
> . . . . . .
>
> You may, therefore, proceed with the work at Phase I starting seven (7) days from receipt of this Notice or from the time that Site is dewatered and cleaned up, whichever is the later. It is further understood that Gammon agrees to continue Phase II at the price stated above and the starting time thereof will depend on the completion by others of the footings in time to allow construction of the superstructure in accordance with Gammon's Tender Programme dated 13 August 1997.
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> . . . . . .

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[11] *Id*. at 11.

Please signify your concurrence by signing the appropriate space below and in the accompanying contract documents and return to Parsons-Interpro the originals. We will send to you a complete set of documents as soon as it is signed by the Owner.[12]

In a Letter dated September 2, 1997 (First Letter), Gammon signed and returned the First Notice to Proceed without the contract documents.[13] The First Letter stated:

MRT 3 North Triangle Development
Superstructure Contract
Letter of Award/Notice to Proceed

We return herewith the original copy of the above[-]mentioned letter which we have countersigned dated 28 August '97. (Please note that Mr. Salagdo's signature is missing).

The contract documentation submitted under cover of your letter is being reviewed now, and should be signed and returned to you tomorrow. The Letter of Comfort has now been signed by the Chief Executive of Gammon Construction Ltd., and is being returned this week.

We confirm that we mobilised resources to site on Friday, 29 August '97 to pump out floodwater. Cleaning up of mud and debris will follow on this week.

During this mobilisation phase, our Site Manager is Mr. Ferdinand Fabro who we introduced to you during the Preconstruction meeting last Thursday, 28 August '97.

We enclose herewith a copy of our Mobilisation Programme dated 1 September '97 (4 x A3 sheets) which includes Design activities, Mobilisation activities, initial Construction activities, key plant and formwork items.

Our Design Team have now relocated to our office in Makati, and are continuing with preparation of shop drawings of all slabs.

We will submit a project organisation chart shortly but in the meantime, we confirm that the following senior [Gammon Philippines, Inc.] staff are now allocated to the project:

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[12] *Id*. at 162-164, Notice to Proceed dated August 27, 1997.

[13] *Id*. at 11, Court of Appeals Decision.

. . . . . .

As soon as layout of temporary facilities has been agreed with you, establishment will commence in the very limited space allocated . . .

We have today received . . . drawings marked "For Construction", and unless we hear from you to the contrary, we will proceed to procure materials for, plan and construct walls and columns based on these drawings. However, please note that the 3 sheets of construction notes have not been issued. We therefore request issue of these drawings. In addition, there are fifteen 'Requests for Information' (RFIs) which were forwarded to you yesterday – these cover queries which affect both design of slabs and construction of walls, columns and beams. In particular, we urgently need instructions to clarify the reinforcement specification generally, and connectors/ splicing of column reinforcement.

Finally, our Performance Bond and Advance Payment Bond are being prepared now – we hope to submit these by end of this week.[14]

In a Letter dated September 3, 1997 (Second Letter), Gammon transmitted to Parsons a signed Letter of Comfort to guarantee its obligations in the Project.[15]

However, in a Letter dated September 8, 1997, MRT wrote Gammon that it would need one (1) or two (2) weeks before it could issue the latter the Formal Notice to Proceed:[16]

Re: Contract for LRT3 North Triangle Podium Structure

Gentlemen:

Due to current developments in the Philippines' foreign exchange rate and the concomitant soaring interest rates, Metro Rail Transit Development Corp. (MRTDC) will need a week or two to estimate the possible effects and repercussions on the above[-]mentioned project before MRTDC, through the Chairman of the Board, will issue the formal Notice to proceed to your company. When these possible

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[14] *Id*. at 160-161, Gammon Letter dated September 2, 1997.

[15] *Id*. at 12, Court of Appeals Decision.

[16] *Id*.

effects and repercussions are analysed and decided upon by our Board, hopefully within the week, we shall notify you at once.[17]

On September 9, 1997, Gammon transmitted the contract documents to Parsons.[18]

In a facsimile transmission sent on the same day, Parsons directed Gammon "to hold any further mobilization activities."[19]

In a Letter dated September 10, 1997, Gammon stated:

"A NOTICE OF AWARD & NOTICE TO PROCEED addressed to Gammon Philippines Inc. (GPI) was issued by your Project Managers, Parsons Interpro JV dated 27th August 1997 and has been signed, accepeted and an original returned to them by our authorised people, therefore a contract exists between MTRDC and GPI.

The formal contract document has been issued to us for final review and has been signed and returned to your Project Managers.

In accordance with the NOA & NTP Gammon Construction Ltd. have provided you with the required letter of guarantee in respect of fulfillment by GCL of GPI's obligations under the Contract in the event of GPI's insolvency.

By the [Notice of Award] & [Notice to Proceed] [Gammon] were (sic) required to proceed with the work starting seven days from receipt of that Notice and it was agreed we would commence dewatering of the flooded site and clean up immediately, under a Change Order, and that the construction period would run from the date of achieving the clean up of the site. It was anticipated that these clean up works would take 11 days.

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[17] *Id*. at 166, MRT Letter dated September 8, 1997.

[18] *Id*. at 33, Court of Appeals Decision.

[19] *Id*. at 12, Court of Appeals Decision; *rollo*, p. 167. The facsimile stated:

Dear Mr. Paterson,

We have just received the attached letter from our client MRTDC. In light of the contents please hold any further mobilization activities until we discuss this matter with the client.

I will contact you tomorrow A.M. as previously discussed.

We are therefore bound by these commitments."[20]

On September 11, 1997, Gammon sent Parsons a facsimile to confirm if all requirements in the contract documents were temporarily suspended pending the clarification of the scope and programming of the Project. [21]

In a facsimile transmission dated September 12, 1997, Parsons confirmed "the temporary suspension of all [the] requirements under the contract except the re-design of the project floor slabs and the site de-watering and clean up."[22]

Thereafter, MRT decided to downscale the Podium's construction and to proceed with the Project's conceptual redesign.[23]

Upon Parson's request order, Gammon studied and discussed with MRT the best option to phase the work.[24]

On November 7, 1997, Gammon presented to MRT the sequencing and phasing of the work.[25]

MRT decided to adopt Gammon's recommendation to construct the Podium up to Level 2 only. [26]

Due to these revisions on the scope of work, MRT also decided to re-design the Level 2 slab, which it perceived would be exposed to more load stresses from prolonged exposure to elements and the weight of heavy construction equipment. MRT asked Gammon to re-design.[27]

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[20] *Id*. at 12, Court of Appeals Decision; *Rollo*, p. 481, Letter dated September 10, 1997.

[21] *Id*. at 12-13, Court of Appeals Decision.

[22] *Id*. at 13, Court of Appeals Decision. *Rollo*, p. 169, Facsimile dated September 12, 1997.

[23] *Id*. at 13, Court of Appeals Decision.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*. at 14, Court of Appeals Decision.

On February 18, 1998, Parsons issued Gammon a Notice of Award and Notice to Proceed (Second Notice to Proceed) for the engineering services based on the redesigned plan.[28] The Second Notice to Proceed stated:

> This Notice to Proceed is for the work to be rolled-in into a Lump Sum Contract. In the event that this contract will not be finalized in the near future, any and all expenses that are necessary and directly incurred by you in connection therewith shall be reimbursed based on actual cost plus a negotiated fee.[29]

Gammon signed the Second Notice to Proceed on March 11, 1998 with qualification:

> The Contractor refers to the Notice of Award and Notice to Proceed dated 27 August 1997, and understands that this Notice to Proceed effectively lifts the suspension of work notified in MRTDC letter dated 8 September 1997, in respect of the design activities only for all of the Level 2 slab and that part of the Level 3 slab over the Depot Maintenance Shop and office area . . . ; and that the existing Notice of Award dated 27 August 1997 is still valid.[30]

On March 3, 1998, Gammon submitted to Parsons a Revised Lump Sum Price Proposal of ₱1,044,055,102.00[31] for the construction of the Podium up to Level 2, including the design of the floor slab at Level 2.[32] At this time, Gammon had already started its engineering services pursuant to the Second Notice to Proceed.[33]

In its Letter dated March 6, 1998, Gammon sent Parsons a breakdown of the Revised Extra Contract Expenses it allegedly incurred in connection with the works' suspension amounting to ₱17,241,505.16.[34]

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[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *Id*. at 132.

[32] *Id*. at 15, Court of Appeals Decision.

[33] *Id*.

[34] *Id*.

In its Letter dated March 11, 1998, Gammon notified Parsons of its revised Breakdown of Lump Sum Price worth ₱1,062,986,607.00.[35]

On April 2, 1998, MRT issued in favor of Gammon another Notice of Award and Notice to Proceed (Third Notice to Proceed).[36]

In its Letter dated April 8, 1998, Gammon acknowledged receipt of the Third Notice to Proceed and requested clarification of certain items.[37]

On April 22, 1998, Parsons wrote Gammon, stating that "since the building ha[d] been revised . . . structural changes [would] be needed and quantities may change."[38]

On April 29, 1998, Gammon wrote Parsons, confirming its readiness to start mobilization and requesting clarification of "urgent issues requiring resolution."[39]

In its Letter dated May 7, 1998, Parsons informed Gammon that MRT was temporarily rescinding the Third Notice to Proceed, noting that it remained unaccepted by Gammon.[40]

On June 11, 1998, Gammon received from Parsons the Contract for the Construction and Development of the Superstructure, MRT-3 North Triangle – Amended Notice to Proceed dated June 10, 1998 (Fourth Notice to Proceed).[41]

The terms of the Fourth Notice to Proceed were different from those of the First and the Third Notices to Proceed. The

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[35] *Id*.

[36] *Id*.

[37] *Id*. at 16.

[38] *Id*.

[39] *Id*. at 16-17, Court of Appeals Decision.

[40] *Id*. at 17.

[41] *Id*.

Fourth Notice to Proceed also expressly cancelled the First and Third Notices to Proceed.[42]

On June 19, 1998, Gammon qualifiedly accepted the Fourth Notice to Proceed.[43]

MRT treated Gammon's qualified acceptance as a new offer. In a Letter dated June 22, 1998, MRT rejected Gammon's qualified acceptance and informed Gammon that the contract would be awarded instead to Filsystems if Gammon would not accept the Fourth Notice to Proceed within five (5) days.[44]

In a Letter dated July 8, 1998, Gammon wrote MRT, acknowledging the latter's intent to grant the Fourth Notice to Proceed to another party despite having granted the First Notice to Proceed to Gammon. Thus, it notified MRT of its claims for reimbursement for costs, losses, charges, damages, and expenses it had incurred due to the rapid mobilization program in response to MRT's additional work instructions, suspension order, ongoing discussions, and the consequences of its award to another party.[45]

In a Letter dated July 15, 1998, MRT expressed its disagreement with Gammon and its amenability to discussing claims for reimbursement.[46]

In a Letter dated July 23, 1998, Gammon notified Parsons of its claim for payment of all costs, damages, and expenses due to MRT's suspension order and the consequences of its award of the contract to another party.[47]

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[42] *Id*.

[43] *Id*.

[44] *Id*. at 17-18, Court of Appeals Decision.

[45] *Id*. at 18, Court of Appeals Decision.

[46] *Id*.

[47] *Id*.

In a Letter dated August 7, 1998, MRT informed Gammon that it was willing to reimburse Gammon for its cost in participating in the bid amounting to about 5% of Gammon's total claim of more or less ₱121,000,000.00.[48]

In a Letter dated August 11, 1998, Gammon replied that MRT's offer was not enough to cover the expenses it had incurred for the Project and that it was willing to send MRT additional information necessary for the evaluation of its claims.[49]

In a Letter dated August 24, 1998, Parsons requested Gammon for additional supporting documents to its claims.[50]

Gammon wrote several communications to MRT to follow up on its evaluation request.[51]

On July 1, 1999, Gammon filed a Notice of Claim before CIAC against MRT.[52]

On August 18, 1999, CIAC issued an Order directing MRT to file its Answer and submit the names of its nominees to the Arbitral Tribunal.[53]

MRT filed a Motion to Dismiss, arguing that CIAC had no jurisdiction to arbitrate the dispute. This Motion was denied and this matter was elevated to this Court.[54] In *Gammon v. Metro Rail Transit Development Corporation*,[55] this Court held that CIAC had jurisdiction over the case.[56]

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[48] *Id*. at 19, Court of Appeals Decision.

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 20, Court of Appeals Decision.

[53] *Id*.

[54] *Id*.

[55] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.,* 516 Phil. 561, 573-574 (2006) [Per *J.* Tinga, Third Division].

[56] *Rollo*, p. 20, Court of Appeals Decision.

Thus, on October 19, 2006, MRT filed its Answer with Compulsory Counterclaim,[57] paragraph 77 of which read:

77. To begin with, MRTDC is willing to pay GAMMON the total amount of ₱5,493,639.27 representing the sum of ₱4,821,261.91 and ₱672,377.36, which comprise GAMMON's claim for cost of the engineering and design services and site de-watering and clean-up works, respectively. [58]

On November 2, 2006, the Arbital Tribunal was formed. On December 11, 2006, a preliminary conference was set to finalize the Terms of Reference, which would regulate the conduct of the proceedings. The parties agreed that they would simultaneously submit their witnesses' affidavits on January 19, 2007.[59]

On March 27, 2007, CIAC ruled:[60]

WHEREFORE, judgment is hereby rendered and AWARD is made on the monetary claims of Claimant as follows:

₱4,821,261.9 for Engineering services design work

672,377.36 for site de-watering and clean up

₱5,493,639.27 Total claim under issue #1

₱53,149,330.35 as a reasonable estimate of the profit it had lost by reason of Respondent's breach of contract in awarding the construction to a different contractor.

₱58,642,969.62 – TOTAL DUE THE CLAIMANT

SO ORDERED.[61]

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[57] *Id*.

[58] *Rollo*, p. 300, MRT's Answer with Compulsory Counterclaim

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

[60] *Id*. at 332-372, Construction Industry Arbitration Commission Decision promulgated on March 27, 2007. The Arbitral Tribunal was composed of Alfredo F. Tadiar as Chairman and Primitivo C. Cal and Joven B. Joaquin as Members.

[61] *Id*. at 371.

MRT assailed the CIAC Decision before the Court of Appeals. However, the Court of Appeals affirmed the CIAC Decision:

> WHEREFORE, premises considered, the instant petition is DENIED. The assailed order of the CIAC dated March 8, 2007 is AFFIRMED.[62]

Thus, MRT filed the instant Petition for Review.[63] It argues that Gammon was not entitled to CIAC's award considering that there is no perfected contract between MRT and Gammon[64] and that Gammon's claim for lost profits was based only on an unsubstantiated and self-serving assertion of its employee.[65] Additionally, it contends that the claim for reimbursements for engineering services, design work, site de-watering, and clean-up was not supported by official receipts. It also avers that it is not estopped from contradicting its alleged judicial admission of liability for reimbursements in the amount of ₱5,493,639.27,[66] and further states that it is entitled to attorney's fees.[67]

Gammon filed its Comment,[68] insisting that there is a perfected contract between them.[69] It argues that this Court determined the perfection of the contract in *Gammon v. Metro Rail Transit Development Corporation*,[70] and thus, the doctrine of the law of the case applies.[71] Gammon asserts that its claim for lost

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[62] *Id*. at 37.

[63] *Id*. at 49-91.

[64] *Id*. at 62-71.

[65] *Id*. at 71-78.

[66] *Id*. at 78-83.

[67] *Id*. at 83-85.

[68] *Id*. at 831-854, Comment.

[69] *Id*. at 831-836, Comment.

[70] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.,* 516 Phil. 561 (2006) [Per *J*. Tinga, Third Division].

[71] *Rollo*, p. 832, Comment.

profits was sufficiently substantiated[72] and that it has proven its entitlement to the reimbursements.[73] It avers that damages may be proved not only by official receipts, but also through other documentary evidence, such as invoices and debit notes.[74]

Gammon further claims that MRT is bound by its implied admission of its liability for the reimbursements in its Answer with Compulsory Counterclaim. It points out that MRT mentioned the exact amount it was willing to pay and that it did not state that it would pay only the proved amount.[75] It argues that MRT is raising factual issues and that CIAC's factual findings on the existence of the contract and the amount of damages ought to be respected.[76]

In its Reply,[77] MRT argues that the doctrine of the law of the case does not apply as the issue in *Gammon* was CIAC's jurisdiction and not the existence of the contract.[78] It reiterates that no contract was perfected because MRT withdrew its offer to Gammon before Gammon returned the contract documents.[79] Thus, Gammon's acceptance only came after the offer had been withdrawn and nothing that could have been accepted remained.[80]

MRT reasons that the loss of profits was not proven with a reasonable degree of certainty because Gammon's witness is not an expert witness.[81] Moreover, it emphasizes that the finding

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[72] CIVIL CODE, Art. 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

[73] *Rollo*, pp. 836-841, Comment.

[74] *Id*. at 845, Comment.

[75] *Id*. at 849, Comment.

[76] *Id*. at 850-853, Comment.

[77] *Id*. at 892-918, Reply.

[78] *Id*. at 892-893 Reply.

[79] *Id*. at 900, Reply.

[80] *Id*. at 900-901, Reply.

[81] *Id*. at 905-906, Reply.

in *National Housing Authority v. First Limited Construction Corporation*[82] of 10% profit as the standard practice in the construction industry is merely *obiter dictum*, and thus, cannot operate as a precedent for construction-related cases.[83]

MRT further claims that invoices and debit memos are not sufficient proof of payment to entitle Gammon to reimbursements because an invoice is a mere detailed statement of the items and their prices and charges, while a debit memo is only an advice to the receiver of an outstanding debt.[84]

MRT avers that the alleged admission in its Answer with Compulsory Counterclaim should be construed as extending only to those "supported by official receipts."[85] It reiterates that "[j]udicial admissions cannot supplant the requirements of law . . . that actual or compensatory damages . . . must be duly proven."[86] Moreover, MRT asserts that its offer to pay is not an admission of liability but only "an attempt to settle the issue and avoid litigation."[87] It argues that the exact amount of ₱5,493,639.27 was mentioned in the Answer with Compulsory Counterclaim as it was the amount claimed by Gammon, which MRT offered to pay, if proven.[88]

It further asserts that the findings of CIAC and of the Court of Appeals are all contrary to evidence on record or are premised on speculation, surmises, and conjectures, and thus, are serious errors of law properly re-examinable by this Court.[89]

For this Court's resolution are the following issues:

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[82] 675 SCRA 175 (2011).

[83] *Rollo*, p. 907, Reply.

[84] *Id*. at 909-910, Reply.

[85] *Id*. at 912, Reply.

[86] *Id*. at 914, Reply.

[87] *Id*. at 915, Reply.

[88] *Id*.

[89] *Id*. at 915-916, Reply.

First, whether or not there is a perfected contract between petitioner Metro Rail Transit Development Corporation and respondent Gammon Philippines, Inc.;

Second, whether the doctrine of the law of the case in *Gammon v. Metro Rail Transit Development Corporation*[90] applies;

Third, whether or not petitioner Metro Rail Transit Development Corporation is bound by its allegation in its Answer with Compulsory Counterclaim that it was "willing to pay GAMMON the total amount of ₱5,493,639.27 representing the sum of ₱4,821,261.91 and ₱672,377.36, which comprise GAMMON's claim for cost of the engineering and design services and site de-watering and clean-up works, respectively";[91] and

Finally, whether or not respondent Gammon Philippines, Inc.'s claims for actual damages, reimbursement of amounts, and lost profits were sufficiently proven.

This Court denies the Petition.

CIAC was created under Executive Order No. 1008[92] to establish an arbitral machinery that will settle expeditiously problems arising from, or connected with, contracts in the construction industry.[93]

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[90] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.,* 516 Phil. 561 (2006) [Per *J.* Tinga, Third Division].

[91] *Rollo*, p. 300, MRT's Answer with Compulsory Counterclaim.

[92] Otherwise known as the Construction Industry Arbitration Law.

[93] Exec. Order No. 1108 (1985), Sec. 4 provides:

Section 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of

Its jurisdiction includes construction disputes between or among parties to an arbitration agreement, or those who are otherwise bound by the latter, directly or by reference.[94] Thus, any project owner, contractor, subcontractor, fabricator, or project manager of a construction project who is bound by an arbitration agreement in a construction contract is under CIAC's jurisdiction in case of any dispute.[95]

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agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

See also Sections 34, 35, 39 of Chapter 6 of Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law).

[94] Rep. Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law), Secs. 34, 35, and 39 provide:

Section 34. *Arbitration of Construction Disputes: Governing Law*. — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

Section 35. *Coverage of the Law*. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

. . . . . .

Section 39. *Court to Dismiss Case Involving a Construction Dispute*. — A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.

[95] Rep. Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law), Chapter 6, Secs. 34, 35, and 39. This provision also includes

CIAC is a quasi-judicial body exercising quasi-judicial powers.

A quasi-judicial agency is a government body, not part of the judiciary or the legislative branch, which adjudicates disputes and creates rules which affect private parties' rights.[96] It is created by an enabling statute, and thus, its existence continues beyond the resolution of a dispute and is independent from the

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design professional, consultant, quantity surveyor, bondsman, and issuer of an insurance policy in the enumeration of those who may be bound by an arbitration agreement.

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Section 35. *Coverage of the Law*. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

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[96] *Metro Construction, Inc. v. Chatham Properties, Inc*., 418 Phil. 176, 202-203 (2001) [Per *C.J*. Davide, Jr., First Division], citing *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per *J*. Sarmiento, *En Banc]*; *Tropical Homes v. National Housing Authority*, 152 SCRA 540 [1987]; *Antipolo Realty Corp. v. NHA*, 236 Phil. 580 (1987) [Per *J*. Gutierez, Jr., *En Banc]*; and *Solid Homes, Inc. v. Payawal*, 257 Phil. 194 (1989) [Per Per *J*. Cruz, First Division].

will of the parties. Its powers are limited to those expressly granted or necessarily implied in the enabling law. [97]

Quasi-judicial or administrative adjudicatory power has been defined as the power: "(1) to hear and determine *questions of fact* to which legislative policy is to apply, and (2) to decide in accordance with the *standards laid down by the law itself in enforcing and administering the same law*."[98]

Arbitration under a quasi-judicial body is similar to commercial arbitration in that its factual findings are generally accorded respect and finality.

However, commercial arbitration is conducted by ad-hoc bodies created by stipulation of parties for the purpose of settling disputes concerning their private or proprietary interests. In general, the findings in commercial arbitration are respected to uphold the autonomy of arbitral awards.[99]

On the other hand, quasi-judicial agencies were created for a speedier resolution of controversies on matters of state interest that require specialized knowledge and expertise.[100]

CIAC exercises quasi-judicial powers over arbitration disputes concerning construction contracts. Thus, its findings are accorded respect because it comes with the presumption that CIAC is technically proficient in efficiently and speedily resolving conflicts in the construction industry.

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[97] See *Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific*, G.R. No. 204197, November 23, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/204197.pdf> [Per *J*. Brion, Second Division].

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

[99] *Id*. at 17.

[100] *Metro Construction, Inc. v. Chatham Properties, Inc*., 418 Phil. 176, 202-203 (2001) [Per *C.J*. Davide, Jr., First Division], citing *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per *J*. Sarmiento, *En Banc]*; *Tropical Homes v. National Housing Authority*, 152 SCRA 540 [1987]; *Antipolo Realty Corp. v. NHA*, 236 Phil. 580 (1987) [Per *J*. Gutierez, Jr., *En Banc]*; and *Solid Homes, Inc. v. Payawal*, 257 Phil. 194 (1989) [Per Per *J*. Cruz, First Division].

Thus, under the Construction Industry Arbitration Law, arbitral awards are binding and shall be final and unappealable, except on pure questions of law:

> Section 19. *Finality of Awards*. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

Initially, CIAC decisions are appealable only to this Court. However, when the Rules of Court were enacted, appeals from CIAC decisions became appealable to the Court of Appeals under Rule 43:[101]

> Section 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.
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> Section 2. *Cases Not Covered*. — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

While Rule 43 petitions may pertain to questions of fact, questions of law, or both questions of law and fact, it has been established that factual findings of CIAC may not be reviewed

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[101] *CE Construction vs. Araneta,* G.R. No. 192725, August 9, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/192725.pdf> 23 [Per *J*. Leonen, Second Division].

on appeal.[102] In *CE Construction v. Araneta*,[103] this Court explained that appeals from CIAC may only raise questions of law:

> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: that there were those that enabled questions of fact, there were those that enabled questions of law, and there were those that enabled mixed questions fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC Arbitral Tribunals must remain limited to questions of law.

Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc. explained the wisdom underlying the limitation of appeals to pure questions of law:

> Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
>
> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense

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[102] *Id.* at 24.

[103] G.R. No. 192725, August 9, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/192725.pdf> [Per *J.* Leonen, Second Division].

> and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

Consistent with this restrictive approach, this Court is duty-bound to be extremely watchful and to ensure that an appeal does not become an ingenious means for undermining the integrity of arbitration or for conveniently setting aside the conclusions arbitral processes make. An appeal is not an artifice for the parties to undermine the process they voluntarily elected to engage in. To prevent this Court from being a party to such perversion, this Court's primordial inclination must be to uphold the factual findings of arbitral tribunals:

> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. *The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions."* The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. *The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal*, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. *Any other, more relaxed, rule would result in setting at naught the basic objective*

of a voluntary arbitration and would reduce arbitration to a largely inutile institution.

Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the narrowest of grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled.[104] (Emphasis in the original, citations omitted)

Thus, CIAC's factual findings on construction disputes are final, conclusive, and not reviewable by this Court on appeal. The only exceptions are when:

(1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[105] (Citation omitted)

Necessarily, before petitioner may raise any question of fact, it must prove that the above circumstances exist in the case at bar.

I

This Court rules that there is a perfected contract between MRT and Gammon.

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[104] *Id*. at 24-26.

[105] *Id*. at 26.

MRT argues that there was no perfected contract between the parties as Gammon only accepted MRT's offer after MRT had already revoked it.[106] MRT claims that it withdrew its offer to Gammon in its September 8, 1997 Letter, when it suspended the Project to review the foreign exchange rates and interest rates.[107] It emphasizes that while Gammon had already then returned the First Notice to Proceed, it did not return the contract documents until September 12, 1997.[108] By then, MRT had already withdrawn the First Notice to Proceed, and the parties were already renegotiating the contract's cause and object.[109]

On the other hand, Gammon maintains that there was a perfected contract between the parties. It insists that MRT did not withdraw or modify its offer before Gammon signed and returned the First Notice to Proceed and the contract documents. It claims that the contract was not cancelled and was only temporarily and partially suspended, and this did not affect its perfection.[110]

The Court of Appeals affirmed CIAC's finding that the contract was perfected when the contract documents were returned to MRT on September 9, 1997. It found that the contract was merely suspended and not terminated when MRT was studying the effects of the foreign exchange rates and interests on the Project.[111] Moreover, it noted that MRT found it necessary to expressly cancel the First Notice to Proceed, implying that a contract was perfected.[112]

This Court rules that there is a perfected contract between the parties.

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[106] *Rollo*, pp. 64 and 67 Petition; *rollo*, p. 901, Reply.

[107] *Id*. at 66, Petition.

[108] *Id*. at 64-66, Petition.

[109] *Id*. at 66, Petition; *rollo*, pp. 897-900, Reply.

[110] *Id*. at 833-834, Comment.

[111] *Id*. at 33-34, Court of Appeals Decision.

[112] *Id*. at 36, Court of Appeals Decision.

Article 1305 of the Civil Code states:

Article 1305. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

Article 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

The requisites of a valid contract are provided for in Article 1318 of the Civil Code:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

A contract is perfected when both parties have consented to the object and cause of the contract. There is consent when the offer of one party is absolutely accepted by the other party.[113] The acceptance of the other party may be express or implied.[114] However, the offering party may impose the time, place, and manner of acceptance by the other party, and the other party must comply.[115]

Thus, there are three (3) stages in a contract: negotiation, perfection, and consummation.

Negotiation refers to the time the parties signify interest in the contract up until the time the parties agree on its terms and

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[113] Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

[114] CIVIL CODE, Art. 1320. An acceptance may be express or implied.

[115] CIVIL CODE, Art. 1321.

conditions. The perfection of the contract occurs when there is a meeting of the minds of the parties such that there is a concurrence of offer and acceptance, and all the essential elements of the contract—consent, object and cause—are present. The consummation of the contract covers the period when the parties perform their obligations in the contract until it is finished or extinguished.[116]

To determine when the contract was perfected, the acceptance of the offer must be unqualified, unconditional, and made known to the offeror.[117] Before knowing of the acceptance, the offeror may withdraw the offer.[118] Moreover, if the offeror imposes the manner of acceptance to be done by the offeree, the offeree must accept it in that manner for the contract to be binding.[119] If the offeree accepts the offer in a different manner, it is not effective, but constitutes a counter-offer, which the offeror may accept or reject.[120] Thus, in *Malbarosa v. Court of Appeals*:[121]

> Under Article 1319 of the New Civil Code, the consent by a party is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. An offer may be reached at any time until it is accepted. An offer that is not accepted does not give rise to a consent. The contract does not come into existence. To produce a contract, there must be acceptance of the offer which may be express or implied but must not qualify the terms of the offer. The acceptance must be absolute, unconditional and without variance of any sort from the offer.
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> The acceptance of an offer must be made known to the offeror. Unless the offeror knows of the acceptance, there is no meeting of

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[116] *Far East Bank and Trust Co. v. Phil. Deposit Insurance Corp.,* 764 Phil. 488, 503 (2015) [Per *J.* Brion, Second Division].

[117] *Malbarosa v. Court of Appeals*, 450 Phil. 202, 212 (2003) [Per *J.* Callejo, Sr., Second Division].

[118] *Id*.

[119] *Id*. at 213.

[120] *Id*.

[121] 450 Phil. 202 (2003) [Per *J.* Callejo, Sr., Second Division].

the minds of the parties, no real concurrence of offer and acceptance. The offeror may withdraw its offer and revoke the same before acceptance thereof by the offeree. The contract is perfected only from the time an acceptance of an offer is made known to the offeror. If an offeror prescribes the exclusive manner in which acceptance of his offer shall be indicated by the offeree, an acceptance of the offer in the manner prescribed will bind the offeror. On the other hand, an attempt on the part of the offeree to accept the offer in a different manner does not bind the offeror as the absence of the meeting of the minds on the altered type of acceptance. An offer made *inter praesentes* must be accepted immediately. If the parties intended that there should be an express acceptance, the contract will be perfected only upon knowledge by the offeror of the express acceptance by the offeree of the offer. An acceptance which is not made in the manner prescribed by the offeror is not effective but constitutes a counter-offer which the offeror may accept or reject. The contract is not perfected if the offeror revokes or withdraws its offer and the revocation or withdrawal of the offeror is the first to reach the offeree. The acceptance by the offeree of the offer after knowledge of the revocation or withdrawal of the offer is inefficacious. The termination of the contract when the negotiations of the parties terminate and the offer and acceptance concur, is largely a question of fact to be determined by the trial court.[122] (Citations omitted)

In bidding contracts, this Court has ruled that the award of the contract to the bidder is an acceptance of the bidder's offer. Its effect is to perfect a contract between the bidder and the contractor upon notice of the award to the bidder.[123] Thus, in *Valencia v. Rehabilitation Finance Corp.*:[124]

With respect to the first argument, it is worthy of notice that the proposal submitted by petitioner consisted of several items, among which are: (a) one for ₱389,980, for the "complete construction of the office building" in question, . . . ; (b) another for ₱358,480, for the "complete construction of the office building *only*", . . . ; (c) a

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[122] *Id*. at 212-213.

[123] *Central Bank of the Philippines v. Court of Appeals,* 159-A Phil. 21-76, 40 (1975) [Per *J*. Barredo, Second Division]; *Valencia v. Rehabilitation Finance Corp*, 103 Phil. 444, 449-450 (1958) [Per *J*. Concepcion, *En Banc*].

[124] 103 Phil. 444 (1958) [Per *J*. Concepcion, *En Banc*].

third one for ₱18,900, for the "electrical installations *only"*, . . . ; and (d) a fourth item for ₱12,600, for the "plumbing installations *only"* . . .

Each one of these items was complete in itself, and, as such, it was distinct, separate and independent from the other items. *The award in favor of petitioner herein, implied, therefore, neither a modification of his offer nor a partial acceptance thereof. It was an unqualified acceptance of the fourth item of his bid, which item constituted a complete offer or proposal on the part of petitioner herein. The effect of said acceptance was to perfect a contract, upon notice of the award to petitioner herein.*[125] (Emphasis supplied)

Likewise, in *Central Bank of the Philippines v. Court of Appeals:*[126]

As We see it then, contrary to the contention of the Bank, the provision it is citing may not be considered as determinative of the perfection of the contract here in question. Said provision only means that as regards the violation of any particular term or condition to be contained in the formal contract, the corresponding action therefor cannot arise until after the writing has been fully executed. Thus, *after the Proposal of respondent was accepted by the Bank thru its telegram and letter both dated December 10, 1965 and respondent in turn accepted the award by its letter of December 15, 1965, both parties became bound to proceed with the subsequent steps needed to formalize and consummate their agreement. Failure on the part of either of them to do so, entitles the other to compensation for the resulting damages.* To such effect was the ruling of this Court in Valencia vs. RFC 103 Phil. 444. We held therein that *the award of a contract to a bidder constitutes an acceptance of said bidder's proposal and that "the effect of said acceptance was to perfect a contract, upon notice of the award to (the bidder)" . . . We further held therein that the bidder's "failure to (sign the corresponding contract) did not relieve him of the obligation arising from the unqualified acceptance of his offer. Much less did it affect the existence of a contract between him and respondent" . . .*

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[125] *Id*. at 449-450.

[126] 159-A Phil. 21 (1975) [Per *J*. Barredo, Second Division].

It is neither just nor equitable that Valencia should be construed to have sanctioned a one-sided view of the perfection of contracts in the sense that the acceptance of a bid by a duly authorized official of a government-owned corporation, financially and otherwise autonomous both from the National Government and the Bureau of Public Works, insofar as its construction contracts are concerned, *binds only the bidder and not the corporation until the formal execution of the corresponding written contract.*[127] (Emphasis supplied)

Thus, the award of a contract to a bidder perfects the contract.[128] Failure to sign the physical contract does not affect the contract's existence or the obligations arising from it.[129]

Applying this principle to the case at bar, this Court finds that there is a perfected contract between the parties. MRT has already awarded the contract to Gammon, and Gammon's acceptance of the award was communicated to MRT before MRT rescinded the contract.

The Invitation to Bid issued to Gammon stated that MRT "will select the Bidder that [MRT] judges to be the most suitable, most qualified, most responsible and responsive, and with the most attractive Price and *will enter into earnest negotiations to finalize and execute the Contract.*"[130]

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[127] *Id.* at 40.

[128] *Central Bank of the Philippines v. Court of Appeals,* 159-A Phil. 21-76, 40 (1975) [Per *J.* Barredo, Second Division]; *Valencia v. Rehabilitation Finance Corp*, 103 Phil. 444, 449-450 (1958) [Per *J.* Concepcion, *En Banc*].

[129] *Id.*

[130] *Rollo*, pp. 145-146. "The Owner will select the Bidder that Owner judges to be the most suitable, most qualified, most responsible and responsive, and with the most attractive Price and *will enter into earnest negotiations to finalize and execute the Contract.* If total agreeement cannot be reached with the Bidder first selected as most suitable, the Owner will invite the Bidder considered the next most suitable to enter into earnest negotiations and so forth. The Owner shall be the sole judge as to which Bidder(s) with whom he will enter into earnest negotiations and others shall not protest such selection. Bidders whose Bids are not accepted will be notified in writing. The terms, conditions, value and any other details of any contract entered into will not be revealed to any unsuccessful Bidder.

On May 30, 1997, Gammon tendered its bids.[131]

In a Letter dated July 14, 1997, Gammon submitted another offer to MRT in response to the latter's invitation to submit a final offer considering the fluctuation in foreign exchange rates and an odd-and-even vehicle restriction plan.[132]

Parsons thereafter issued the First Notice to Proceed,[133] which stated:

We are pleased to inform [you] that you have been awarded the work on the construction of the Podium Structure for the MRT-3 EDSA-North Triangle Development Project. The formal contract document, which is the product of a series of discussions and negotiation is herewith attached for your signature.

The Work includes the furnishing of labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with contract document, approved drawings, specifications and your over-all Breakdown of

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Metro Rail Transit Development Corporation assumes no obligation whatsoever to compensate or indemnify Bidders for any expense or loss that they may have incurred in the preparation of their Bids nor does Metro Rail Transit Development Corporation guarantee that an award will be made. . . . Metro Rail Transit Development Corporation reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability to or against Metro Rail Transit Development Corporation." (Emphasis supplied).

[131] *Id*. at 149, Letter dated May 30, 1997.

[132] *Id*. at 153-155. "We refer to your fax received this morning inviting us to submit our final offer in the light of two recent developments:

1. Fluctuation in foreign exchange rates

2. Odd and even vehicle restriction plan

In the very limited time you have given us to respond, we propose the following:

. . . . . .

We are therefore in a high state of preparedness and ready to respond to the Owner[']s acceptance of our offer immediately. Once again, we thank you for giving this opportunity."

[133] *Id*. at 11, Court of Appeals Decision.

Lump Sum Bid (marked Exhibit "A") amounting to ONE BILLION FOUR HUNDRED ONE MILLION SIX HUNDRED SEVENTY[-] TWO THOUSAND NINETY[-]FIVE PESOS (₱1,401,672,095.00). It is understood that due to the existing squatters in the Area, the work shall be divided in two (2) separate geographical areas designated as Phase I and Phase II – but shall be treated as one contract and still totalling to ₱1,401,672,095.00. *Further, this award is predicated on the commitments contained in the attached comfort letter (marked Exhibit "B") issued by Gammon Construction Limited, your associate company overseas and receipt of the duly signed letter from the Chief Executive of Gammon Construction Limited that is expected within seven days from the date hereof.*

. . . . . .

You may, therefore, proceed with the work at Phase I starting seven (7) days from receipt of this Notice or from the time that Site is dewatered and cleaned up, whichever is later. It is further understood that Gammon agrees to continue Phase II at the price stated above and the starting time thereof will depend on the completion by others of the footings in time to allow construction of the superstructure in accordance with Gammon's Tender Programme dated 13 August 1997.

. . . . . .

Please signify your concurrence by signing the appropriate space below and in the accompanying contract documents and return to Parsons-Interpro the originals. We will send to you a complete set of documents as soon as it is signed by the Owner.[134] (Emphasis supplied)

In its First Letter, Gammon signed and returned the First Notice to Proceed to signify its consent to its prestations.[135]

In its Second Letter, Gammon transmitted to Parsons the signed Letter of Comfort to guarantee its obligations in the Project.[136]

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[134] *Id*. at 162-165, Notice of Award and Notice to Proceed dated August 27, 1997.

[135] *Id*. at 11, Court of Appeals Decision.

[136] *Id*. at 12, Court of Appeals Decision.

On September 9, 1997, Gammon returned to Parsons the contract documents.[137]

MRT argues that the return of the contract documents occurred after it had already revoked its offer, i.e., after it sent its September 8, 1997 Letter, which stated:

Re: Contract for LRT3 North Triangle Podium Structure

Gentlemen:

Due to current developments in the Philippines' foreign exchange rate and the concomitant soaring interest rates, Metro Rail Transit Development Corp. (MRTDC) will need a week or two to estimate the possible effects and repercussions on the above[-]mentioned project before MRTDC, through the Chairman of the Board, will issue the formal Notice to proceed to your company. When these possible effects and repercussions are analysed and decided upon by our Board, hopefully within the week, we shall notify you at once.[138]

However, MRT had already accepted the offered bid of Gammon and had made known to Gammon its acceptance when it awarded the contract and issued it the First Notice to Proceed on August 27, 1997.

The First Notice to Proceed clearly laid out the object and the cause of the contract. In exchange for ₱1,401,672,095.00, Gammon was to furnish "labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with [its bid]."[139]

This acceptance is also manifested in the First Notice to Proceed when it authorized Gammon to proceed with the work seven (7) days from its receipt or from the time the site is de-watered and cleaned up.

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[137] *Id*. at 33, Court of Appeals Decision.

[138] *Id*. at 12, Court of Appeals Decision; *rollo*, p. 166, MRT Letter dated September 8, 1997.

[139] *Id*. at 156, Notice of Award and Notice to Proceed dated August 27, 1997.

Thus, Gammon's receipt of the First Notice to Proceed constitutes the acceptance that is necessary to perfect the contract.

The First Notice to Proceed stated that the award "is predicated on the commitments contained in the . . . comfort letter . . . issued by Gammon Construction Limited," Gammon's associate company overseas.[140] It also required that Gammon signify its concurrence by signing and returning the First Notice to Proceed and the accompanying contract documents.[141]

Assuming that this constitutes a counter-offer from MRT, this Court rules that Gammon sufficiently complied with these requirements such that the perfection of the contract cannot be affected. Gammon returned the signed First Notice to Proceed on September 2, 1997. It transmitted to Parsons the signed Letter of Comfort to guarantee its obligations in the Project on September 3, 1997.[142] The signed contract documents were returned on September 9, 1997.[143]

Gammon manifested its unqualified acceptance of the First Notice to Proceed on September 2, 1997 in its First Letter:

MRT 3 North Triangle Development
Superstructure Contract
Letter of Award/Notice to Proceed

We return herewith the original copy of the above mentioned letter which we have countersigned dated 28 August '97. (Please note that Mr. Salagdo's signature is missing).

The contract documentation submitted under cover of your letter is being reviewed now, and should be signed and returned to you tomorrow. The Letter of Comfort has now been signed by the Chief Executive of Gammon Construction Ltd., and is being returned this week.

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[140] *Id*. at 162, Notice of Award and Notice to Proceed dated August 27, 1997.

[141] *Id*. at 164, Notice of Award and Notice to Proceed dated August 27, 1997.

[142] *Id*. at 12, Court of Appeals Decision.

[143] *Id*. at 33, Court of Appeals Decision.

We confirm that we mobilised resources to site on Friday, 29 August '97 to pump out floodwater. Cleaning up of mud and debris will follow on this week.

During this mobilisation phase, our Site Manager is Mr. Ferdinand Fabro who we introduced to you during the Preconstruction Meeting last Thursday, 28 August '97.

We enclose herewith a copy of our Mobilisation programme dated 1 September '97 (4 x A3 sheets) which includes Design activities, Mobilisation activities, initial Construction activities, key plant and formwork items.

Our Design Team have now relocated to our office in Makati, and are continuing with preparation of shop drawings of all slabs.

We will submit a project organisation chart shortly but in the meantime, we confirm that the following senior [Gammon Philippines, Inc.] staff are now allocated to the project:

. . . . . .

As soon as layout of temporary facilities has been agreed with you, establishment will commence in the very limited space allocated . . .

We have today received . . . drawings marked "For Construction", and unless we hear from you to the contrary, we will proceed to procure materials for, plan and construct walls and columns based on these drawings. However, please note that the 3 sheets of construction notes have not been issued. We therefore request issue of these drawings. In addition, there are fifteen 'Requests for Information' (RFIs) which were forwarded to you yesterday – these cover queries which affect both design of slabs and construction of walls, columns and beams. In particular, we urgently need instructions to clarify the reinforcement specification generally, and connectors/ splicing of column reinforcement.

Finally, our Performance Bond and Advance Payment Bond are being prepared now – we hope to submit these by the end of the week.[144]

This First Letter shows that Gammon fully consented to the contents and accepted the prestations of the First Notice to

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[144] *Id*. at 160-161, Gammon's First Letter dated September 2, 1997; *rollo*, p. 11, Court of Appeals Decision.

Proceed. Gammon's acceptance is also manifested in its undertakings to mobilize resources, to prepare the Performance and Advance Payment Bonds, and to procure materials necessary for the Project. All that remained was the formality of returning the contract documents and the Letter of Comfort, which eventually was complied with by Gammon. Thus, there is already mutual consent on the object of the contract and its consideration, and an absolute acceptance of the offer.

In any case, this Court has ruled that the meeting of the minds need not always be put in writing, and the fact that the documents have not yet been signed or notarized does not mean that the contract has not been perfected.[145] A binding contract may exist even if the signatures have not yet been affixed because acceptance may be express or implied.[146]

Thus, the parties have become bound to consummate the contract such that the failure by one party to comply with its obligations under the contract entitles the other party to damages. Clearly, Gammon was expected to comply with the award when it signified its concurrence. Thus, it is not just or equitable for the perfection of the contract to be one (1)-sided such that the contract only binds Gammon but not MRT just because the contract documents were not yet returned before MRT suspended the contract.[147]

Moreover, this Court rules that MRT did not revoke its offer when it temporarily suspended the First Notice to Proceed.

MRT's September 8, 1997 Letter stated, thus:

Due to current developments in the Philippines' foreign exchange rate and the concomitant soaring interest rates, Metro Rail Transit

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[145] *Far East Bank and Trust Co. v. Phil. Deposit Insurance Corp.,* citing *Limketkai Sons Milling, Inc. v. CA*, 764 Phil. 488, 515 (2015) [Per *J.* Brion, Second Division].

[146] *Far East Bank and Trust Co. v. Phil. Deposit Insurance Corp.,* 764 Phil. 488, 503 (2015) [Per *J.* Brion, Second Division].

[147] *Central Bank of the Philippines v. Court of Appeals,* 159-A Phil. 21-76, 40 (1975) [Per *J.* Barredo, Second Division].

Development Corp. (MRTDC) will need a week or two to estimate the possible effects and repercussions on the above[-]mentioned project before MRTDC, through the Chairman of the Board, will issue the formal Notice to Proceed to your company. When these possible effects and repercussions are analysed and decided upon by our Board, hopefully within the week, we shall notify you at once.[148]

Thereafter, Parsons directed Gammon to hold any further mobilization activities in a facsimile transmission dated September 9, 1997. [149]

On September 11, 1997, Gammon sent Parsons a facsimile to confirm if all requirements in the contract documents were temporarily suspended pending the clarification of the scope and programming of the Project.[150]

In a facsimile transmission dated September 12, 1997, Parsons confirmed "the temporary suspension of all the requirements under the contract except the re-design of the project floor slabs and the site de-watering and clean up":[151]

With reference to your fax of September 11, 1997 this will *confirm the temporary suspension of all requirements under the terms of the contract until such time as clarification of scope has been received from the owner.* The only exception to this suspension is the re-design of the project[']s floor slabs and the site de-watering and clean up.[152] (Emphasis supplied)

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[148] *Rollo*, p. 12, Court of Appeals Decision; *rollo*, p. 166, MRT Letter dated September 8, 1997.

[149] *Id*. at 12, Court of Appeals Decision.

[150] *Id*. at 12-13, Court of Appeals Decision; *rollo*, p. 168.

"Please confirm that due to the current problems, all requirements within the Contract Documents for [Gammon Philippines, Inc.] to provide programmes, breakdowns and the like within a fixed number of days of the Notice to Proceed (*e.g*. Article 22.02 states 15 days for Contract Breakdown) are temporarily suspended pending further clarification on scope and programming."

[151] *Id*. at 13, Court of Appeals Decision.

[152] *Id*. at 169.

The wording of these communications indicates that the contract is still binding though on hold. Gammon was informed that the contract was temporarily suspended. When a contract is suspended temporarily, it provisionally ceases to be operative until the occurrence of a condition or situation that warrants the lifting of the suspension of the contract.[153]

It is different from a cancellation of a contract which terminates the contract such that it does not become operative again.

The usage of the words "temporary suspension" is clear. It is a settled rule that when the words in a contract are clear and leave no doubt on the parties' intentions, the literal meaning shall control.[154] Thus, the above communications cannot be interpreted to mean that the contract has been cancelled or rescinded.

This is bolstered by MRT's express cancellation of the contract on June 10, 1998 in its Fourth Notice to Proceed:

> This notice formally cancels documents referred to as Notice of Award, Notice to Proceed issued on August 27, 1997, which was received by [Gammon Philippines, Inc.] on August 28, 1997 and April 2, 1998, which was received by [Gammon Philippines, Inc.] on April 8, 1998.[155]

It can be implied that prior to the Fourth Notice to Proceed, the First and Third Notices to Proceed were not cancelled and were still valid and subsisting.

Furthermore, MRT's Second Notice to Proceed issued on February 18, 1998 for engineering services based on the redesigned plan was signed by Gammon on March 11, 1998 with a qualification:[156]

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[153] *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.,* 135 Phil. 532, 549 (1968) [Per *J.* Zaldivar, *En Banc*].

[154] CIVIL CODE, Art. 1370.

[155] *Rollo*, p. 220.

[156] *Id*. at 14, Court of Appeals Decision; *rollo*, pp. 190-191.

The Contractor refers to the 'Notice of Award' and 'Notice to Proceed' dated 27 August 1997, and understands that this 'Notice to Proceed' effectively lifts the suspension of work notified in Metro Rail Transit Development Corporation letter dated 8 September 1997, in respect of the design activities only for all of the Level 2 slab and that part of the Level 3 slab over the Depot Maintenance Shop and office area . . . ; *and that the existing 'Notice of Award' dated 27 August 1997 is still valid.*[157] (Emphasis supplied)

MRT did not contest Gammon's notice of receipt of the First Notice to Proceed, expressing that it was still valid and was not cancelled.

Additionally, when the parties were discussing the change of plans, MRT did not mention that no contract was executed between them. Instead, it sought to modify its terms and conditions. Thus, Gammon was made to believe that the First Notice to Proceed was in force and effect, albeit temporarily suspended.

Given these circumstances, it cannot be said that no contract was perfected between the parties.

II

The parties argue on the application of *Gammon v. Metro Rail Transit Development Corporation*[158] on the contract's perfection.

MRT claims that this Court's ruling in *Gammon* did not determine that a contract was perfected as to warrant the application of the doctrine of the law of the case.[159] It argues that the issue in *Gammon* was CIAC's jurisdiction over the Notice of Claim, not the existence of the contract.[160] MRT insists that the ruling was limited only to the preliminary question of

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[157] *Id.* at 191.

[158] 516 Phil. 561 (2006) [Per *J.* Tinga, Third Division].

[159] *Rollo*, p. 892, Reply.

[160] *Id.* at 893 Reply.

whether or not there is an arbitration agreement between the parties to give CIAC jurisdiction over the dispute.[161] It was a preliminary finding supported by limited evidence and not the result of an actual trial.[162]

However, Gammon claims that *Gammon* already determined that there is a perfected contract, and thus, the doctrine of the law of the case applies. It insists that without the perfected contract, which contains the provision for arbitration, CIAC would not have acquired jurisdiction over the case. This is shown in that the existence of a contract between the parties was not an issue submitted by the parties in the arbitration proceedings. Thus, CIAC could not have ruled on it.[163]

The Court of Appeals affirmed that there was a perfected contract because MRT alleged in *Gammon* that the contract was novated or abandoned. It found that this was an implied admission that the contract was perfected considering that there was nothing to novate or abandon if there had been no perfected contract. The perfection of the contract was further confirmed by this Court's ruling in *Gammon* that the contract was merely modified.[164]

In *Gammon v. Metro Rail Transit Development Corporation,*[165] this Court held:

> Although there is considerable disagreement concerning the foregoing facts, specifically whether Gammon undertook certain works on the Project and whether a re-bidding for the downgraded podium structure was indeed conducted, the Court does not need to make its own factual findings before it can resolve the *main question of whether the CIAC's jurisdiction was properly invoked. The resolution of this question necessarily involves a two-pronged analysis, first, of*

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[161] *Id*. at 69-70, Petition; *rollo*, p. 893, Reply.

[162] *Id*. at 69-70, Petition.

[163] *Id*. at 831-833, Comment.

[164] *Id*. at 34, Court of Appeals Decision.

[165] 516 Phil. 561 (2006) [Per *J*. Tinga, Third Division].

the requisites for invoking the jurisdiction of the CIAC, and second, of the scope of arbitrable issues covered by CIAC's jurisdiction.

EO 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration . . .

. . . . . .

In this case, the parties submitted themselves to the jurisdiction of the CIAC by virtue of the arbitration clause in the [General Conditions of Contract], which provides:

. . . . . .

MRTDC, however, contends that the contract between the parties was novated by subsequent [Notices of Award]/[Notices to Proceed] which changed the design of the podium structure and reduced the contract price.

We do not agree. Novation is defined as the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions; substituting the person of the debtor; or subrogating a third person in the rights of the creditor. In order tha[t] an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Novation cannot be presumed. The *animus novandi*, whether partial or total, must appear by the express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken. Further, novation may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former. It is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.

We have carefully gone over the records of this case and are convinced that the redesign of the podium structure and the reduction in the contract price merely modified the contract. These modifications were even anticipated by the [General Conditions of Contract] as it expressly states that changes may be made on the works without invalidating the contract, thus:

. . . . . .

By these terms, the parties evidently agreed that should changes need to be made on the Project plans, such changes shall not annul or extinguish the contract. Thus, it can fairly be concluded that the revisions in the design of the Project and the reduction of the contract price were intended to merely modify the agreement and not to supplant the same.

Parenthetically, while the [Notices of Award]/[Notices to Proceed] adverted to the execution of a formal contract for the Project, no such formal contract appears to have been executed. Instead, the [Notices of Award]/[Notices to Proceed] issued by MRTDC in favor of Gammon denominated the agreement as "Contract No. 4.251.001 for the Construction and Development of the Superstructure MRT 3 North Triangle" and consistently referred to the [General Conditions of Contract] as one of the controlling documents with regard to the transaction.

In fact, as mentioned by the CIAC in its assailed Order dated August 18, 1999, the [Notice of Award]/[Notice to Proceed] dated June 10, 1998 makes reference to the [General Conditions of Contract]. The June 10, 1998 [Notice of Award]/[Notice to Proceed] states:

> A formal contract for the Work is in process and will be available for signature as soon as possible. Pending the execution of the contract, the General conditions, and the Drawings and Specifications included with the Bid Documents (as originally issued and only as applicable to the current scope of work), all of which are incorporated herein by this reference, shall apply in this Notice . . .

A similar reference to the [General Conditions of Contract] appears in the April 2, 1998 [Notice of Award]/[Notice to Proceed]. Thus, even granting that, as the Court of Appeals ruled, the August 27, 1997 [Notice of Award]/[Notice to Proceed] had been novated by the April 2, 1998 [Notice of Award]/[Notice to Proceed] and that, in turn, the latter was rescinded by MRTDC, the arbitration clause in the [General Conditions of Contract] remained in force.

At any rate, the termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect.

The Court of Appeals, therefore, erred in ruling that there must be a subsisting contract before the jurisdiction of the CIAC may properly be invoked. *The jurisdiction of the CIAC is not over the contract but the disputes which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof.*

It may even be added that issues regarding the rescission or termination of a construction contract are themselves considered arbitrable issues under Sec. 2, Art. IV of the Rules of Procedure Governing Construction Arbitration, the Rules which were in force at the time the present controversy arose. . . .

This brings us to the question of whether the dispute in this case falls within the scope of the arbitration clause.

. . . . . .

The arbitration clause in the [General Conditions of Contract] submits to the jurisdiction of the CIAC all disputes, claims or questions subject to arbitration under the contract. The language employed in the arbitration clause is such as to indicate the intent to include all controversies that may arise from the agreement as determined by the CIAC Rules. It is broad enough to encompass all issues save only those which EO 1008 itself excludes, *i.e.*, employer-employee relationship issues. Under these Rules, the amount of damages and penalties is a general category of arbitrable issues under which Gammon's claims may fall.[166] (Emphasis supplied, citations omitted)

This Court rules that the doctrine of the law of the case applies in this case.

There is a distinction between the agreement to arbitrate and the contract which may be the subject matter of the dispute between the parties. While the agreement to arbitrate may be in the same subject matter contract, it is a separate agreement in itself.

Under the Construction Industry Arbitration Law, CIAC acquires jurisdiction when the parties agree to submit the matter to voluntary arbitration.

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[166] *Id.* at 569-574.

Section 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. *For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.*

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Emphasis supplied)

In *Ormoc Sugarcane Planters' Association, Inc. v. Court of Appeals*,[167] this Court discussed that "an agreement to arbitrate is a contract" in itself:

Except where a compulsory arbitration is provided by statute, the first step toward the settlement of a difference by arbitration is the entry by the parties into a valid agreement to arbitrate. An agreement to arbitrate is a contract, the relation of the parties is contractual, and the rights and liabilities of the parties are controlled by the law of contracts. In an agreement for arbitration, the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or by implication. (Citation omitted)

Thus, in *Gammon v. Metro Rail Transit Development Corporation*,[168] this Court ruled that CIAC does *not* have jurisdiction over construction *contracts*. Rather, it has

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[167] 613 Phil. 240 (2009) [Per *J*. Leonardo-De Castro, First Division].

[168] 516 Phil. 561 (2006) [Per *J*. Tinga, Third Division].

jurisdiction over the *dispute* arising from or connected to construction contracts, such that it still acquires jurisdiction even if the contract has been breached, abandoned, terminated, or rescinded.[169]

On the basis of this ruling, this Court concluded that CIAC has jurisdiction over the dispute between MRT and Gammon. Their contract need not be valid or in force before CIAC may arbitrate the matter, so long as there is an agreement to arbitrate.

Thus, the agreement to arbitrate is separate from the construction contract entered into by parties.

Nonetheless, the doctrine of the law of the case applies in the case at bar. While *Gammon* did not expressly state that the contract was perfected, it concluded that both the construction contract and the arbitration contract existed between the parties.

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[169] *Id*. at 573-574. This Court stated:

"At any rate, the termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect. The Court of Appeals, therefore, erred in ruling that there must be a subsisting contract before the jurisdiction of the CIAC may properly be invoked. *The jurisdiction of the CIAC is not over the contract but the disputes which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof.*

It may even be added that issues regarding the rescission or termination of a construction contract are themselves considered arbitrable issues under Sec. 2, Art. IV of the Rules of Procedure Governing Construction Arbitration, the Rules which were in force at the time the present controversy arose. . . .

. . . . . .

The arbitration clause in the [General Conditions of Contract] submits to the jurisdiction of the CIAC all disputes, claims or questions subject to arbitration under the contract. The language employed in the arbitration clause is such as to indicate the intent to include all controversies that may arise from the agreement as determined by the CIAC Rules. It is broad enough to encompass all issues save only those which EO 1008 itself excludes, *i.e*., employer-employee relationship issues. Under these Rules, the amount of damages and penalties is a general category of arbitrable issues under which Gammon's claims may fall." (Emphasis supplied, citations omitted).

The doctrine of the law of the case applies when in a particular case, an appeal to a court of last resort has resulted in a determination of a question of law. The determined issue will be deemed to be the law of the case such that it will govern a case through all its subsequent stages.[170] Thus, after ruling on the legal issue and remanding the case to a lower court for further proceedings, the determined legal issue can no longer be passed upon and determined differently in another appeal in the same case.

In *Presidential Decree No. 1271 Committee v. De Guzman*:[171]

> The doctrine of the "law of the case" provides that questions of law previously determined by a court will generally govern a case through all its subsequent stages where "the determination has already been made on a prior appeal to a court of last resort." In *People v. Olarte*:
>
> > Suffice it to say that our ruling in Case L-13027, rendered on the first appeal, constitutes the *law of the case*, and, even if erroneous, it may no longer be disturbed or modified since it has become final long ago. A subsequent reinterpretation of the law may be applied to new cases but certainly not to an old one finally and conclusively determined.
> >
> > > 'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

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[170] See *Presidential Decree No. 1271 Committee v. De Guzman*, G.R. Nos. 187291 & 187334, December 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/187291.pdf> [Per *J*. Leonen, Second Division].

[171] G.R. Nos. 187291 & 187334, December 5, 2016 [Per *J*. Leonen, Second Division].

> As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party being to seek a rehearing.
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> . . . . . .
>
> It is thus clear that posterior changes in the doctrine of this Court [cannot] retroactively be applied to nullify a prior final ruling in the same proceeding where the prior adjudication was had, whether the case should be civil or criminal in nature.

If an appellate court has determined a legal issue and has remanded it to the lower court for further proceedings, another appeal in that same case should no longer differently determine the legal issue previously passed upon. Similar to *res judicata*, it is a refusal to reopen what has already been decided.[172] (Citations omitted)

The legal issue determined in *Gammon* is the jurisdiction of CIAC. However, this determination was arrived at after this Court found that *the parties entered into a construction contract with an agreement to arbitrate.*

This is indicated when *Gammon* determined that there is no novation of the contract between MRT and Gammon as to deprive CIAC of jurisdiction. It ruled that there is merely a *modification*, not an annulment or extinguishment, of the contract; thus:

> We have carefully gone over the records of this case and are convinced that the redesign of the podium structure and the reduction in the contract price *merely modified the contract*. These *modifications* were even anticipated by the [General Conditions of Contract] as *it expressly states that changes may be made on the works without invalidating the contract*, thus:
>
> . . . . . .
>
> By these terms, the parties evidently agreed that *should changes need to be made on the Project plans, such changes shall not annul or extinguish the contract.* Thus, it can fairly be concluded that the revisions in the design of the Project and the reduction of the contract

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

price were *intended to merely modify the agreement and not to supplant the same.*[173] (Emphasis supplied)

While this Court's determination on the perfection of the contract is not categorical and its finding that the CIAC's jurisdiction is not over the contract but rather over the disputes that arise from it, the existence of a contract, albeit terminated or rescinded, is still contemplated:

> At any rate, the termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect. The Court of Appeals, therefore, erred in ruling that there must be a subsisting contract before the jurisdiction of the CIAC may properly be invoked. *The jurisdiction of the CIAC is not over the contract but the disputes which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof.*
>
> It may even be added that issues regarding the rescission or termination of a construction contract are themselves considered arbitrable issues under Sec. 2, Art. IV of the Rules of Procedure Governing Construction Arbitration, the Rules which were in force at the time the present controversy arose. . . .[174] (Emphasis supplied, citations omitted)

Thus, the doctrine of the law of the case applies. The current appeal can no longer bring the existence of the contract into issue.

III

MRT seeks to question the award of lost profits and reimbursements in favor of Gammon.

As to the reimbursement award for engineering services, design work, site de-watering, and clean-up, CIAC awarded the reimbursement

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[173] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.,* 516 Phil. 561, 571-572 (2006) [Per *J.* Tinga, Third Division].

[174] *Id.* at 573.

claims on account of MRT's allegation in paragraph 77 of its Answer with Compulsory Counterclaim, thus:

> 77. To begin with, MRTDC is willing to pay GAMMON the total amount of ₱5,493,639.27 representing the sum of ₱4,821,261.91 and ₱672,377.36, which comprise GAMMON's claim for cost of the engineering and design services and site de-watering and clean-up works, respectively. [175]

CIAC ruled that as MRT had already admitted its liability for the claims, it was bound by this admission.[176] This finding was also affirmed by the Court of Appeals, which ruled that there was no showing that the admission was made by palpable mistake. It also noted that MRT did not amend its Answer.[177]

MRT argues that while it expressed its willingness to pay Gammon the reimbursements, it only applies to those supported by official receipts.[178] Gammon was allegedly aware that it had to substantiate its claims, as proven by its inclusion of the reimbursement amount in the issues to be resolved by CIAC in the Terms of Reference and its presentation of proof for its claims.[179] MRT also insists that its judicial admission is not conclusive because an answer is a mere statement of fact that the filing party is expected to prove; it is not evidence.[180] The trial court is still given leeway to consider evidence especially when the parties agreed to submit the issue for the court's resolution.[181]

MRT avers that judicial admissions cannot supplant the requirement that actual damages must be duly proven. It further asserts that an offer to pay is not an admission of liability under

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[175] *Rollo*, p. 300, MRT's Answer with Compulsory Counterclaim.

[176] *Id*. at 352, CIAC Decision.

[177] *Id*. at 23, Court of Appeals Decision.

[178] *Id*. at 81, Petition; *rollo*, p. 912, Reply.

[179] *Id*. at 82, Petition; *rollo*, p. 912, Reply.

[180] *Id*. at 82, Petition; *rollo*, p. 914, Reply.

[181] *Id*. at 82, Petition.

Rule 130, Section 27 of the Rules of Court. The admission was made only as an attempt to settle the issue and to avoid litigation. It explains that the exact amount of ₱5,493,639.27 was mentioned in the Answer with Compulsory Counterclaim because it was the amount Gammon was claiming and which MRT offered to pay, if proven.[182]

On the other hand, Gammon claims that MRT is bound by its allegation in its Answer with Compulsory Counterclaim. It argues that MRT failed to show that its admission was made by palpable mistake.[183] MRT even mentioned the exact amount it was willing to pay. It did not state that it would pay only the amount proved or present any evidence to contradict its admission.[184] Gammon asserts that although the amount was included as an issue in the Terms of Reference, this only meant that MRT can present contrary evidence without needing to prove that the admissions were made through palpable mistake.[185]

This Court rules that MRT is bound by its judicial admission.

Rule 129, Section 4 of the Revised Rules of Court provides:

> Section 4. Judicial admissions. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Judicial admissions may be made by a party in his or her pleadings, during the trial, through verbal or written manifestations, or in other stages of the judicial proceeding.[186] They are binding such that no matter how much the party rationalizes it, the party making the admission cannot contradict

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[182] *Id*. at 914-915, Reply.

[183] *Id*. at 846, Comment.

[184] *Id*. at 849-850, Comment.

[185] *Id*. at 846, Comment.

[186] *Spouses Binarao v. Plus Builders, Inc.,* 524 Phil. 361, 365 (2006) [Per *J*. Sandoval Gutierrez, Second Division].

himself or herself unless it is shown that the admission was made through a palpable mistake.[187]

In this case, MRT alleges that it is willing to pay Gammon the total amount of ₱5,493,639.27, which comprises the latter's claim for cost of engineering and design services, and de-watering and clean-up works.[188]

MRT's allegation was not qualified. It neither stated that Gammon must first present proof of its claims for the cost of engineering and design services, and of de-watering and clean-up works nor amended the Answer with Compulsory Counterclaim to either correct this allegation or to qualify that Gammon must first present official receipts. Thus, CIAC correctly held that MRT is bound by this admission and is estopped from denying its representation.

IV.A

MRT is likewise asserting that the evidence presented by Gammon to prove its entitlement to actual damages is not sufficient.

Actual damages are provided for under Article 2199 of the Civil Code:

> Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Actual damages constitute compensation for sustained measurable losses.[189] It must be proven "with a reasonable degree of certainty, premised upon competent proof or the best

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[187] *Id*. at 366.

[188] *Rollo*, p. 845.

[189] *International Container Terminal Services, Inc. v. Chua*, 730 Phil. 475, 489-490 (2014) [Per *J*. Perez, Second Division].

evidence obtainable."[190] It is never presumed or based on personal knowledge of the court. [191]

In *International Container Terminal Services, Inc. v. Chua*:[192]

"Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and **susceptible of measurement**. . . . Basic is the rule that **to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty**, premised upon competent proof or the best evidence obtainable."

. . . . . .

This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne. An award of actual damages is "dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof."[193] (Emphasis in the original, citations omitted)

Although official receipts are the best evidence of payment, this Court has acknowledged that actual damages may be proved by other forms of documentary evidence, including invoices.

In *MCC Industrial Sales Corporation v. Ssangayong Corporation*,[194] this Court did not award actual damages because the claimant failed to substantiate its claims with official receipts.[195]

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[190] *Id*. at 489.

[191] *Id*. at 489-490.

[192] 730 Phil. 475 (2014) [Per *J*. Perez, Second Division].

[193] *Id*. at 489-490.

[194] 562 Phil. 390 (2007) [Per *J*. Nachura, Third Division].

[195] *Id*. at 439.

In *G.Q. Garments, Inc. v. Miranda,*[196] this Court held that an allegation of a witness must be supported by receipts or other documentary proofs to prove the claim of actual damages.[197]

In *Gonzales v. Camarines Sur II Electric Cooperative, Inc.,*[198] this Court noted that petitioners did not back up its claims of actual damages by documentary proof such as a receipt or an *invoice*.[199]

For lost profits, Article 2200 of the Civil Code provides:

> Article 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

This Court has ruled that the award of unrealized profits cannot be based on the sole testimony of the party claiming it. In *Producers Bank of the Philippines v. Court of Appeals*:[200]

> In the case at bar, actual damages in the form of unrealized profits were awarded on the basis of the sole testimony of private respondent Salvador Chua, to wit:
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> . . . . . .
>
> However, other than the testimony of Salvador Chua, private respondents failed to present documentary evidence which is necessary to substantiate their claim for actual or compensatory damages. In order to recover this kind of damages, the injured party must prove his case, thus:
>
> > When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for that reason alone.

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[196] 528 Phil. 341 (2006) [Per *J.* Callejo, First Division].

[197] *Id*. at 359.

[198] 705 Phil. 511 (2013) [Per *C.J.* Sereno, First Division].

[199] *Id*. at 519.

[200] 417 Phil. 646 (2001) [Per *J.* Melo, Third Division].

> He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. (*Cerreno vs. Tan Chuco*, 28 Phil. 312 [1914] quoted in *Central Bank of the Philippines vs. Court of Appeals*, 63 SCRA 431 [1975])

Applying the foregoing test to the instant case, the Court finds the evidence of private respondents insufficient to be considered within the purview of "best evidence." The bare assertion of private respondent Salvador Chua that he lost an average of ₱18,000.00 per month is inadequate if not speculative and should be admitted with extreme caution especially because it is not supported by independent evidence. Private respondents could have presented such evidence as reports on the average actual profits earned by their gasoline business, their financial statements, and other evidence of profitability which could aid the court in arriving with reasonable certainty at the amount of profits which private respondents failed to earn. Private respondents did not even present any instrument or deed evidencing their claim that they have transferred their right to operate their gasoline station to their relatives. We cannot, therefore, sustain the award of ₱18,000.00 a month as unrealized profits commencing from October 16, 1984 because this amount is not amply justified by the evidence on record.[201]

IV.B

As to the reimbursement award for engineering services, design work, site de-watering, and clean-up, MRT argues that it was not supported by sufficient documentary evidence as only 2% of the claims have official receipts.[202] It argues that invoice, debit notes, and summaries are not proof of payment. An invoice is a mere detailed statement of the items, price, and charges of the things invoiced[203] while a debit memo is merely an advice to the receiver of an outstanding debt.[204]

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[201] *Id*. at 659-661.

[202] *Rollo*, p. 79; *rollo*, p. 908.

[203] *Id*. at 909.

[204] *Id*. at 910.

Gammon nonetheless insists that it was able to prove its entitlement to the reimbursements.[205] It avers that official receipts are not the only documentary evidence to prove the claim of damages. Invoices and debit notes are allowed. Debit notes do not require an official receipt as additional documentation.[206]

The Court of Appeals found that there are sufficient bases for the award of Gammon's reimbursement claims.[207] It ruled that MRT failed to prove that the evidence was insufficient and that Gammon's computations were erroneous.[208] It found that Gammon provided the best available documentary evidence, through invoices, debit notes, and official receipts.[209]

IV.C

MRT likewise questions the award of lost profits in favor of Gammon.

Gammon presented evidence of its claim for lost profits by presenting as witness Francisco Delos Santos (Delos Santos), the Planning and Estimating Engineer of Gammon since 1996. He was responsible for the preparation of proposals, "negotiations, mobilization, and meetings with and among the parties involved in the Project."[210]

Delos Santos testified that "the average competitive percentage of profit in the construction industry, in Gammon's experience, [was] 5% and [that] the Net Cost Estimate was properly set at ₱65,194,050.93."[211]

CIAC granted the award of lost profits based on Delos Santos' testimony.[212] The Court of Appeals affirmed this finding and

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[205] *Id*. at 842.

[206] *Id*. at 845.

[207] *Id*. at 24.

[208] *Id*. at 27.

[209] *Id*. at 28.

[210] *Id*. at 223.

[211] *Id*. at 73.

[212] *Id*. at 365.

found that the award for lost profits was not grounded on pure speculation as "documentary evidence is not absolutely necessary . . . to prove a claim for lost profit."[213] It found that Delos Santos was competent to testify on the matter.[214] In any case, it ruled that CIAC shall act without regard to technicalities or legal forms, in accordance with justice and equity and the merits of the case.[215] It also noted CIAC's finding that this Court upheld as reasonable 18% as expected profit estimate.[216]

MRT contests this finding and argues that Delos Santos is not an expert witness.[217] It claims that Delos Santos' testimony was not sufficient because there is no proof of his experience, and his functions consist only of preparing project proposals, negotiations, mobilization, and meetings with and among the parties in the Project.[218] It holds that Delos Santos' testimony was bare, insufficient, self-serving, and unsubstantiated by independent evidence, like audited financial statements or other reports on past projects.[219]

MRT also avers that the 5% lost profits should not be based on the last net estimate of the contract cost because it must be based on the contract price agreed upon. It argues that basing it on the revised scope of work and a greatly increased foreign exchange rate would unjustly enrich Gammon.[220]

On the other hand, Gammon insists that its claim for lost profits was sufficiently substantiated. It asserts that there need not be absolute certainty in its amount to be able to recover

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[213] *Id*. at 32.

[214] *Id*. at 30.

[215] *Id*. at 32.

[216] *Id*. at 31.

[217] *Id*. at 76; *rollo*, pp. 905-906.

[218] *Id*. at 905.

[219] *Id*. at 73 and 76.

[220] *Id*. at 77.

lost profits.[221] It argues that "lost profits cannot be denied in a construction contract on the ground of business uncertainty."[222] It also holds that loss of profits can be proven on the basis of experience and the industry standard by which it can be calculated, if there is any.[223]

Gammon asserts that MRT did not refute the 5% amount given by Delos Santos or quantify how much Gammon is actually entitled to. It notes that MRT presented no evidence contrary to what was testified and that this Court has accepted 10% profit as the standard industry practice in the construction business.[224]

This Court affirms the findings of CIAC and of the Court of Appeals.

MRT is raising questions of fact. Questions of fact are not proper in a Petition for Review under Rule 45. This Court can no longer entertain factual issues, unless there are compelling and cogent reasons, as when the findings were "drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd." [225]

The findings of fact in the case at bar was arrived at by CIAC, a quasi-judicial body, the jurisdiction of which is confined to construction disputes. "[F]indings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals."[226]

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[221] *Id*. at 836.

[222] *Id*. at 837.

[223] *Id*.

[224] *Id*. at 840-841.

[225] *National Housing Authority v. First United Constructors Corp.,* 672 Phil. 621, 658 (2011) [Per *J*. Perez, Second Division].

[226] *Id*.

Moreover, arbitration proceedings are not bound by the technical rules of evidence in judicial proceedings. Arbitrators are to ascertain the facts in each case by all reasonable means without regard to technicalities of law or procedure.[227]

Thus, under Section 13.5 of the CIAC Revised Rules of Procedure Governing Construction Arbitration:

> Section 13.5 *Evidence.* — The parties may offer such evidence as they desire and shall produce such additional documents and witnesses as the Arbitral Tribunal may deem necessary to clear understanding of facts issues for a judicious determination of the dispute(s). The Arbitral Tribunal shall act according to justice and equity and merits of the case, without regard to technicalities or legal forms and need not be bound by any technical rule of evidence. Evidence shall be taken in the presence of the Arbitral Tribunal and all of the parties, except where any of the parties is absent, or has waived his right to be present.
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> 13.5.1 *Order to produce documentary evidence.* Upon motion of either or both of the parties, or on its own initiative, the Arbitral Tribunal may direct any person, board, body, tribunal, or government office, agency or instrumentality, or corporation to produce real or documentary evidences necessary for the proper adjudication of the issues.
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> 13.5.2 *Order to give testimony.* The Arbitral Tribunal may, likewise, direct any person to give testimony at any proceedings for arbitration.

Thus, the findings of fact of CIAC are binding, respected, and final. They are not reviewable by this Court, especially when affirmed by the Court of Appeals.[228] "A review of the

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[227] CIAC REV. RULES OF PROC., Sec. 1.3 provides:

> Section 1.3 *Judicial Rules Not Controlling.* — In any arbitration proceedings under these Rules, the judicial rules of evidence need not be controlling, and it is the spirit and intention of these Rules to ascertain the facts in each case by every and all reasonable means without regard to technicalities of law or procedure.

[228] *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction and Development Corporation*, 540 Phil. 350, 360 (2006) [Per *J.* Tinga, Third Division].

CIAC's findings of fact would have had the effect of 'setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.'"[229]

The only exceptions subject to this rule were laid out in *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction and Development Corporation*:[230]

> As a rule, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal. This rule, however admits of certain exceptions.
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> In *David v. Construction Industry and Arbitration Commission*, we ruled that, as exceptions, factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.
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> Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.[231] (Citations omitted)

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[229] *Id*. at 376.

[230] 540 Phil. 350 (2006) [Per *J.* Tinga, Third Division].

[231] *Id*. at 360-361.

However, petitioner failed to prove that any of these exceptions are present in the case at bar. Thus, this Court will no longer disturb CIAC's factual findings, which were affirmed by the Court of Appeals.

WHEREFORE, the petition is **DENIED**. The Court of Appeals October 14, 2011 Decision and January 25, 2012 Resolution in CA-G.R. SP No. 98569 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 202612. January 17, 2018]

TEODORO C. TORTONA, RODRIGO C. TORTONA, PEDRO C. TORTONA, ERNESTO C. TORTONA, and **PATRICIO C. TORTONA,** *petitioners, vs.* **JULIAN C. GREGORIO, FLORENTINO GREGORIO, JR., ISAGANI C. GREGORIO, CELEDONIA G. IGNACIO, TEODOCIA G. CHAN, LEONILA G. CAAMPUED, CONCORDIA G. MIJARES, ROMEO C. GREGORIO, EDNA S. TAN, NELIA S. REYES, CECILIA S. FRIEDMAN, LAMBERTO SUANTE, JULIUS SUANTE, ENRICO SUANTE, FELIPE SUANTE, CESAR SUANTE, CORAZON YASAY-GREGORIO, DONALDO Y. GREGORIO, ELMER Y. GREGORIO, AND ROY JOHN Y. GREGORIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* AS A RULE;

ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; AN EXCEPTION IS WHEN THE FINDINGS AND CONCLUSIONS OF THE COURT OF APPEALS CONFLICT WITH THOSE OF THE REGIONAL TRIAL COURT AS IN CASE AT BAR.— The matter of the authenticity of Rufina Casimiro's thumbmarks is a factual issue resting on the evidence presented during trial. Factual issues are normally improper in Rule 45 petitions as, under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised in a petition for review on *certiorari*. However, the rule admits of exceptions. x x x Several exceptions exist in this case. Most evident is how the findings and conclusions of the Court of Appeals conflict with those of the Regional Trial Court. More significant than these conflicting findings, this Court finds the Court of Appeals' appreciation of evidence to be grossly misguided. Contrary to the Court of Appeals' findings, a more circumspect consideration of the evidence sustains the conclusion that Rufina's purported thumbmarks were false and merely simulated to make it appear that she had consented to the alleged sale to her sister, Rafaela.

2. ID.; EVIDENCE; PUBLIC DOCUMENTS; NOTARIZED DOCUMENTS ARE ACCORDED EVIDENTIARY WEIGHT AND ENJOY THE PRESUMPTION OF REGULARITY; CASE AT BAR.— Notarized documents enjoy the presumption of regularity. They are accorded evidentiary weight as regards their due execution. x x x However, any such presumption is disputable. It can be refuted by clear and convincing evidence to the contrary. x x x The contentious Deed of Absolute Sale in this case is a notarized document. Thus, it benefits from the presumption of regularity. The burden of proving that thumbmarks affixed on it by an ostensible party is false and simulated lies on the party assailing its execution. It is then incumbent upon petitioners to prove by clear and convincing evidence that the seller's thumbmarks, as appearing on the Deed of Absolute Sale, are forged and are not their mother's. Petitioners successfully discharged this burden. With the aid of an expert witness, they contrasted Rufina's apparent thumbmarks on the Deed of Absolute Sale with specimen thumbmarks on authentic documents. They demonstrated disparities that lead to no other conclusion than that the thumbmarks on the contentious Deed of Absolute Sale are forged.

3. ID.; ID.; ADMISSIBILITY; OPINION OF EXPERT WITNESS; COURTS ARE NOT BOUND BY EXPERT TESTIMONIES BUT THEY EXERCISE WIDE LATITUDE OF DISCRETION IN GIVING WEIGHT TO EXPERT TESTIMONIES IN ACCORDANCE WITH THE FACTS OF THE CASE.— Rule 130, Section 49 of the Revised Rules on Evidence specifies that courts may admit the testimonies of expert witnesses or of individuals possessing "special knowledge, skill, experience or training". x x x Testimonies of expert witnesses are not absolutely binding on courts. However, courts exercise a wide latitude of discretion in giving weight to expert testimonies, taking into consideration the factual circumstances of the case. x x x Evidence is concerned with "ascertaining . . . the truth respecting a matter of fact." It is concerned with what can be objectively established and relies on verifiable actualities. Opinions are, by definition, subjective. They proceed from impressions, depend on perception, and are products of personal interpretation and belief. Hence, opinions are generally inadmissible as evidence. Opinions, when admissible, must have proper factual basis. They must be supported by facts or circumstances from which they draw logical inferences. An opinion bereft of factual basis merits no probative value.

4. ID.; ID.; AUTHENTICATION AND PROOF OF DOCUMENTS; STANDARDS FOR ESTABLISHING FORGERY; FORGERY, PROVEN IN CASE AT BAR.— *Heirs of Gregorio v. Court of Appeals*, outlined standards for establishing forgery: As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. Without the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery. A comparison based on a mere xerox copy or reproduction of the document under controversy cannot produce reliable results. Here, petitioners submitted for comparison three (3) standard documents bearing the genuine thumbmarks of Rufina: (1) *Kasulatan sa Bilihan*

ng Lote (Exhibit "F"); (2) *Kasulatang Paghahati sa Labas ng Hukuman na may Lakip na Bilihan ng Lupa* (Exhibit "G"); and (3) the Residence Certificate of Rufina (Exhibit "H"). After examination, Gomez submitted to the Regional Trial Court his Technical Investigation/Identification Report FP Case No. 2000-182 dated July 13, 2000. x x x Upon personally perusing the documents, Regional Trial Court Judge Novato T. Cajigal (Judge Cajigal) reached a similar conclusion. x x x Judge Cajigal's observations and conclusions are in keeping with the settled principle that judges exercise independent judgment in appraising the authenticity of a signature, or of a fingerprint placed in a signature's stead.

5. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONY OF A WITNESS WHOSE CREDIBILITY IS IN ITSELF DOUBTFUL CANNOT PREVAIL OVER PHYSICAL FACTS; CASE AT BAR.— The Regional Trial Court's observations are on point. It was right to not lend credence to Atty. Espiritu's testimony: Thus, the presumption of regularity in the execution of notarial documents [cannot] apply in this case, despite the testimony of the notary public who notarized the said Deed of Absolute Sale, whose credibility is in itself doubtful considering his admission that he prepared and notarized an affidavit of self-adjudication of inherited properties from a deceased sister (Exhibit "M") inspite (sic) of his personal knowledge that the affiant was not the sole heir of the said deceased, who has other surviving brothers and sisters as they were once his neighbors in Zapote, Bacoor, Cavite. No amount of testimonial evidence could ever alter or detract from the cold physical fact that the questioned thumbmarks are not identical with the standard thumbmarks. Testimonial evidence cannot prevail over physical facts.

APPEARANCES OF COUNSEL

Rogelio M. Cortez for petitioners.
Richard Joseph F. Elias for respondents.

D E C I S I O N

LEONEN, *J.*:

Documents acknowledged before a notary public are presumed to have been duly executed. This presumption may be contradicted by clear and convincing evidence. A notarized Deed of Absolute Sale where the thumbmark of a party is shown to be a forgery is void.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Court of Appeals July 9, 2012 Decision[2] in CA-G.R. CV No. 91767 be reversed and set aside. This assailed Decision reversed and set aside the May 31, 2005 Decision[3] of the Regional Trial Court of Bacoor, Cavite, which ruled in favor of then plaintiffs, now petitioners, in their action for recovery of real property with damages against then defendants, now respondents.

This case is an offshoot of a Deed of Absolute Sale allegedly entered into by sisters Rufina Casimiro (Rufina), the purported seller, and Rafaela Casimiro (Rafaela), the purported buyer. Petitioners are the heirs of Rufina, while respondents are the heirs of Rafaela.[4]

During their lifetime, Rufina and Rafaela co-owned with their other siblings two (2) parcels of land.[5] They shared in equal, undivided 1/10 shares of a parcel located in Longos, Bacoor, Cavite, covered by Original Certificate of Title (OCT) No. O-923. They also shared in equal, undivided 1/5 shares of a second

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[1] *Rollo*, pp. 7-30.

[2] *Id*. at 31-43. The Decision was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesinando E. Villon and Abraham B. Borreta of the Seventeenth Division, Court of Appeals, Manila.

[3] *Id*. at 44-49. The Decision, docketed as Civil Case No. BCV 97-183, was penned by Judge Novato T. Cajigal.

[4] *Id*. at 45.

[5] *Id*. at 111-112, Memorandum for the Petitioners.

parcel in Talaba, Bacoor, Cavite, covered by Transfer Certificate of Title (TCT) No. T-10058.[6]

When Rufina was still alive, she regularly collected her respective 1/10 and 1/5 shares in the income of the two (2) properties. After her death, petitioners continued to collect and receive their mother's share.[7]

Sometime in 1997, petitioners filed a complaint for recovery of real property with damages. They alleged that their cousin Emilio Casimiro (Emilio) offered them a *balato*[8] of ₱50,000.00 for the sale of the first parcel to the Department of Public Works and Highways. Surprised, they asked why they were not instead given their 1/10 share in the proceeds of the sale. To this, Emilio allegedly replied that according to respondents,[9] the two (2) properties had already been sold by Rufina to Rafaela during their lifetime.[10]

Petitioners proceeded to the Office of the Registry of Deeds to verify the supposed sale. They learned that OCT No. O-923, covering the first parcel, had already been cancelled on account of a Deed of Absolute Sale allegedly executed by Rufina and Rafaela on February 14, 1974. It appeared that Rufina also sold her 1/5 share over the second parcel covered by TCT No. T-10058. It also became apparent that some time after the sales of the two (2) parcels, respondents executed a Declaration of Heirship and Extrajudicial Partition. Consequently, Rufina's

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[6] *Id*. at 44.

[7] *Id*. at 111-112.

[8] *Id*. at 112, Petitioners' Memorandum. "Vicassan's Tagalog-English Dictionary defines the word *'balato'* 'as a small amount of money given away in goodwill'."

[9] The Heirs of Rafaela are Julian C. Gregorio, Florentino Gregorio, Jr., Isagani C. Gregorio, Celedonia G. Ignacio, Teodocia G. Chan, Leonila G. Caampued, Concordia G. Mijares, Romeo C. Gregorio, Edna S. Tan, Nelia S. Reyes, Cecilia S. Friedman, Lamberto Suante, Julius Suante, Enrico Suante, Felipe Suante, Cesar Suante, Corazon Yasay-Gregorio, Donaldo Y. Gregorio, Elmer Y. Gregorio, and Roy John Y. Gregorio. *See rollo,* p. 7.

[10] *Rollo,* pp. 44-45.

1/10 and 1/5 shares in the first and second parcels were added to the shares of the respondents, as Rafaela's heirs, thereby increasing their shares to 2/10 and 2/5, respectively.[11]

Petitioners underscored that their mother was illiterate, not even knowing how to write her own name. They alleged that she only affixed her thumbmark on documents, and whenever she did so, she was always assisted by at least one (1) of her children. Thus, they asserted that if the sales to Rafaela were genuine, they should have known about them.[12]

In support of their allegations, they presented during trial some documents,[13] collectively identified as the standard documents, supposedly bearing the authentic thumbmarks of their mother. These standard documents also showed that at least one (1) of them assisted her in executing each document.[14]

Petitioners likewise presented as witness National Bureau of Investigation fingerprint examiner Eriberto B. Gomez, Jr. (Gomez), who conducted an examination to determine the genuineness of the questioned thumbmarks in the Deed of Absolute Sale.[15] He noted that he compared the questioned thumbmarks with the genuine thumbmarks of Rufina in the standard documents. In his Technical Investigation/Identification Report FP Case No. 2000-182-A dated July 13, 2000 (First Report),[16] Gomez noted that "the purported thumbmarks of Rufina Casimiro in the alleged Deed of Absolute Sale . . . [were] not identical with her standard thumbmarks in [the standard

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[11] *Id*. at 45.

[12] *Id*.

[13] *Id*. at 47. These documents were: *Kasulatan sa Bilihan ng Lote* dated February 19, 1979; *Kasulatang Paghahati sa Labas ng Hukuman na may Lakip na Bilihan ng Lupa* dated March 31, 1982; Rufina Casimiro's Residence Certificate dated July 21, 1971; and a receipt issued by the Rural Bank of Zapote.

[14] *Id*. at 45.

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

[16] *Id*. at 15.

documents]" and concluded that "the thumbmarks appearing in the . . . Deed of Absolute Sale . . . were not impressed by Rufina Casimiro."[17]

In another report dated May 2, 2001 (Second Report), Gomez observed that the thumbmarks on the standard documents appeared to be "faint, blurred and lacking the necessary ridge characteristics to warrant positive identification."[18] During a subsequent hearing, however, he clarified that "while the standard thumbmarks lack the 'necessary ridge characteristics to warrant positive identification,['] 'all the standard are all in the same finger print pattern' and 'they are also in agreement of the flow of ridges of all the standard.'"[19]

In its May 31, 2005 Decision,[20] the Regional Trial Court concluded that the Deed of Absolute Sale was a forgery and ruled in favor of the petitioners. It found as credible the First Report, which positively showed that the questioned thumbmarks in the Deed of Absolute Sale were not Rufina's:

> This Court has examined the said thumbmarks and is convinced and satisfied that they are very different from her standard thumbmarks in the documents Exhibits "F", "G", and "H". This difference is further enhanced in the enlarged photographs of these thumbmarks (Exhibit "J"). It is clear by the naked eyes that Rufina's thumbmarks in the questioned Deed of Absolute Sale (Exhibit "D") are really the "circle type" while those of the standard thumbmarks in Exhibits "F", "G" and "H" are the loop type as the NBI expert technically described them. As the Supreme Court ruled in People vs. Abatayo, 87 Phil. 794, 798, "Thumbmarks never lie". "A comparison of both the differences and similarities in the questioned thumbmarks (signatures) should have been made to satisfy the demands of evidence" (Licarte vs. CA, G.R. No. 128899; June 8, 1995).[21]

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[17] *Id*. at 47.

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

[19] *Id*. at 17. Petition for Review on *Certiorari*.

[20] *Id*. at 44-49.

[21] *Id*. at 47.

The dispositive portion of its Decision read:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring the thumbmarks of Rufina Casimiro in the Deed of Absolute Sale dated February 14, 1974, Doc. No. 73, Page 16, Book 1, Series of 1974 of the notarial registry of Atty. Arcadio Espiritu of Bacoor, Cavite (Exhibit "D") as forged and hence, null and void and inexistent.

2. Declaring the Deed of Declaration of Heirship and Extrajudicial Partition dated August 15, 1996 (Exhibit "E") null and void insofar as the adjudication of the one-tenth (1/10) share of Rufina Casimiro over the lot situated in Longos, Bacoor, Cavite, covered by OCT No. O-923; and the one-fifths (1/5) share of Rufina Casimiro in the lot situated in Talaba, Bacoor, Cavite, covered by TCT No. T-10058 both of the Registry of Deeds for the Province of Cavite (Exhibits "A" and "B"), both in favor of the Heirs of Rafaela Casimiro.

3. The Register of Deeds of the Province of Cavite is hereby ordered to cancel TCT No. T-741726, and to revert to the cancelled OCT No. O-923 and to cancel Entry No. 8449-75 appearing on TCT No. T-10058, which is the annotation of the questioned Deed of Absolute Sale (Exhibit "D") that has been declared herein as null and void and inexistent.

The claim for damages is hereby DENIED for lack of merit.

SO ORDERED.[22]

The Court of Appeals reversed and set aside the ruling of the Regional Trial Court.[23] It found that the Deed of Absolute Sale was a notarized document and had in its favor the presumption of regularity. It also emphasized Gomez's second examination, which appeared to indicate that the thumbmarks in the standard documents prevent "positive identification."[24] Thus, according to the Court of Appeals, the Regional Trial Court's conclusions were suspect. It held that, ultimately, petitioners failed to prove "by clear and convincing evidence"

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[22] *Id*. at 48-49.

[23] *Id*. at 31-43.

[24] *Id*. at 128.

that the thumbmarks found on the Deed of Absolute Sale were forged.[25]

The Heirs of Rufina then filed the present Petition.

For resolution is the sole issue of whether or not the Deed of Absolute Sale allegedly executed by Rufina Casimiro, as seller, and Rafaela Casimiro, as buyer, is void, as Rufina Casimiro never consented to it and with her apparent thumbmarks on it being fake.

The Court of Appeals gravely erred in reversing the ruling of the Regional Trial Court. The Petition must be granted and the Regional Trial Court May 31, 2005 Decision must be reinstated.

I

The matter of the authenticity of Rufina Casimiro's thumbmarks is a factual issue resting on the evidence presented during trial. Factual issues are normally improper in Rule 45 petitions as, under Rule 45 of the 1997 Rules of Civil Procedure,[26] only questions of law may be raised in a petition for review on certiorari. However, the rule admits of exceptions. In *Pascual v. Burgos*:[27]

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the

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[25] *Id*. at 42.

[26] RULES OF COURT, Rule 45, Sec. 1:

Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[27] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 10-11 [Per *J*. Leonen, Second Division].

parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.[28] (Citations omitted)

Several exceptions exist in this case. Most evident is how the findings and conclusions of the Court of Appeals conflict with those of the Regional Trial Court. More significant than these conflicting findings, this Court finds the Court of Appeals' appreciation of evidence to be grossly misguided. Contrary to the Court of Appeals' findings, a more circumspect consideration of the evidence sustains the conclusion that Rufina's purported thumbmarks were false and merely simulated to make it appear that she had consented to the alleged sale to her sister, Rafaela.

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

II

Notarization enables a notary public to ascertain the voluntariness of the party's act and to verify the genuineness of his or her signature.[29] Through notarization, the public and the courts may rely on the face of the instrument, without need of further examining its authenticity and due execution. It is an act that is imbued with public interest. In *Nunga v. Atty. Viray*:[30]

> [N]otarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that the notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of the authenticity thereof. A notarial document is by law entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[31]

Notarized documents enjoy the presumption of regularity. They are accorded evidentiary weight as regards their due execution:

> Generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity.[32]

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[29] *Aquino v. Manese,* 448 Phil. 555 (2003) [*J.* Carpio Morales, Third Division].

[30] 366 Phil. 155 (1999) [*J.* Davide, Jr., *En Banc*].

[31] *Id.* at 160-161.

[32] *Basilio v. Court of Appeals*, 400 Phil. 120, 124 (2000) [*J.* Pardo, First Division] citing *Loyola v. Court of Appeals,* 383 Phil. 171 (2000) [*J.* Quisumbing, Second Division].

However, any such presumption is disputable. It can be refuted by clear and convincing evidence to the contrary:

> It is true that notarized documents are accorded evidentiary weight as regards their due execution. Nevertheless, while notarized documents enjoy the presumption of regularity, this presumption is disputable. They can be contradicted by evidence that is clear, convincing, and more than merely preponderant.[33] (Citations omitted)

The contentious Deed of Absolute Sale in this case is a notarized document.[34] Thus, it benefits from the presumption of regularity. The burden of proving that thumbmarks affixed on it by an ostensible party is false and simulated lies on the party assailing its execution.[35] It is then incumbent upon petitioners to prove by clear and convincing evidence that the seller's thumbmarks, as appearing on the Deed of Absolute Sale, are forged and are not their mother's.

Petitioners successfully discharged this burden.

With the aid of an expert witness, they contrasted Rufina's apparent thumbmarks on the Deed of Absolute Sale with specimen thumbmarks on authentic documents. They demonstrated disparities that lead to no other conclusion than that the thumbmarks on the contentious Deed of Absolute Sale are forged. In contrast, respondents merely harped on a disputable presumption, and sought to affirm this presumption through the self-serving testimony of the notary public, whose very act of notarizing the Deed of Absolute Sale is the bone of contention, whose credibility was shown to be wanting, and who is himself potentially liable for notarizing a simulated document. They

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[33] *Heirs of Trazona v. Heirs of Cañada,* 723 Phil. 388, 397 (2013) [*C.J.* Sereno, First Division].

[34] *Rollo,* p. 46.

[35] *Basilio v. Court of Appeals*, 400 Phil. 120, 124 (2000) [*J.* Pardo, First Division] citing *Sumbad v. Court of Appeals,* 368 Phil. 52 (1999) [*J.* Mendoza, Second Division].

also endeavored to undermine petitioners' expert witness by dismissively characterizing him as "just an ordinary employee."[36]

III

Rule 130, Section 49 of the Revised Rules on Evidence specifies that courts may admit the testimonies of expert witnesses or of individuals possessing "special knowledge, skill, experience or training":

> Section 49. *Opinion of expert witness*. — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

Testimonies of expert witnesses are not absolutely binding on courts. However, courts exercise a wide latitude of discretion in giving weight to expert testimonies, taking into consideration the factual circumstances of the case:

> Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they choose upon such testimonies in accordance with the facts of the case. *The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study or observation of the matters about which he testifies, and any other matters which serve to illuminate his statements.* The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect (20 Am. Jur., 1056-1058). The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.[37] (Emphasis supplied)

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[36] *Rollo,* p. 98.

[37] *Salomon v. Intermediate Appellate Court,* 263 Phil. 1068, 1077 (1999) [*J.* Medialdea, First Division].

This analysis applies in the examination of forged documents:

> Due to the technicality of the procedure involved in the examination of forged documents, the expertise of questioned document examiners is usually helpful. These handwriting experts can help determine fundamental, significant differences in writing characteristics between the questioned and the standard or sample specimen signatures, as well as the movement and manner of execution strokes.[38]

Respondents here assail the qualification of National Bureau of Investigation fingerprint examiner Gomez, pejoratively branding him as "just an ordinary employee."[39] In support of this dismissive casting of Gomez, respondents noted that he performed such functions as securing fingerprints from applicants for National Bureau of Investigation clearances and taking fingerprints of people involved in crimes.[40]

Evidence is concerned with "ascertaining . . . the truth respecting a matter of fact."[41] It is concerned with what can be objectively established and relies on verifiable actualities. Opinions are, by definition, subjective. They proceed from impressions, depend on perception, and are products of personal interpretation and belief. Hence, opinions are generally inadmissible as evidence.[42]

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[38] *Spouses Ulep v. Court of Appeals,* 509 Phil. 227, 240 (2005) [*J.* Garcia, Third Division].

[39] *Rollo,* p. 98.

[40] *Id.*

[41] RULES OF COURT, Rule 128, Sec. 1.

[42] RULES OF COURT, Rule 130, Sec. 48-50:

> Section 48. General rule. — The opinion of a witness is not admissible, except as indicated in the following sections.
>
> Section 49. Opinion of expert witness. — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.
>
> Section 50. Opinion of ordinary witnesses. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —
>
> (a) the identity of a person about whom he has adequate knowledge;

Opinions, when admissible, must have proper factual basis. They must be supported by facts or circumstances from which they draw logical inferences. An opinion bereft of factual basis merits no probative value. *People v. Malejana*[43] stated the following regarding expert opinions:

> The probative force of the testimony of an expert does not lie in a mere statement of the theory or opinion of the expert, but rather *in the aid that he can render to the courts in showing the facts which serve as a basis for his criterion and the reasons upon which the logic of his conclusion is founded.*[44] (Emphasis supplied, citation omitted)

The witness rendering an opinion must be credible,[45] in addition to possessing all the qualifications and none of the disqualifications specified in the Revised Rules on Evidence.[46] In the case of an expert witness, he or she must be shown to possess knowledge, skill, experience, or training on the subject matter of his or her testimony.[47] On the other hand, an ordinary witness may give an opinion on matters which are within his or her knowledge or with which he or she has sufficient familiarity.[48]

The testimony, too, must be credible in itself. In *Borguilla v. Court of Appeals*,[49] this Court said:

(b) A handwriting with which he has sufficient familiarity; and

(c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.

[43] 515 Phil. 584 (2006) [*J.* Azcuna, Second Division].

[44] *Id*. at 596.

[45] See *Borguilla v. Court of Appeals*, 231 Phil. 9 (1987) [*J.* Paras, Second Division].

[46] See *Armed Forces of the Philippines Retirement and Separation Benefits System v. Republic*, 707 Phil. 109 (2013) [*J.* Villarama, Jr., First Division].

[47] RULES OF COURT, Rule 130, Sec. 49.

[48] RULES OF COURT, Rule 130, Sec. 50.

[49] 231 Phil. 9 (1987) [*J.* Paras, Second Division].

Evidence to be believed must not only proceed from the mouth of a credible witness, it must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[50]

The availability of direct evidence affects the viability of opinions. If there is a direct evidence to prove the fact in issue, an opinion may be rendered unnecessary. For instance, in *Cebu Shipyard and Engineering Works, Inc. v. William Lines*,[51] where the origin of a fire was at issue, this Court held that there was no need for the judge to consider expert opinion:

[T]here is no need for the judge to resort to expert opinion evidence. In the case under consideration, the testimonies of the fire experts were not the only available evidence on the probable cause and origin of the fire. There were witnesses who were actually on board the vessel when the fire occurred. Between the testimonies of the fire experts who merely based their findings and opinions on interviews and the testimonies of those present during the fire, the latter are of more probative value.[52]

Contrary to respondents' dismissiveness towards Gomez, his performance of such tasks as taking fingerprints, even if, for a time it was his main duty, does not, per se, discount competence. A history of performing this function does not negate any "special knowledge, skill, experience or training" that Gomez possesses. Despite respondents' protestations, it remains that Gomez personally scrutinized and compared Rufina's disputed thumbmarks in the contested Deed of Absolute Sale with her authentic thumbmarks in the standard documents and detailed his findings in the First Report to which he testified before the Regional Trial Court. He expounded on his findings in the

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[50] *Borguilla v. Court of Appeals,* 231 Phil. 9, 22 (1987) [*J.* Paras, Second Division].

[51] 366 Phil. 439 (1999) [*J.* Purisima, Third Division].

[52] *Id.* at 454-455.

Second Report and clarified, contrary to what respondents and the Court of Appeals harp on, that the findings detailed in it are not in conflict with or otherwise discount the conclusions stated in the First Report.

Incidentally, this case is not the first instance that this Court sustained Gomez's competence and credibility. In *Rojales v. Dime*,[53] this Court relied on the examination conducted by Gomez to determine the genuineness of the thumbmark appearing on the *pacto de retro* subject of that case. *Rojales*' demonstration of Gomez's competence and credibility is worth reproducing at length:

> Petitioner avers that the [Court of Appeals] erred in relying on the NBI Fingerprint Examination. She alleges that the opinion of one claiming to be an expert is not binding upon the court.
>
> There is nothing on record that would compel this Court to believe that said witness, Fingerprint Examiner Gomez, has improper motive to falsely testify against the petitioner nor was his testimony not very certain. His testimony is worthy of full faith and credit in the absence of evidence of an improper motive. His straightforward and consistent testimonies bear the earmarks of credibility.
>
> Gomez testified during direct and cross examination, the process of examination of the fingerprints and his conclusion:
>
> ATTY: BELMI:
>
> Q: Will you kindly tell the court what was the result of your examination?
> A: After having thorough examination, comparison and analysis, the thumbmark appearing on the [Pacto] de Retro and the right thumbmark appearing on the original copy of PC/INP Fingerprint form taken by SPO3 Marcelo Quintin Sosing were impressed by one and the same person.
>
> . . . . . .

[53] G.R. No. 194548, February 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/194548.pdf> [*J.* Peralta, Third Division].

Q: How do you go about this comparison to determine whether that thumbmark [was] impressed by the same person?
A: We must locate the three elements of comparing, the number 1 is type of fingerprint pattern.

. . . . . .

A: There are three elements, after knowing the fingerprint pattern and they are of the same fingerprint the next step is to know the flow of the rages of the fingerprint pattern or the shape.

. . . . . .

Q: Then what is next?
A: After number 2, the last is the most important one because you must locate the number of ridges of characteristics and their relationship with each other because it is the basis of identification of the fingerprint.

Q: Meaning the description of the ridges?
A: Yes, sir, the identification features appearing on the fingerprint.

Q: What did you see?
A: I found that there were 13 identical points to warrant the positive identification.

Q: [Those] 13 points [are] more than enough to determine whether those thumbmark[s] [are] done by one and the same person?
A: Yes, sir.

. . . . . .

Q: Where did you base your conclusion that the thumbprint on the Pacto de Retro Sale over and above the name Juana Vda. de Rojales is genuine thumbprint of the same person?
A: Well, we only respon[d]ed to the request of the court to compare with the thumbprint appearing on the Pacto de Retro Sale to that of the fingerprint appearing on the thumbprint form.

Q: You mean to say you were provided with the standard fingerprint of the subject?
A: Yes, sir.

. . . . . .

COURT:

Q: Now, with this photograph blown-up, you have here 13 points, will you please explain to the court how these 13 points agree from that standard to that questioned document?
A: I found 2x4 bifurcation, it means that single rage splitting into two branches.

Q: You pointed out?
A: I found the bifurcation on the standard that corresponds exactly to the bifurcation which I marked number 1 in both photograph[s].

Q: From the center?
A: As to the number and location with respect to the core, I found that both questioned and standard coincide.

. . . . . .

Q: Now, but the layer does not change in point 1, how many layer from the core?
A: From the core, there are 4 intervening layers from number 1 to number 2 and it appears also the questioned 4 intervening layers between number 1 and number 2, so, the intervening rages between ends of th[ese] characteristics are all both in agreement.

. . . . . .

ATTY. SALANGUIT:

Q: Can you say that based on the questioned thumbmark, you would be able to arrive an accurate evaluation between the questioned thumbmark and standard thumbmark?
A: Yes, [ma'am].

Q: Even if the questioned thumbmark is a little bit blurred as to the standard thumbmark?
A: [Even though] the questioned thumbmark is a little bit blurred but still the ridge characteristics [are] still discernible.

Q: You are telling us that among many people here in the world, nobody have the same thumbmark as another person and that include the thumbmark of a twins?
A: Yes, [ma'am].[54]

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

This Court finds no reason to favorably consider respondents' attempt at undermining Gomez's competence.

The credibility of an expert witness does not inhere in his or her person. Rather, he or she must be shown to possess knowledge, skill, experience, or training on the subject matter of his or her testimony.[55] In *First Nationwide Assurance Corp. v. Court of Appeals*,[56] where the identity of the vehicle in question was in issue, this Court considered these factors in assessing the credibility of the expert witness:

> We note that Sergeant Agadulin is a police officer who has adequate knowledge, training and experience to perform macro-etching examinations. His assertions on this technical matter are, as the [Court of Appeals] noted, in the nature of expert testimony. Additionally, as a public officer, he is presumed to have regularly performed his duty. In the absence of controverting evidence, his testimony is entitled to great weight and credence.[57] (Citation omitted)

Standards outlined in American jurisprudence illustrate frameworks and standards for appraising expert testimonies.

In the 1923 case of *Frye v. United States*,[58] James Alfonso Frye was convicted of second-degree murder by the lower court after he was disallowed to introduce expert testimony relating to the results of systolic blood pressure deception test. The United States Supreme Court, in sustaining the lower court, explained:

> The rule is that the opinions of experts or skilled witnesses are admissible in evidence in those cases in which the matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it, for the reason that the subject-matter so far partakes of a science, art, or trade as to require a previous habit or experience or study

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[55] RULES OF COURT, Rule 130, Sec. 49.

[56] 376 Phil. 701 (1999) [*J.* Panganiban, Third Division].

[57] *Id.* at 712.

[58] 54 App. D.C. 46, 293 F. 1013 (1923).

> in it, in order to acquire a knowledge of it. When the question involved does not lie within the range of common experience or common knowledge, but requires special experience or special knowledge, then the opinions of witnesses skilled in that particular science, art, or trade to which the question relates are admissible in evidence.
>
> Numerous cases are cited in support of this rule. Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained *general acceptance in the particular field in which it belongs*.
>
> We think the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development, and experiments thus far made.[59] (Emphasis supplied)

In 1993, the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* departed from the Frye standard and articulated a new framework for assessing the admission of expert testimony.[60] In that case, plaintiffs Jason Daubert and Eric Schuller attributed their serious birth defects to the drug Bendectin, manufactured by defendant Dow Chemical Company. They submitted expert testimonies on animal studies showing a link between Bendectin and malformations, pharmacological studies, and reanalysis of previously published epidemiological studies. The district court ruled in favor of the defendant and stated that scientific evidence is admissible only if the principle upon which it is based is "sufficiently established to have general acceptance in the field to which it belongs."[61] The Ninth Circuit Court affirmed this Decision after

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[59] *Id*.

[60] 509 US 579, 113 S.Ct. 2786 (1993).

[61] *Id*.

finding that the plaintiffs' evidence had not yet been accepted as reliable technique by scientists who had an opportunity to scrutinize and verify the methods.

However, the United States Supreme Court remanded the case after finding the Frye standard to be mooted by the adoption of the Federal Rules of Evidence, Rule 702, which stated:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The United States Supreme Court observed that Rule 702 did not require "general acceptance" of the Frye standard before expert testimony is admitted. Instead of following the strict Frye standard, it placed on the judge the duty to act as "gatekeeper" when faced with a proffer of expert scientific testimony. Thus, the judge must make a preliminary determination of whether or not the offered testimony is scientific knowledge and whether or not it will assist the trier of fact to understand or determine a fact in issue. The following are the standards that should be considered by the judge:

> Many considerations will bear on the inquiry, including whether the theory or technique in question can be (and has been) tested, whether it has been subjected to peer review and publication, its known or potential error rate, and the existence and maintenance of standards controlling its operation, and whether it has attracted widespread acceptance within a relevant scientific community.[62]

However, the standards are not exclusive:

> The inquiry is a flexible one, and its focus must be solely on principles and methodology, not on the conclusions that they generate. Throughout, the judge should also be mindful of other applicable Rules.[63]

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[62] *Id*.

[63] *Id*.

Thus, the United States Supreme Court remanded the case for the application of its enumerated standards.

In this case, the Regional Trial Court's May 31, 2005 Decision detailed the circumstances leading to the National Bureau of Investigation's examination of the contentious Deed of Absolute Sale, respondents' incessant attempts at preventing the examination, and how Gomez took the witness stand and presented his findings. The Regional Trial Court's recollection indicates, most notably, that Gomez was not handpicked by petitioners. Rather, following petitioners' request, Gomez appeared to have been designated by the National Bureau of Investigation itself to conduct the examination. Thus, any such determination of Gomez's expertise was not borne by petitioners' innate preference for him or of their insistence upon him, but by the National Bureau of Investigation's own confidence in him. This institutional reposition of confidence can only bolster Gomez's credibility:

> To prove that their mother's thumbmarks on the disputed deed of absolute sale were forged, plaintiffs filed a motion to refer the questioned document to the National Bureau of Investigation (NBI) for examination. An Order was issued by this Court directing the Office of the Registry of Deeds for the Province of Cavite to submit to this Court the original copy of the said title and upon receipt of the same ordered the Branch Clerk of Court to transmit the same to the NBI. An Omnibus Motion was filed by the defendants informing this Court that the questioned document was already lost and/or missing pursuant to the Certification dated April 5, 2000 issued by the Office of the Registry of Deeds for the Province of Cavite (Exh. 8). Hence, the order to transmit the questioned document became unavailing and academic. That notwithstanding, the Branch Clerk of Court transmitted the questioned document to the NBI. Defendants insinuated that the original questioned document came from an illegitimate and spurious source. However, it was explained by a representative of the registry, Mr. Agusto Vasquez, that the registrar asked him to bring the questioned document to the Court and the same was received by one of the employees of the Court. Further, the said issue has been resolved by this Court in its Order dated August 14, 2000, pertinent portion of which states that:

> "Therefore, the allegations (sic) of the defendants that the said document came from a spurious [source] is without any basis. This Court assures the defendants and/or any litigant for that matter that this Court will not allow spurious document[s] to be admitted by this Court.
>
> WHEREFORE, the Omnibus Motion filed by the defendants is hereby DENIED for lack of merit."

As basis of the comparison[,] plaintiffs presented, the Kasulatan sa Bilihan ng Lote dated February 19, 1979 (Exhibit "F"); Kasulatang Paghahati sa Labas ng Hukuman na may Lakip na Bilihan ng Lupa dated March 31, 1982 (Exhibit "G"); and the Residence Certificate of Rufina Casimiro dated July 21, 1971 (Exhibit "H") and a receipt issued by the Rural Bank of Zapote (Exhibit "H-1"), which documents contained the genuine thumbmarks of Rufina Casimiro.

A fingerprint examiner of the NBI, Eriberto B. Gomez, Jr., took the witness stand. He testified that pursuant to the order of this Court he conducted an examination to determine the genuineness of Rufina Casimiro's thumbmarks on the questioned Deed of Absolute Sale by comparing them with her genuine thumbmarks as appearing on Exhibits "F", "G" and "H". These documents, containing the genuine thumb marks of Rufina Casimiro were executed on the dates prior to and after the execution of the questioned documents. Mr. Gomez prepared enlarged photographs of the questioned and standard thumbmarks of Rufina Casimiro for better examination and comparison (Exhibit "J"). After examining these thumbmarks, Mr. Gomez concluded in his Technical Investigation/Identification Report FP Case No. 2000-182-A (Exh. "I") that the purported thumbmarks of Rufina Casimiro in the alleged Deed of Absolute Sale (Exhibit "D") are not identical with her standard thumbmarks in Exhibits "F", "G" and "H" and that the thumbmarks appearing in the said Deed of Absolute Sale (Exhibit "D") were not impressed by Rufina Casimiro.[64]

IV

Heirs of Gregorio v. Court of Appeals,[65] outlined standards for establishing forgery:

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[64] *Rollo*, pp. 46-47.

[65] 360 Phil. 753 (1998) [*J.* Purisima, Third Division].

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. Without the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery. A comparison based on a mere xerox copy or reproduction of the document under controversy cannot produce reliable results.[66] (Citation omitted)

Here, petitioners submitted for comparison three (3) standard documents bearing the genuine thumbmarks of Rufina: (1) *Kasulatan sa Bilihan ng Lote* (Exhibit "F"); (2) *Kasulatang Paghahati sa Labas ng Hukuman na may Lakip na Bilihan ng Lupa* (Exhibit "G"); and (3) the Residence Certificate of Rufina (Exhibit "H").[67] After examination, Gomez submitted to the Regional Trial Court his Technical Investigation/Identification Report FP Case No. 2000-182 dated July 13, 2000:

6. RESULT OF EXAMINATION: After having a thorough examination, comparison and analysis, questioned thumbmarks mentioned in item nos. 5A and 5B are found not identical with the standard thumbmarks mentioned in item nos. 5C, 5D[,] and 5E.

7. OPINION: In view of the foregoing result of the examination, questioned thumbmark mentioned in item nos. 5A and 5B were not impressed by Rufina Casimiro.[68]

This Report could not be any clearer. The questioned thumbmarks on the Deed of Absolute Sale do not belong to Rufina. The questioned thumbmarks were of the "circle type" while the genuine thumbmarks of Rufina were of the "loop type."[69]

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[66] *Id*. at 763.

[67] *Rollo*, p. 47.

[68] *Id*. at 15-16.

[69] *Id*. at 47.

Upon personally perusing the documents, Regional Trial Court Judge Novato T. Cajigal (Judge Cajigal) reached a similar conclusion:

> This Court has examined the said thumbmarks and is convinced and satisfied that they are very different from her standard thumbmarks in the documents Exhibits "F", "G"[,] and "H". This difference is further enhanced in the enlarged photographs of these thumbmarks (Exhibit "J"). It is clear by the naked eyes that Rufina's thumbmarks in the questioned Deed of Absolute Sale (Exhibit "D") are really the "circle type" while those of the standard thumbmarks in Exhibits "F", "G"[,] and "H" are the loop type as the NBI expert technically described them. As the Supreme Court ruled in People vs. Abatayo, 87 Phil. 794, 798, "Thumbmarks never lie". "A comparison of both the differences and similarities in the questioned thumbmarks (signatures) should have been made to satisfy the demands of evidence" (Licarte vs, CA, G.R. No. 128899; June 8, 1995).[70]

Judge Cajigal's observations and conclusions are in keeping with the settled principle that judges exercise independent judgment in appraising the authenticity of a signature, or of a fingerprint placed in a signature's stead:

> A judge must therefore conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity and this cannot be done without the original copy being produced in court.[71]

V

In reversing the Regional Trial Court, the Court of Appeals emphasized Gomez's Second Report, which indicated that faint and blurred features of the thumbmarks appearing on the standard documents prevented "positive identification."[72] Thus, it concluded that "no comparison may be made between the

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[70] *Id*.

[71] *Mendoza v. Fermin,* 738 Phil. 429, 442 (2014) [*J*. Peralta, Third Division].

[72] *Rollo*, p. 127.

thumbmarks found in the Deed [Absolute of Sale] and those found in the standard documents."[73]

However, the Court of Appeals failed to consider that Gomez clarified that all the requisites for comparing the thumbmarks—(1) fingerprint patterns, (2) flow of ridges, and (3) location and relationship of their characteristics—had been satisfied. He specifically stated that first, "[a]ll the standard [thumbmarks] are all in the same fingerprint pattern";[74] second, "they are also in agreement [as to] the flow [of] ridges";[75] and third, there is no discrepancy as to their ridge characteristics:[76]

ATTY. CORTEZ

Q Can you tell us, Mr. Witness, the requirements before you can render an opinion in the identity of the standard thumbmark?

WITNESS

A Well, in comparing the prints there are three requirements, (1) to determine the type of the finger prints pattern; (2) the flow of the ridges; (3) the location of each characteristics and their relationship to each other, sir.

ATTY. CORTEZ

Q Now with respect to the first requirements (sic) that you mentioned "the general pattern"?

. . . . . .

ATTY. CORTEZ

Q Would you say that this standard thumbmark, what can you say about the general pattern of the thumbmark?

WITNESS

A *All the standard are all in the same finger print pattern, sir*.

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[73] *Id*. at 38 and 40.

[74] *Id*. at 127.

[75] *Id*. at 128.

[76] *Id*. at 128-129.

ATTY. CORTEZ

Q How about the second requirements (sic) which is the flow of the ridges, what can you say about this standard?

WITNESS

A *Well, they are also in agreement of the flow [of] ridges of all the standard, sir.*

ATTY. CORTEZ

Q And how about the third requirements, the number of ridge characteristics?

WITNESS

A The number of the ridge characteristics because [of] the none clarity (sic) of th[ese] characteristics. I only locate[d] one or two points and it is not sufficient for positive identification. I must locate seven or more ridge characteristics to warrant positive identification, sir.

ATTY. CORTEZ

Q But will you agree, Mr. Witness that with respect to this point, there is no discrepancy among the standard thumbmark?

WITNESS

A Well, if I have not meet (sic) all the requirements then I cannot make an opinion regarding the identification of the standard finger print, sir.

ATTY. CORTEZ

Q My question is not about the identity. My question is pertaining to any discrepancy or any disagreement?

WITNESS

A *There is none, sir.*[77] (Emphasis supplied)

The faint and blurred features of the thumbmarks appearing on the standard documents may have made them less than ideal. Still, Gomez explained that they remained to be sufficiently

[77] *Id*. at 127-129.

consistent, and therefore, suitable for a comparison with the thumbmarks appearing on the disputed Deed of Absolute Sale. Gomez, too, was particular in rejecting respondents' counsel's suggestion that the Second Report should "supersede"[78] the First Report:

> ATTY. DELA CUEVA
>
> Q Mr. Witness, this document now marked as Exh. "K" which we are adopting as our Exh. "6" was prepared by you subsequently to a previous report which is now marked as Exh. "I", does this report supersede your previous report, Mr. Witness?
>
> WITNESS
>
> A No, Sir.[79]

Thus, Gomez was steadfast on the findings he detailed in his First Report. The First Report already established that the questioned thumbmarks appearing on the Deed of Absolute Sale were not Rufina's, as their genuineness is belied by thumbmarks appearing on the authentic, standard documents. Despite the flaws in the thumbmarks appearing in the standard documents, the inherent deficiencies of the thumbmarks affixed in the Deed of Absolute Sale remain.

VI

Respondents' lone witness was Atty. Arcadio Espiritu (Atty. Espiritu), the notary public who notarized the Deed of Absolute Sale.[80] Atty. Espiritu asserted that the parties to the Deed of Absolute Sale personally appeared before him and that Rufina affixed her thumbmarks in his presence.[81]

However, Atty. Espiritu's credibility is highly questionable. It was established during trial that he notarized an Affidavit of

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[78] *Id*. at 129.

[79] *Id*. at 129-130.

[80] *Id*. at 45-46.

[81] *Id*. at 93-97.

Self-Adjudication in favor of a certain Victor Guinto (Guinto), where Guinto declared that he was the sole heir of his deceased sister, to the exclusion of their other siblings.[82] This was despite Atty. Espiritu's personal knowledge, as a longtime neighbor of Guinto's family, that there were other brothers and sisters.[83] During trial, he even admitted that "he was not 'concerned about the truth and falsities of entries in the document.'"[84]

The Regional Trial Court's observations are on point. It was right to not lend credence to Atty. Espiritu's testimony:

> Thus, the presumption of regularity in the execution of notarial documents [cannot] apply in this case, despite the testimony of the notary public who notarized the said Deed of Absolute Sale, whose credibility is in itself doubtful considering his admission that he prepared and notarized an affidavit of self-adjudication of inherited properties from a deceased sister (Exhibit "M") inspite (sic) of his personal knowledge that the affiant was not the sole heir of the said deceased, who has other surviving brothers and sisters as they were once his neighbors in Zapote, Bacoor, Cavite. No amount of testimonial evidence could ever alter or detract from the cold physical fact that the questioned thumbmarks are not identical with the standard thumbmarks. Testimonial evidence cannot prevail over physical facts.[85]

VII

Petitioners were able to discharge their burden of proving forgery by clear and convincing evidence. Petitioners themselves recounted in a straightforward manner that their mother, being illiterate, never dealt with her properties without the assistance of any of her children.[86] To attest to this, they presented documents bearing the thumbmarks of their mother, where it appeared that at least one (1) of them was present to assist her.[87] These same

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[82] *Id*. at 21-22.

[83] *Id*.

[84] *Id*. at 22.

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

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

[87] *Id*. at 45.

documents, when compared with the contentious Deed of Absolute Sale, demonstrated the falsity of the thumbmarks appearing on the latter. Respondents' cause may have been supported by the general presumption that notarized documents were duly executed; however, this presumption must crumble in light of the significantly more compelling evidence presented by petitioners. As against petitioners' evidence, all that respondents presented was the testimony of the notarizing lawyer, whose own acts are clouded with suspicion.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The July 9, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 91767 is **REVERSED** and **SET ASIDE**. The May 31, 2005 Decision of the Regional Trial Court, Branch 19, Bacoor, Cavite in Civil Case No. BCV 97-183 is **REINSTATED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 203081. January 17, 2018]

LINDA CACHO, MINORS SARAH JANE, JACQUELINE, FIRE RINA and MARK LOUISE ALL SURNAMED CACHO, ALL REPRESENTED BY THEIR MOTHER AND GUARDIAN *AD LITEM* LINDA CACHO, *petitioners, vs.* **GERARDO MANAHAN, DAGUPAN BUS CO., INC., and RENATO DE VERA DOING BUSINESS UNDER THE NAME R. M. DE VERA CONSTRUCTION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; GENERALLY LIMITED TO QUESTIONS OF LAW; EXCEPT WHEN THE FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT ARE CONTRADICTORY; CASE AT BAR.— x x x [W]e must remember that a Rule 45 review is generally limited to questions of law. This limitation exists because we are not a trier of facts who undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are generally binding on this Court. However, there are exceptions, such as when the factual findings of the CA and the trial court are contradictory. Although the present petition substantially raises factual matters, we review the contrasting evaluation and conclusion by the RTC and the CA. An examination of the records shows that both the RTC and the CA had carefully considered the facts behind the case. On one hand, the RTC found that it was Manahan's negligence that was the proximate cause of the accident. The CA's position is that Cacho was driving recklessly as he traversed the bridge, so he was found negligent. Taken that the RTC and the CA have different positions on who was negligent, we now ascertain who between them is correct.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES IS ACCORDED GREAT WEIGHT AND RESPECT GIVEN THAT THE TRIAL JUDGE HAS THE UNIQUE OPPORTUNITY TO OBSERVE THE WITNESS FIRST HAND; CASE AT BAR.—x x x[T]he assessment of the trial court on the credibility of witnesses is accorded great weight and respect and even considered as conclusive and binding. Given that the trial judge has the unique opportunity to observe the witness first hand, he can be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief. In the case at bar, the RTC gave much credence to Camba's testimony as he was a passenger of the bus during the accident. Camba testified that the bus was travelling at a high speed even

if it was nearing the Embarcadero Bridge. x x x Although Dagupan Bus offered the testimony of one of its bus conductors to contradict Camba's version, we agree with the trial court that his testimony duly established the fact that Manahan was driving the bus at a high speed before they entered the bridge. This unbiased piece of evidence alone supports the RTC's conclusion that there was negligence on the part of Manahan. Absent any showing that the calibration of the credibility of the witness was flawed, we are bound by this assessment.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; *QUASI-DELICTS;* TEST TO DETERMINE THE EXISTENCE OF NEGLIGENCE; NEGLIGENCE, ESTABLISHED IN CASE AT BAR.— In *Picart v. Smith*, we laid down the test by which we determine the existence of negligence, *viz*: The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, then he is guilty of negligence.** The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that. x x x Using this test, Manahan was clearly negligent when he was relatively driving fast on a narrow highway and approaching a similarly narrow bridge. We must bear in mind that a bus is a significantly large vehicle which would be difficult to maneuver and stop if it were travelling at a high speed. On top of this, the time of the accident was on or about sunrise when visibility on the road was compromised. Manahan should have been more prudent and careful in his driving the bus especially considering that Dagupan Bus is a common carrier. Given the nature of the business and for reasons of public policy, the common carrier is bound "to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case."

4. ID.; ID.; ID.; AN EMPLOYER IS SOLIDARILY LIABLE WITH THE NEGLIGENT EMPLOYEE FOR THE

DAMAGES CAUSED BY THE LATTER; TO ESCAPE SOLIDARY LIABILITY, THE EMPLOYER MUST PROVE THAT IT EXERCISED THE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES; CASE AT BAR.— Having established Manahan's negligence, he is liable with Dagupan Bus to indemnify Cacho's heirs. Article 2180, in relation to Article 2176, of the Civil Code provides that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee there instantly arises a presumption of the law that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it had exercised the care and diligence of a good father of a family in the selection and supervision of his employee. x x x On this point, we are surprised at how prompt Dagupan Bus had allowed Manahan to drive one of its buses considering he had no prior experience driving one. The only time he was actually able to drive a bus was probably during his driving examination and a few more times while undergoing apprenticeship. We cannot simply brush aside and ignore Dagupan Bus' haste to hire Manahan; to our mind, this is negligence on its part.In addition, we noted that Manahan's apprenticeship record indicate that he is not fit to drive aircon buses nor to drive at night. That the accident happened early in the morning, when the visibility conditions are the same as driving at night, Manahan should not have been driving in the first place. Once more, Dagupan Bus' negligence is clear.

5. ID.; ID.; COMMON CARRIERS; EXTRAORDINARY DILIGENCE REQUIRED OF COMMON CARRIERS SHOULD EXTEND TO PEDESTRIANS AND THE OWNERS AND PASSENGERS OF OTHER VEHICLES WHO ARE EQUALLY ENTITLED TO THE SAFE USE OF ROADS AND HIGHWAYS.—While the immediate beneficiaries of the standard of extraordinary diligence are the passengers, they are not the only persons the law seeks to benefit. If we were to solely require this standard of diligence for a common carrier's passengers, this would be incongruent to the State's responsibility to curb accidents on the road. That common

carriers should carefully observe the statutory standard of extraordinary diligence in respect of their passengers, such diligence should similarly benefit pedestrians and the owners and passengers of other vehicles who are equally entitled to the safe and convenient use of our roads and highways.

APPEARANCES OF COUNSEL

Pizarras & Associates Law Office for petitioners.

Baltazar Servito for respondent Renato de Vera.

Anelyn C. Ciudadano and *Homer Elford M. Garong* for respondents Dagupan Bus Co., Inc. and Gerardo Manahan.

D E C I S I O N

MARTIRES, *J.*:

For resolution is the Petition for Review on Certiorari,[1] docketed as G.R. No. 203081, assailing the 22 March 2012 Decision[2] and the 3 August 2012 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 83499. The CA reversed the 26 January 2004 Decision[4] of the Regional Trial Court, Branch 55 of Alaminos, Pangasinan *(RTC)*, and dismissed the complaint for damages docketed as Civil Case No. A-2553.

THE FACTS

The present case arose from a complaint for damages filed by the petitioners, the wife and children of Bismark Cacho *(Cacho)*, against Gerardo Manahan *(Manahan)*, Dagupan Bus Co., Inc. (*Dagupan Bus*), and Renato de Vera *(De Vera)*, the owner of R.M. De Vera Construction *(De Vera Construction)*.

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[1] *Rollo*, pp. 9-38; Under Rule 45 of the Rules of Court.

[2] *Id*. at 41-53.

[3] *Id*. at 54-55.

[4] *Id*. at 56-88, penned by Judge Jules A. Mejia.

The records disclose that on 30 June 1999 a vehicular accident occurred along the national highway at Pogo, Alaminos, Pangasinan, near the Embarcadero Bridge. At around 5:00 A.M. on the said date, Cacho was driving a Nissan Sentra with Plate No. UAM 778 from Alaminos, Pangasinan to Bani, Pangasinan, when it collided with a Dagupan Bus, with Plate No. AVD 548, traversing on the opposite lane. The car had already crossed the bridge when it collided with the bus which was just about to enter the bridge. The collision caused heavy damage to the front of the bus, the total wreckage of the Nissan Sentra, Cacho's instant death, and multiple injuries to three (3) passengers inside the car.

The complaint alleged that Cacho's car was hit by the bus because the latter swerved to the left lane as it tried to avoid a pile of boulders placed on the shoulder of the road. These boulders were negligently placed by De Vera Construction contracted by the local government to do some work on the Embarcadero Bridge.

Dagupan Bus, the owner and operator of the bus, and Manahan, the bus driver, jointly filed their answer with counterclaim and cross-claims. They claimed that it was Cacho who drove fast coming from the bridge and bumped into the bus that was on full stop; and that Cacho had to swerve to the left because there were boulders of rocks scattered on his lane.

In their cross-claims, Dagupan Bus and Manahan argued that the proximate cause of the accident was because of De Vera Construction's negligence for leaving the boulders of rocks on both shoulders of the national highway. These rocks obstructed passage on the highway and posed an imminent danger to vehicles passing by. At the time of the accident, the rocks were piled on both shoulders and some rocks rolled down to both lanes of the highway.

In his answer with counterclaim, De Vera maintained that he ensured the safety of the road by piling the boulders in a safe place to make sure they did not encroach upon the road. He presented the municipality's local civil engineer to testify that he inspected the road and found that De Vera Construction

had complied with the safety measures. Like his co-defendants, De Vera blamed Cacho for driving recklessly and causing the collision with the bus.

The Ruling of the Trial Court

After thoroughly evaluating the evidence adduced by all the parties, the RTC held Dagupan Bus, Manahan, and De Vera jointly and severally liable to pay the petitioners:

1. Sixty Thousand (₱60,000) Pesos as reduced amount for burial and funeral expenses incurred by them as shown from the receipts;
2. Fifty Thousand (₱50,000) Pesos for loss of life;
3. Two Million (₱2,000,000) Pesos as the reduced amount for the loss of support of the [petitioners] had not [Cacho] meet his untimely death;
4. Another amount of moral damages in the reduced sum of Three Hundred Thousand (₱300,000) Pesos;
5. Exemplary damages in the reduced sum of One Hundred Thousand (₱100,000) Pesos;
6. Loss of earning capacity in the amount of One Million Six Hundred Eighty Thousand (₱1,680,000) Pesos; and
7. Attorney's fees in the sum of Two Hundred Thousand (₱200,000) Pesos.

For the total amount of Four Million Three Hundred Ninety Thousand (₱4,390,000) Pesos.[5]

Initially, the RTC did not believe that the bus was on full stop and that Cacho caused the collision, *viz*:

The Court cannot believe that the [bus] had stopped fully upon reaching the front portion of the bridge because Exhibit K shows that in fact the [bus] has encroached the lane as shown in Exhibit K-1 to mean therefore that the [bus] was not on full stop position when the incident happened but was moving. Likewise, Exhibit K shows the left portion, left front wheel of the [bus] was steered to the right

[5] *Id.* at 88.

which is clearly depicted in Exhibit J and also clearly shown in Exhibit I showing the front right wheel of the bus turned to the left side.

x x x x x x x x x

The Court cannot also believe that [Cacho] driving the Nissan Sentra was the one that bumped the [bus], the reason being that, if it was [Cacho] driving the car bumped the [bus], in this position shown in Exhibit F-2, how will the [bus], the defendant in this case explain the damage that he suffered as shown in Exhibit 3 which shows the front left portion of the bus having suffered damages at the line of the bus driver's seat, so that if there were two (2) vehicles running on opposite direction in this kind of impact the smaller vehicle, which is the Nissan Sentra could have been thrown to the left side of the bus (along the driver's line of seat) as shown in Exhibit 2 because if the [bus] was stationary and the Nissan Sentra was the one that bumped while running, the position of the Nissan Sentra car should not have been on the left but on the opposite direction in line with the front of the bus or slightly off the front of the bus and besides how can Dagupan Bus explain if indeed the bus was stationary at the time of the incident since it is shown that it has occupied outside its lane shown in Exhibit K-1.[6]

The RTC explained that Manahan was negligent in driving the bus because it was traversing at the speed of 80-100 KM/H and was about to enter a very narrow bridge.[7] In coming up with this finding, the trial court gave much credence and importance to the testimony of one Alvin Camba *(Camba)*, who was a passenger of the bus in this incident, over the testimony of Dagupan Bus' conductor.[8] Furthermore, the RTC stressed the negligence on the part of Manahan as he had the last clear chance to avoid the collision, to wit:

Another point. At 5:20 A.M., more or less, both vehicles should have still their lights on and since the [bus] is higher than the Nissan Sentra, the [bus] could have noticed the incoming car and could have the last clear chance to avoid the car, had [Manahan] exercised

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

[7] *Id*. at 84.

[8] *Id*. at 80-82.

extraordinary diligence by running the bus slowly since the width of the bridge is narrow and the car was already about to clear the bridge by crossing the span of the entire bridge. This was not done and neither was the last reasonable opportunity to avoid the impending harm exercise; such failure spells clearly the negligence of [Manahan].[9]

To add, applying the doctrine of *res ipsa loquitor*, the RTC concluded that Cacho could not have driven on Manahan's side of the road because the car he was driving was thrown to a position where the car's front was facing the left side of the bus.[10]

In the end, the trial court held that the proximate cause of the incident was the negligence of Manahan in driving the bus as well as the negligence on the part of De Vera for allowing his employees to place boulders near the bridge.[11] The RTC noted:

> The Court can also take Judicial Notice of the Embarcadero Bridge which is a very narrow bridge but the length is quite long that could hardly accommodate two (2) big vehicles crossing one another, except, if these vehicles are running at a very low speed.
>
> In Exhibit H and H-1 [De Vera] operating [De Vera Construction], had placed boulders/stones on the edge of the road which to the mind of the Court additionally hampers the flow of traffic and likewise shown in Exhibit I.[12]

The CA Ruling

In the assailed decision, the CA reversed the trial court's ruling, effectively dismissing the complaint for damages against Manahan, Dagupan Bus, and De Vera. Contrary to the trial court's findings, the CA did not believe that the bus was running very fast and that it suddenly swerved to the left to avoid the boulders. It held:

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[9] *Id*. at 82.

[10] *Id*.

[11] *Id*. at 84.

[12] *Id*. at 79.

Logic and the principles of force and momentum dictate that, if the [bus] was moving at a high speed until it collided with the Nissan Sentra, said bus would have traveled a farther distance from the point of collision especially considering its size and weight compared to the Nissan Sentra.

Moreover, if the [bus] swerved to its left while speeding until the time of collision, the bus would be occupying a bigger, if not, the entire portion of the opposite lane. Certainly, the Nissan Sentra which is a lighter and smaller vehicle could not have stopped the [bus'] force and momentum if [Manahan] was driving the bus very fast. As the evidence (Exhibit "2") shows, the Nissan Sentra was in a perpendicular position with its front portion rammed against the upper left portion of the bus.

Further, the evidence (Exhibit "K") shows that the [bus] was just situated at the approach of the bridge and in parallel position to the road notwithstanding the fact that its front tires were swerved to its left side. This is consistent with [Dagupan Bus and Manahan's] averment that the bus was at a full stop and waiting for the Nissan Sentra to cross the bridge so that it could in turn proceed.

Regarding the position of the front tires of the bus, to the mind of this Court, considering that the bridge is narrower than the road, the front tires had to be aimed to its left to compensate for the bus length before entering the narrow bridge. Furthermore, the [bus] had to encroach a portion of the opposite lane to avoid the boulders on its right side.

Notwithstanding the position of the bus, it cannot be said that the Dagupan Bus was the party liable for the collision. It must be emphasized that the [bus] still left a significant space to enable the vehicles coming from the opposite direction to safely pass the bridge and into the highway. As Exhibit "K" shows, there is approximately a 24-inch space between a passing red car and the [bus] and the red car had passed the bridge and traversed the highway and safely avoided the [bus] on its left with ease. Moreover, the picture (Exhibit "K") shows that the red car is being followed by a jeepney, which is evidently bigger than the red car and the subject Nissan Sentra, and presumably, the said jeepney was able to pass through the same space without difficulty.

Definitely, [Cacho] had a significant space to maneuver his car safely from the bridge and into the highway and pas[s] the [bus] on

its left. Unfortunately, the Nissan Sentra still collided with the [bus]. Despite the fact that the bus was at a full stop at the approach of the bridge and with enough space for other vehicles from the opposite lane to pass through, [Cacho] failed to avoid the [bus] and collided with [it]. Clearly, it was [Cacho] who drove the Nissan Sentra negligently or with lack of due care. [Cacho]'s negligence resulted in the collision which left his Nissan Sentra car lying perpendicular to the left side of the [bus] and with considerable damage to both the bus and his car, and, sadly, in his death.

x x x x x x x x x

In the case at bench, the proximate cause of the accident was clearly the negligence of [Cacho] in driving the Nissan Sentra. We are not ruling here on the liability of defendant [De Vera] who was found by the RTC to be solidarily liable with [Dagupan Bus and Manahan] because of his negligence in carelessly dumping the stone boulders on the road and which both the [bus] and the Nissan Sentra tried to avoid on their respective side of the highway. Be it noted that [De Vera] did not appeal from the RTC's decision.[13]

After their motion for reconsideration was denied, the petitioners filed the petition before this Court.

OUR RULING

The petition has merit.

At the onset, we must remember that a Rule 45 review is generally limited to questions of law.[14] This limitation exists because we are not a trier of facts who undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial.[15] The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and

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

[14] RULES OF COURT, Rule 45, Section 1. *Filing of petition with Supreme Court.* x x x The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law**, which must be distinctly set forth. x x x (emphasis supplied)

[15] *Maglana Rice and Corn Mill, Inc. v. Sps. Tan*, 673 Phil. 532, 539 (2011).

are generally binding on this Court.[16] However, there are exceptions, such as when the factual findings of the CA and the trial court are contradictory.[17]

Although the present petition substantially raises factual matters, we review the contrasting evaluation and conclusion by the RTC and the CA. An examination of the records shows that both the RTC and the CA had carefully considered the facts behind the case. On one hand, the RTC found that it was Manahan's negligence that was the proximate cause of the accident. The CA's position is that Cacho was driving recklessly as he traversed the bridge, so he was found negligent. Taken that the RTC and the CA have different positions on who was negligent, we now ascertain who between them is correct.

After review of the conclusions of fact and the evidence on record, we are inclined to side with the RTC's findings.

First, the assessment of the trial court on the credibility of witnesses is accorded great weight and respect and even considered as conclusive and binding. Given that the trial judge has the unique opportunity to observe the witness first hand, he can be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief.[18] In the case at bar, the RTC gave much credence to Camba's testimony as he was a passenger of the bus during the accident. Camba testified that the bus was travelling at a high speed even if it was nearing the Embarcadero Bridge:

Q: On June 30, 1999, at about 5:20 in the morning, will you tell us, Mr. Witness, where were you?

A: I was aboard the [bus] that was bound for Manila but I was going to Alaminos and it collided with a car, sir.

Q: Mr. Witness, do you know the number of the [bus] that you were riding?

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[16] *Id*. citing *FNCB Finance v. Estavillo*, 270 Phil. 630, 633 (1990).

[17] *Macalinao v. Ong*, 514 Phil. 127, 134 (2005); *Vallacar Transit, Inc. v. Catubig*, 664 Phil. 529, 542 (2011).

[18] *Cang v. Cullen*, 620 Phil. 403, 416 (2009).

A: 272, sir.

Q: What happened at Pogo, Alaminos, Pangasinan, Mr. Witness?
A: I noticed that the driver of the bus that I was riding was driving fast and it suddenly swerved to the left and then I heard a "bang" but I did not alight at once because I was bumped the seat in front and I was a little dizzy.

x x x x x x x x x

Q: You said, Mr. Witness, that the driver of the [bus] was driving very fast, is it not?
A: Yes, sir.

Q: Could you estimate the speed in terms of kilometers per hour?
A: Between 80 to 100 kilometers per hour, sir.

Q: And you sad that the bus suddenly swerved to the left, is it not?
A: Yes, sir.

x x x x x x x x x

Q: How far was the spot of the impact or the spot of the accident to the edge of the ridge?
A: From here… (witness demonstrating) a distance between 2-3 or 2 ½ meters.

Q: So we can safely say that the accident happened at the approach of the bridge coming from Bani?
A: Yes, madam.

x x x x x x x x x

Q: What part of the bus did you ride?
A: Right side, madam.

Q: How many seats?
A: Third seat, madam.

Q: When you were approaching the bridge, did you also see the car of Mr. Cacho coming?
A: I did not see the car approaching, madam.

Q: Were you sleeping at that time?
A: No, madam.

Q: Considering that it was 5:00 in the morning, the lights of the vehicle were on, you did not see the light of the car of Mr. Cacho?
A: When I saw it was immediately before the impact, it was followed by the sound of the impact.[19]

Although Dagupan Bus offered the testimony of one of its bus conductors to contradict Camba's version, we agree with the trial court that his testimony duly established the fact that Manahan was driving the bus at a high speed before they entered the bridge. This unbiased piece of evidence alone supports the RTC's conclusion that there was negligence on the part of Manahan. Absent any showing that the calibration of the credibility of the witness was flawed, we are bound by this assessment. As much as possible, we will sustain the trial court's findings unless it could be shown that it ignored, overlooked, misunderstood, misappreciated, or misapplied substantial facts and circumstances which, if considered, would materially affect the result of the case.[20] In this case, there is no such instance. The RTC's meticulous analysis deserves more credit because it is supported by the evidence on record.

We simply cannot adopt the CA's position that the bus was on full stop upon entering the bridge as this is based on speculation and contrary to evidence. Borne by the record, the impact of the collision resulted in the car being thrown about ninety (90) degrees counter-clockwise to the opposite lane before resting perpendicular to the road. The resulting position of the vehicle after the collision is incompatible with the conclusion that the bus was at full stop. Cacho's car would not be thrown off and be turned counter-clockwise to the opposite direction of its motion if there was no heavier and greater force that collided with it. This circumstance was duly established by the photographs of the scene taken after the accident.

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[19] TSN, 28 April 2000, pp. 3-15.

[20] *Gomez v. Gomez-Samson,* 543 Phil. 436, 464 (2007); *Ong v. Bogñalbal*, 533 Phil. 139, 154 (2006).

Second, negligence on the part of Manahan was also established by the photographs showing that he occupied Cacho's lane. Exhibits "I-1" and "J-1" would show that the front wheels of the bus were turned to the left. We can easily notice from Exhibits "K-1" and "L-1" that both the front and rear left wheels of the bus already occupied a portion of the opposite lane; leaving a smaller space for Cacho to safely exit the bridge. We also observe that there was enough space on the right side of the road because a man extending his two hands, as depicted in Exhibit "M", could fit between the right side of the bus and the shoulder of the road.

From these circumstances, therefore, we find that Manahan was clearly negligent because the bus he was driving already occupied a portion of the opposite lane, and he was driving at a high speed while approaching the bridge.

In *Picart v. Smith*,[21] we laid down the test by which we determine the existence of negligence, *viz*:

> The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, then he is guilty of negligence.** The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.
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> **The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case.** Abstract speculations cannot here be of much value but this much can be profitably said: **Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take**

[21] 37 Phil. 809 (1918).

care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. **Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist.** Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: **Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing conduct or guarding against its consequences.**[22] (emphases ours)

Using this test, Manahan was clearly negligent when he was relatively driving fast on a narrow highway and approaching a similarly narrow bridge. We must bear in mind that a bus is a significantly large vehicle which would be difficult to maneuver and stop if it were travelling at a high speed. On top of this, the time of the accident was on or about sunrise when visibility on the road was compromised. Manahan should have been more prudent and careful in his driving the bus especially considering that Dagupan Bus is a common carrier. Given the nature of the business and for reasons of public policy, the common carrier is bound "to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case."[23]

Moreover, we can also say that Manahan was legally presumed negligent under Article 2185 of the Civil Code, which provides: "unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was [in violation of] any traffic regulation."[24] Based on the place and time of the accident, Manahan was actually violating a traffic rule found in R.A. No. 4136, otherwise known as the Land Transportation and Traffic Code:

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[22] *Id*. at 813.

[23] Civil Code, Article 1733.

[24] See *Mendoza v. Gomez*, 736 Phil. 460, 475 (2014); *Gulliang v. Bedania*, 606 Phil. 57, 63 (2009); *Mendoza v. Soriano*, 551 Phil. 693, 701 (2007).

CHAPTER VI
TRAFFIC RULES

ARTICLE I
Speed Limit and Keeping to the Right

Section 35. *Restriction as to speed. –*

(a) Any person driving a motor vehicle on a highway shall drive the same **at a careful and prudent speed, not greater or less than is reasonable and proper, having due regard for the traffic, the width of the highway, and of any other condition then and there existing**; and no person shall drive any motor vehicle upon a highway at such speed as to endanger the life, limb and property of any person, **nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead**. (emphasis and underlining ours)

(b) Subject to the provisions of the preceding paragraph, the rate of speed of any motor vehicle shall not exceed the following:

MAXIMUM ALLOWABLE SPEEDS	Passenger Cars and Motorcycle	Motor trucks and buses
1. On open country roads, with no "blind corners" not closely bordered by habitations.	80 km. per hour	50 km. per hour
2. On "through streets" or boulevards, clear of traffic, with no "blind corners," when so designated.	40 km. per hour	30 km. per hour
3. On city and municipal streets, with light traffic, when not designated "through streets."	30 km. per hour	30 km. per hour
4. Through crowded streets, approaching intersections at "blind corners," passing school zones, passing other vehicles which are stationary, or for similar dangerous circumstances.	20 km. per hour	20 km. per hour

Considering that the bus was already approaching the Embarcadero Bridge, Manahan should have already slowed down a few meters away from the bridge. Actually, he should have stopped farther away from the bridge because he would have been able to see that Cacho's car was already crossing the bridge. An experienced and competent bus driver would be able to know how to properly react upon seeing another vehicle ahead that is about to exit a narrow bridge. Obviously, Manahan failed to do so.

Having established Manahan's negligence, he is liable with Dagupan Bus to indemnify Cacho's heirs. Article 2180, in relation to Article 2176, of the Civil Code provides that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee there instantly arises a presumption of the law that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it had exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to escape solidary liability, for a quasi-delict committed by its employees, an employer must overcome the presumption by presenting convincing proof that it exercised the care and diligence of a good father of a family in the selection and supervision of its employees.[25]

When an employee causes damage due to his own negligence while performing his own duties, the *juris tantum* presumption arises that his employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family. In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. With respect to the supervision of employees, employers

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[25] *Travel & Tours Advisers, Inc. v. Cruz*, G.R. No. 199282, 14 March 2016, 787 SCRA 297, 317 citing *Baliwag Transit, Inc. v. CA*, 330 Phil. 785, 789-790 (1996) further citing *China Air Lines, Ltd. v. CA*, 264 Phil. 15, 26 (1990).

must formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence.[26]

A closer scrutiny of the evidence presented to overcome this presumption would show that Dagupan Bus failed in this regard. It would seem that Manahan applied with Dagupan Bus sometime in April 1999.[27] In his application form, he stated that prior to his employment with Dagupan Bus, he was a truck driver. Along with his application, Manahan was required to submit the following documents: 2x2 ID pictures, recommendation letter, NBI clearance, SSS E-1 form, TIN number, barangay clearance, residence certificate, driver's license, and birth certificate.[28]

Finding his requirements to be complete, Manahan was cleared for actual driving and a written examination. On 10 May 1999, Manahan passed his driving examination, but the examiner noted his slow reaction in stopping.[29] Manahan's written examination also points out that he cannot recognize traffic signs indicating a narrow road.[30] After undergoing shop training, Manahan underwent a seven (7)-day apprentice training which he completed on 7 June 1999.[31] A few days after, or on 21 June 1999, Dagupan Bus gave Manahan clearance to report for duty as a bus driver.[32]

On this point, we are surprised at how prompt Dagupan Bus had allowed Manahan to drive one of its buses considering he had no prior experience driving one. The only time he was actually

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[26] *Davao Holiday Transport Services Corporation v. Spouses Emphasis*, 748 Phil. 921, 925 (2014) citing *Cang v. Cullen*, *supra* note 18 at 421.

[27] Exhibit folder; Exhibits "6-S", "6-T", and "6-U".

[28] *Id*.; Exhibit "6-K".

[29] *Id*.; Exhibit "6-LL".

[30] *Id*.; Exhibits "6-JJ" and "6-KK".

[31] *Id*.; Exhibits "6-OO" and "6-PP".

[32] *Id*.; Exhibit folder, Exhibit "6-F".

able to drive a bus was probably during his driving examination and a few more times while undergoing apprenticeship. We cannot simply brush aside and ignore Dagupan Bus' haste to hire Manahan; to our mind, this is negligence on its part.

In addition, we noted that Manahan's apprenticeship record indicate that he is not fit to drive aircon buses nor to drive at night. That the accident happened early in the morning, when the visibility conditions are the same as driving at night, Manahan should not have been driving in the first place. Once more, Dagupan Bus' negligence is clear.

While the immediate beneficiaries of the standard of extraordinary diligence are the passengers, they are not the only persons the law seeks to benefit. If we were to solely require this standard of diligence for a common carrier's passengers, this would be incongruent to the State's responsibility to curb accidents on the road. That common carriers should carefully observe the statutory standard of extraordinary diligence in respect of their passengers, such diligence should similarly benefit pedestrians and the owners and passengers of other vehicles who are equally entitled to the safe and convenient use of our roads and highways.[33]

All said, finding both Manahan and Dagupan Bus negligent in meeting their responsibilities, the RTC was correct in awarding damages in favor of Cacho's heirs. Clearly, the CA committed a reversible error.

Further, we noticed that the RTC failed to provide for the interest required of the award. Since the damages imposed were the result of a complaint for damages based on a quasi-delict, the interest on these awards must be computed from the date when the RTC rendered its decision in the civil case, or on 26 January 2004, as it was at this time that a quantification of the damages may be deemed to have been reasonably

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[33] See *Kapalaran Bus Line v. Coronado*, 257 Phil. 797, 808 (1989).

ascertained.[34] From the finality of a judgment awarding a sum of money until it is satisfied, the award shall be considered a forbearance of credit, regardless of whether the award in fact pertained to one.[35] To be consistent with the foregoing, the interest on the monetary awards shall then be fixed at six percent (6%) per annum, until the damages are fully paid.

WHEREFORE, the foregoing premises considered, the present petition is **GRANTED**. The 22 March 2012 Decision and the 3 August 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 83499 are **REVERSED** and **SET ASIDE** and the 26 January 2004 Decision of the Regional Trial Court, Branch 55, Alaminos, Pangasinan in Civil Case No. A-2553 is **REINSTATED** with the following **MODIFICATION**: Gerardo Manahan, Dagupan Bus Co., and Renato De Vera are solidarily ordered to pay interest on the monetary awards in favor of the petitioners at the rate of six percent (6%) per annum, to be computed from 26 January 2004.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

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[34] *Philtranco Service Enterprises, Inc. v. Paras*, 686 Phil. 736, 753 (2012); *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 454 (2011).

[35] *S.C. Megaworld Construction and Development Corporation v. Parada*, 717 Phil. 752, 773 (2013).

THIRD DIVISION

[G.R. No. 203298. January 17, 2018]

INTERLINK MOVIE HOUSES, INC. and EDMER Y. LIM, *petitioners, vs.* **HONORABLE COURT OF APPEALS, STATIONERY EXPRESSIONS SHOP, INC. and JOSEPHINE LIM BON HUAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS *IN PERSONAM*; THE COURT ACQUIRES JURISDICTION OVER A DEFENDANT IN A CIVIL CASE EITHER THROUGH SERVICE OF SUMMONS OR THROUGH DEFENDANT'S VOLUNTARY APPEARANCE IN COURT AND SUBMISSION TO ITS AUTHORITY.— It is settled that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. In the absence of service or when the service of summons upon the person of the defendant is defective, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void. In actions *in personam,* such as collection for a sum of money and damages, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons.

2. ID.; ID.; ID.; SERVICE OF SUMMONS; PERSONAL SERVICE DISTINGUISHED FROM SUBSTITUTED SERVICE; THE COURT HELD THAT BEFORE A SHERIFF MAY RESORT TO SUBSTITUTED SERVICE, HE MUST FIRST ESTABLISH THE IMPOSSIBILITY OF PROMPT PERSONAL SERVICE.— Personal service is effected by handling a copy of the summons to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. If the defendant is a domestic private juridical entity, service may be made on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It has been held that this enumeration is exclusive. Service on a domestic private juridical entity must, therefore, be made only on the person expressly listed in Section 11, Rule 14 of

the Rules of Court. If the service of summons is made upon persons other than those officers enumerated in Section 11, the same is invalid. x x x It is settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time. In such cases, substituted service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with a competent person in charge. Because substituted service is in derogation of the usual method of service, and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons. In *Manotoc v. Court of Appeals,* the Court held that before a sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To establish such impossibility, there must be at least three (3) attempts, preferably on at least two different dates, to personally serve the summons within a reasonable period of one (1) month or eventually result in failure. The sheriff must further cite why such efforts are unsuccessful. x x x Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. They are enjoined to make their best efforts to accomplish personal service on defendant. Sheriff Muriel clearly failed to meet this requirement.

3. **ID.; ID.; ID.; VOLUNTARY SUBMISSION TO THE TRIAL COURT'S JURISDICTION; AS A RULE, ONE WHO SEEKS AN AFFIRMATIVE RELIEF IS DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THE COURT; EXCEPTION.—** As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Thus, it has been held that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be

considered to have submitted to its authority. As summarized by the Court in *Philippine Commercial International Bank v. Spouses Dy,* a special appearance operates as an exception to the general rule on voluntary appearance. Such special appearance, however, requires that the defendant must explicitly and unequivocably pose objections to the jurisdiction of the court over his person; otherwise, such failure would constitute voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution. x x x A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalid service of summons is not deemed to have submitted itself to the jurisdiction of the court.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioners.
Generosa R. Jacinto Law Firm for respondents.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari seeking to reverse and set aside the 17 May 2012 Decision[1] and the 6 September 2012 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 116221, which nullified the 15 September 2010 Decision[3] of the Regional Trial Court, Branch 167, Pasig City *(RTC),* in Civil Case No. 71732.

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[1] *Rollo,* pp. 228-238, penned by Associate Justice Manuel M. Barrios, and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Apolinario D. Bruselas, Jr.

[2] *Id*. at 281-283, penned by Associate Justice Manuel M. Barrios, and concurred in by Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Agnes Reyes-Carpio.

[3] Records, pp. 139-143; penned by Judge Rolando G. Mislang.

THE FACTS

On 22 July 2008, petitioner Interlink Movie Houses, Inc. *(Interlink),* represented by its president, petitioner Edmer Y. Lim *(Lim),* filed before the RTC a complaint for sum of money and damages against respondents Expressions Stationery Shop, Inc. *(Expressions),* a corporation duly organized and existing under the laws of the Republic of the Philippines, and Joseph Lim Bon Huan *(Bon Huan).*[4] Interlink sought from Expressions the recovery of the latter's unpaid rentals and damages resulting from its alleged breach of their lease contract.

In the Sheriff's Return,[5] dated 26 September 2008, Sheriff Benedict R. Muriel *(Sheriff Muriel)* of the RTC's Branch 167 certified that on 24 September 2008, he served the summons issued in the subject case, together with the copy of the complaint, on the respondents at the office of the defendant company's president through a certain Jonalyn Liwanan *(Liwanan)*. Sheriff Muriel stated that Liwanan undertook to forward the said documents to her superior.

On 5 January 2009, Interlink filed a motion to declare herein respondents in default for their failure to file their answer.[6]

On 6 January 2009, respondents entered a special appearance through Atty. Generosa Jacinto *(Atty. Jacinto)* alleging that the service of the summons was defective and, as such, the RTC did not acquire jurisdiction over them. They further prayed that Interlink's motion for declaration of default be denied.[7]

Thus, in its Order,[8] dated 2 March 2009, the RTC denied Interlink's motion to declare defendants in default. The trial court agreed that the summons was not served in accordance with Section 11, Rule 14 of the Rules of Court rendering such

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[4] *Id*. at 1-14.

[5] *Id*. at 31.

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

[7] *Id*. at 35-39.

[8] *Id*. at 49-50; Penned by Judge Rolando G. Mislang.

service defective. Thus, it ordered the issuance and service of summonses to the respondents.

In the Sheriff's Return,[9] dated 15 May 2009, Sheriff Muriel certified that on 11 May 2009, he served the summons on Expressions at the office of its president, Bon Huan, through a certain Amee Ochotorina *(Ochotorina)*, a person of suitable age and discretion, who introduced herself as one of the secretaries of Bon Huan. Sheriff Muriel added that Ochotorina assured him that the summons would be brought to the attention of Bon Huan. He added that he had insisted that the summons be received personally by Bon Huan, but Ochotorina refused and told him that Bon Huan was then attending to some business matters.

On 25 June 2009, Interlink filed another motion to declare defendants in default.[10] To this motion, respondent again entered a special appearance through Atty. Jacinto on 10 July 2009. The respondents alleged that the second service of the summons was still defective because Ochotorina did not work for nor was connected with the office of the president of Expressions, and that she was neither its president, managing partner, general manager, corporate secretary, treasurer, nor its in-house counsel.[11]

In the Order,[12] dated 10 February 2010, the RTC granted the motion to declare defendants in default and allowed Interlink to present evidence *ex parte*. The trial court was convinced that there was sufficient compliance with the rules on service of summons to a juridical entity considering that the summons was received by the assistant/secretary of the president. The trial court further stated that corporate officers are usually busy and as such, summons to corporations are usually received only by assistants or secretaries of corporate officers.

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[9] *Id*. at 53.

[10] *Id*. at 54-55.

[11] *Id*. at 60-68.

[12] *Id*. at 76-78.

On 5 March 2010, the respondents, on special appearance through Atty. Jacinto, filed an omnibus motion wherein they prayed that the 10 February 2010 order be recalled. The respondents insisted that the second service of summons did not vest upon the trial court jurisdiction over their persons.[13]

In its Order,[14] dated 9 August 2010, the RTC denied the respondents' omnibus motion. Thereafter, Interlink proceeded with its *ex parte* presentation of evidence.

The RTC Ruling

In its decision, the RTC ruled in favor of Interlink. It opined that Interlink was able to prove its claims against Expressions and Bon Huan. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered in favour of plaintiff and against the defendants ordering the latter to pay the former jointly and severally the following:
>
> a. The sum of Php600,000.00 for the unpaid use of the 1,000 square meters which defendant has unlawfully occupied for (4) months at the rate of Php150.00 per square meter with the interest of 12% per annum from the time of filing of the complaint until full payment;
>
> b. The sum of PhP242,676.00 for the use of the leased premises from June to July 2008 with 12% interest per annum from the time of the filing of the complaint until full payment;
>
> c. The sum of PhP300,000.00 as actual damages;
>
> d. Costs of suit.
>
> SO ORDERED.[15]

Aggrieved, the respondents filed a petition for certiorari under Rule 65 of the Rules of Court before the CA.[16]

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[13] *Id*. at 109-120.

[14] *Id*. at 136-138.

[15] *Id*. at 143.

[16] *Rollo,* pp. 112-144.

The CA Ruling

In its assailed decision, dated 17 May 2012, the CA annulled the RTC decision. The appellate court ruled that the second service of summons was still defective, and the trial court did not acquire jurisdiction over the persons of the respondents, thus rendering the RTC decision void. The dispositive portion of the CA decision states:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed Orders dated 09 August 2010 and 10 February 2010 and the Decision dated 15 September 2010 of the Regional Trial Court, Branch 167 of Pasig City in Civil Case No. 71732 are REVERSED and SET ASIDE.
>
> Respondent court is instructed to issue alias Summonses on the defendants therein and to direct the Branch Sheriff to serve the same in a valid and effective manner in accordance with the provisions of the Rules of Court.
>
> SO ORDERED.[17]

Interlink moved for reconsideration, but the same was denied by the CA in its resolution, dated 6 September 2012.

Hence, this petition.

THE ISSUE

WHETHER THE APPELLATE COURT ERRED WHEN IT RULED THAT THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE PERSONS OF THE RESPONDENTS.

OUR RULING

The appeal has no merit.

No valid service of summons

It is settled that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority.

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[17] *Id*. at 237-238.

In the absence of service or when the service of summons upon the person of the defendant is defective, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void.[18]

In actions *in personam,* such as collection for a sum of money and damages, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons.[19]

Personal service is effected by handling a copy of the summons to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.[20] If the defendant is a domestic private juridical entity, service may be made on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.[21] It has been held that this enumeration is exclusive.[22] Service on a domestic private juridical entity must, therefore, be made only on the person expressly listed in Section 11, Rule 14 of the Rules of Court.[23] If the service of summons is made upon persons other than those officers enumerated in Section 11, the same is invalid.[24]

There is no dispute that respondent Expressions is a domestic corporation duly existing under the laws of the Republic of the Philippines, and that respondent Bon Huan is its president. Thus, for the trial court to acquire jurisdiction, service of summons to it must be made to its president, Bon Huan, or to its managing partner, general manager, corporate secretary, treasurer, or in-

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[18] *Spouses Belen v. Judge Chavez,* 573 Phil. 58, 67 (2008).

[19] *Tam-Wong v. Factor-Koyama,* 616 Phil. 239, 250 (2009).

[20] RULES OF COURT, Rule 14, Section 6.

[21] RULES OF COURT, Rule 14, Section 11.

[22] *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.,* 738 Phil. 37, 57 (2014).

[23] *Green Star Express, Inc. v. Nissin-Universal Robina Corporation,* 763 Phil. 27, 29 (2015).

[24] *Paramount Insurance Corp. v. A.C. Ordoñez Corporation and Franklin Suspine,* 583 Phil. 321, 327 (2008).

house counsel. It is further undisputed that the questioned second service of summons was made upon Ochotorina, who was merely one of the secretaries of Bon Huan, and clearly, not among those officers enumerated under Section 11 of Rule 14. The service of summons upon Ochotorina is thus void and, therefore, does not vest upon the trial court jurisdiction over Expressions.

Even assuming *arguendo* that the second service of summons may be treated as a substituted service upon Bon Huan as the president of Expressions, the same did not have the effect of giving the trial court jurisdiction over the respondents.

It is settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time. In such cases, substituted service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with a competent person in charge.[25] Because substituted service is in derogation of the usual method of service, and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons.[26]

In *Manotoc v. Court of Appeals,*[27] the Court held that before a sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To establish such impossibility, there must be at least three (3) attempts, preferably on at least two different dates, to personally serve the summons within a reasonable period of one (1) month or eventually result in failure. The sheriff must further cite why such efforts are unsuccessful.

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[25] RULES OF COURT, Rule 14, Section 7; *Sps. Jose v. Sps. Boyon,* 460 Phil. 354, 363 (2003).

[26] *Carson Realty & Management Corporation v. Red Robin Security Agency,* G.R. No. 225035, 08 February 2017.

[27] 530 Phil. 454 (2006).

In this case, the impossibility of prompt personal service was not shown. The 15 May 2009 sheriffs return reveals that Sheriff Muriel attempted to serve the second summons personally only once on 11 May 2009. Clearly, the efforts exerted by Sheriff Muriel were insufficient to establish that it was impossible to personally serve the summons promptly. Further, Sheriff Muriel failed to cite reasons why personal service proved ineffectual. He merely stated that Ochotorina told him that Bon Huan was then attending to business matters, and that he was assured that the summons would be brought to the attention of Bon Huan.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. They are enjoined to make their best efforts to accomplish personal service on defendant.[28] Sheriff Muriel clearly failed to met this requirement.

No voluntary submission to the jurisdiction of the trial court

It must be recalled that the respondents filed an omnibus motion to recall the trial court's order granting Interlink's motion for declaration of default and for allowance of *ex parte* presentation of evidence.

As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.[29] Thus, it has been held that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction.[30] This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance

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[28] *Prudential Bank v. Magdamit, Jr.,* 746 Phil. 649, 660 (2014).

[29] *Galicia, et al. v. Manliquez, et al.,* 549 Phil. 595, 606 (2007).

[30] *Planters Development Bank v. Chandumal,* 694 Phil. 411, 422 (2012).

to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.[31]

As summarized by the Court in *Philippine Commercial International Bank v. Spouses Dy*[32] a special appearance operates as an exception to the general rule on voluntary appearance. Such special appearance, however, requires that the defendant must explicitly and unequivocably pose objections to the jurisdiction of the court over his person; otherwise, such failure would constitute voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

At first glance, the respondents may be seen to have submitted themselves to the jurisdiction of the RTC. Indeed, said omnibus motion, which is essentially a motion to lift order of default, prayed for an affirmative relief which would not be possible if the movant does not recognize the jurisdiction of the court.

Nevertheless, a reading of the said omnibus motion reveals that the respondents expressly stated that the said omnibus motion was filed on special appearance. Further, the respondents explicitly objected, in an equivocal manner, to the jurisdiction of the RTC on the ground of invalid service of summons. Measured against the requirements enunciated in *Philippine Commercial International Bank,* the Court is convinced that the respondents never recognized and did not acquiesce to the jurisdiction of the RTC. A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalid service of summons is not deemed to have submitted itself to the jurisdiction of the court.[33]

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[31] *Hongkong and Shanghai Banking Corporation Limited v. Catalan,* 483 Phil. 525, 543 (2004); *Casimina v. Legaspi, et al.,* 500 Phil. 560, 570 (2005).

[32] 606 Phil. 615 (2009).

[33] *Orion Security Corporation v. Kalfam Enterprises, Inc.,* 550 Phil. 711, 717-718 (2007).

From the foregoing, it is clear that the trial court failed to acquire jurisdiction over the respondents either by valid service of summons or by their voluntary appearance. Necessarily, the proceedings before the RTC in Civil Case No. 71732 are void with respect to the respondents. Thus, the CA did not err when it nullified the 9 August 2010 and 10 February 2010 Orders, and the 15 September 2010 Decision of the RTC.

WHEREFORE, the present petition is **DENIED** for lack of merit. The 17 May 2012 Decision and the 6 September 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116221 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 206079-80. January 17, 2018]

PHILIPPINE AIRLINES, INC. (PAL), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 206309. January 17, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE AIRLINES, INC. (PAL),** *respondent.*

SYLLABUS

1. **TAXATION; REPUBLIC ACT NO. 1125, AS AMENDED; COURT OF TAX APPEALS; HAS EXCLUSIVE APPELLATE JURISDICTION OVER TAX REFUND CLAIMS THAT WERE NOT ACTED UPON BY THE COMMISSIONER OF BUREAU OF INTERNAL REVENUE; ITS REVIEW COVERS FACTUAL FINDINGS AND MAY CONSIDER NEW AND ADDITIONAL EVIDENCE TO PROVE CLAIMS FOR TAX REFUND; CASE AT BAR.—** Republic Act No. 9282, amending Republic Act No. 1125, is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them. x x x This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling. The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record. x x x In the case at bar, the Commissioner failed to act on PAL's administrative claim. If she had acted on the refund claim, she could have directed PAL to submit the necessary documents to prove its case. Furthermore, considering that the refund claim will be litigated anew in the Court of Tax Appeals, the latter may consider all pieces of evidence formally offered by PAL, whether or not they were submitted in the administrative level.

2. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; CASE AT BAR.—** This Court maintains the factual findings of the Court of Tax Appeals Special First Division and En Banc. [I]n bringing forth the issue of remittance, the parties are raising a question of fact which is not within the scope of review on *certiorari* under a Rule 45 Petition. An appeal under Rule 45 must raise only questions of

law. There is a question of law when it seeks to determine whether or not the legal conclusions of the lower courts from a given set of facts are correct, i.e. what is the law, given a particular set of circumstances? On the other hand, there is a question of fact when the issue involves the truth or falsity of the parties' allegations. The test in determining if an issue is a question of law or fact is whether or not there is a need to evaluate evidence to resolve the issue. If there is a need to review the evidence or witnesses, it is a question of fact. If there is no need, it is a question of law. As stated, this Court will no longer entertain questions of fact in appeals under Rule 45. The factual findings of the lower courts are accorded respect and are beyond this Court's review.

3. TAXATION; PRESIDENTIAL DECREE NO. 1590 (PAL'S CHARTER); PAL IS EXEMPT FROM TAX ON INTEREST INCOME EARNED FROM BANK DEPOSITS; ANY EXCESS PAYMENT OVER TAXES SHALL BE REFUNDED OR CREDITED AGAINST ITS LIABILITY FOR THE SUCCEEDING TAXABLE YEAR. – x x x [T]his Court rules that PAL is entitled to its claim for refund for taxes withheld by Chinabank, PBCom, and Standard Chartered. ***Remittance need not be proven.*** PAL needs only to prove that taxes were withheld from its interest income. x x x PAL is uncontestedly exempt from paying the income tax on interest earned. x x x Presidential Decree No. 1590 and PAL's tax exemptions subsist. Necessarily, PAL remains exempt from tax on interest income earned from bank deposits. Moreover, Presidential Decree No. 1590 provides that any excess payment over taxes due from PAL's shall either be refunded or credited against its tax liability for the succeeding taxable year. x x x Thus, PAL is entitled to a tax refund or tax credit if excess payments are made on top of the taxes due from it. Considering that PAL is not liable to pay the tax on interest income from bank deposits, any payments made for that purpose are in excess of what is due from it. Thus, if PAL erroneously paid for this tax, it is entitled to a refund.

4. ID.; BUREAU OF INTERNAL REVENUE; REVENUE REGULATIONS 09-28; INCOME SUBJECT TO FINAL WITHHOLDING TAX SHALL BE REMITTED TO THE BIR BY THE WITHHOLDING AGENT; ANY DEFICIENCY IN THE AMOUNT OF THE TAX

WITHHELD IS THE LIABILITY OF THE WITHHOLDING AGENT; CASE AT BAR.— When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. Thus, the liability for remitting the tax is on the withholding agent: Under Revenue Regulations No. 02-98, Section 2.57: Section 2.57. *Withholding of Tax at Source (A) Final Withholding Tax.* — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. *The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.* Clearly, the withholding agent is the payor liable for the tax, and any deficiency in its amount shall be collected from it. Should the Bureau of Internal Revenue find that the taxes were not properly remitted, its action is against the withholding agent, and not against the taxpayer. x x x In the case at bar, PAL is the income earner and the payee of the final withholding tax, and the Agent Banks are the withholding agents who are the payors responsible for the deduction and remittance of the tax. Given the above provisions, the failure of the Agent Banks to remit the amounts does not affect and should not prejudice PAL. In case of failure of remittance of taxes, the Bureau of Internal Revenue's cause of action is against the Agent Banks. Thus, PAL is not obliged to remit, let alone prove the remittance of, the taxes withheld.

5. ID.; PRESIDENTIAL DECREE NO. 1590 (PAL'S CHARTER); FOR PAL TO CLAIM A TAX REFUND UNDER ITS CHARTER, IT ONLY NEEDS TO PROVE THAT TAXES WERE WITHHELD, NOT NECESSARILY REMITTED; CERTIFICATES OF FINAL TAXES WITHHELD ISSUED BY AGENT BANKS ARE SUFFICIENT EVIDENCE TO ESTABLISH THE WITHHOLDING OF TAXES.— To claim a refund, this Court rules that PAL needs only to prove that taxes were withheld. Taxes withheld by the withholding agent are deemed to be the full and final payment of the income tax due from the income earner or payee. x x x Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence

> to establish the withholding of the taxes. x x x Considering that these Certificates were presented, the burden of proof shifts to the Commissioner, who needs to establish that they were incomplete, false, or issued irregularly. However, the Commissioner did no such thing. Thus, these Certificates are sufficient evidence to establish the withholding of the taxes. The taxes withheld from PAL are considered its full and final payment of taxes. Necessarily, when taxes were withheld and deducted from its income, PAL is deemed to have paid them. Considering that PAL is exempted from paying the withholding tax, it is rightfully entitled to a refund.

APPEARANCES OF COUNSEL

Office of the Solicitor General for Commissioner of Internal Revenue.

Pal Legal Affairs Department for Philippine Airlines, Inc.

D E C I S I O N

LEONEN, *J.*:

Before this Court are two (2) consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court assailing the August 14, 2012 Decision[1] and February 25, 2013 Resolution[2] of the Court of Tax Appeals En Banc in CTA EB Nos. 749 and 757 (CTA Case No. 6877).

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[1] *Rollo* (G.R. No. 206309), pp. 30-45, Decision of the Court of Tax Appeals *En Banc*. The Decision was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the Court of Tax Appeals, Quezon City.

[2] *Id*. at 48-54, Resolution of the Court of Tax Appeals *En Banc*. The Resolution was penned by Associate Justice Erlinda P. Uy and concurred in by Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino,

These consolidated cases stem from a refund claim by Philippine Airlines, Inc. (PAL) for final taxes withheld on its interest income from its peso and dollar deposits with China Banking Corporation (Chinabank), JP Morgan Chase Bank (JPMorgan), Philippine Bank of Communications (PBCom), and Standard Chartered Bank (Standard Chartered) (collectively, Agent Banks).[3]

G.R. Nos. 206079-80 involves the Petition filed by PAL questioning the denial of its claim for refund of ₱510,233.16 and US$65,877.07, representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.[4]

Meanwhile, G.R. No. 206309 involves the Petition filed by the Commissioner of Internal Revenue (Commissioner) assailing the grant to PAL of the tax refund of ₱1,237,646.43, representing the final income tax withheld and remitted by JPMorgan.[5]

PAL asserts that it is entitled to a refund of the withheld taxes because it is exempted from paying the tax on interest income under its franchise, Presidential Decree No. 1590.[6] However, the Commissioner refused to grant the claim, arguing that PAL failed to prove the remittance of the withheld taxes to the Bureau of Internal Revenue.[7]

Thus, the issue involves whether or not PAL is required to prove the *remittance* to the Bureau of Internal Revenue of the final withholding tax on its interest from currency bank deposits to be entitled to tax refund.

The Court of Tax Appeals Special First Division ordered the refund to PAL of ₱1,237,646.43 representing the final income

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Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the Court of Tax Appeals, Quezon City.

[3] *Id*. at 103, Decision of the Court of Tax Appeals Special First Division.

[4] *Rollo* (G.R. Nos. 206079-80), pp. 35-52, Petition for Review on *Certiorari*.

[5] *Rollo* (G.R. No. 206309), pp. 7-27.

[6] *Id*. at 34.

[7] *Id*. at 14.

tax withheld and remitted by JPMorgan on PAL's interest income. However, it denied the refund of ₱510,223.16 and US$65,877.07, representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.[8] The Court of Tax Appeals En Banc affirmed the Decision of the Court of Tax Appeals Special First Division.[9]

The facts are as follows:

Sometime in 2002, PAL made US dollar and Philippine peso deposits and placements in the following Philippine banks: Chinabank, JPMorgan, PBCom, and Standard Chartered.[10]

PAL earned interest income from these deposits and the Agent Banks deducted final withholding taxes.[11]

From Chinabank, PAL claimed that it earned interest income net of withholding tax in the amount of US$480,688.76 in its US dollar time deposit for the year 2002.[12] Substantiating this claim was Chinabank's Certification dated October 24, 2003,[13] which stated that withholding taxes were deducted from PAL's interest income in the amount of US$38,974.75. These taxes were remitted to the Bureau of Internal Revenue on different dates from February 11, 2002 to January 10, 2003.[14]

From JPMorgan, PAL alleged that it earned interest income in its peso deposit in the amount of ₱6,188,232.17, from September 2002 to December 2002. JPMorgan deducted withholding tax totalling ₱1,237,646.43.[15]

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[8] *Id*. at 116.

[9] *Id*. at 44.

[10] *Id*. at 32.

[11] *Id*.

[12] *Id*.

[13] Signed by China Banking Corporation's Senior Manager, International Banking Group, Wilfredo A. Quijencio.

[14] *Rollo* (G.R. No. 206309), p. 32.

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

From PBCom, PAL maintained that it earned interest income from its various dollar placements for the year 2002, with the following corresponding final taxes withheld:[16]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
1st Quarter	US$ 102,648.40	US$ 7,698.63
2nd Quarter	US$ 22,653.20	US$ 1,698.00
3rd Quarter	US$ 40,123.73	US$ 3,009.28
4th Quarter	US$ 107,163.73	US$ 8,037.28
TOTAL	US$ 272,589.06	US$ 20,443.19

PAL's peso deposit account with PBCom also allegedly earned interest income for the year 2002, with the following corresponding final taxes withheld:[17]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
2nd Quarter	₱ 541,758.42	₱108,351.67
3rd Quarter	₱ 2,009,357.41	₱401,871.46
TOTAL	₱ 2,551,115.83	₱510,223.13

A letter dated April 10, 2003 from PBCom's Branch Manager, Carmencita L. Tan, stated that the taxes withheld from PAL's interest income had been remitted by PBCom to the Bureau of Internal Revenue.[18]

From Standard Chartered, PAL stated that it earned interest income in its dollar time deposit account from May 2002 to December 2002, amounting to US$86,107.55. The amount of US$6,458.14 was deducted and allegedly remitted to the Bureau of Internal Revenue as final withholding tax.[19]

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[16] *Id.* at 33.

[17] *Id.*

[18] *Id.*

[19] *Id.*

Claiming that it was exempt from final withholding taxes under its franchise, Presidential Decree No. 1590, PAL filed with the Commissioner on November 3, 2003 a written request for a tax refund[20] of the withheld amounts of ₱1,747,869.59 and US$65,877.07.[21]

The Commissioner failed to act on the request. Thus, on February 24, 2004, PAL elevated the case to the Court of Tax Appeals in Division.[22]

In her Answer, the Commissioner contended that PAL's claim was subject to administrative routinary investigation or examination by the Bureau of Internal Revenue. She also alleged that PAL's claim was not properly documented, and that it must show that it complied with the prescriptive period for filing refunds under Sections 204(C) and 229 of the National Internal Revenue Code. It likewise asserted that claims for refund are of the same nature as a tax exemption, and thus, are strictly construed against the claimant.[23]

PAL presented evidence to support its claim. The Commissioner then submitted the case for decision based on the pleadings.[24]

In its November 9, 2010 Decision,[25] the Court of Tax Appeals Special First Division partially granted PAL's Petition and ordered the Commissioner to refund PAL ₱1,237,646.43, representing the final income tax withheld and remitted by JPMorgan. It denied the remaining claim for refund of

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[20] Through PAL's Assistant Vice President for Financial Planning and Analysis, Ma. Stella L. Diaz.

[21] *Rollo* (G.R. No. 206309), p. 34.

[22] *Id*.

[23] *Id*.

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

[25] *Id*. at 103-117. The Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova of the Special First Division, Court of Tax Appeals, Quezon City.

₱510,223.16 and US$65,877.07 representing the final income tax withheld by Chinabank, PBCom, and Standard Chartered.[26]

The Court of Tax Appeals Special First Division found that PAL was exempted from final withholding tax on interest on bank deposits.[27] However, it ruled that PAL failed to adequately substantiate its claim because it did not prove that the Agent Banks, with the exception of JPMorgan, remitted the withheld amounts to the Bureau of Internal Revenue.[28] PAL only presented documents[29] which showed the total amount of final taxes withheld for all branches of the banks.[30] As such, the amount of tax withheld from and to be refunded to PAL could not be ascertained with particularity.[31] It ruled that the Certificates of Final Tax Withheld at Source are not sufficient to prove remittance.[32] Thus:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND in favor of petitioner the reduced amount of ₱1,237,646.43, representing the 20% final income tax withheld and remitted by JP Morgan Chase bank on petitioner's interest income; while the remaining claim of ₱510,223.16 and US$65,877.07, representing the final income tax withheld by China Banking Corporation, Philippine Bank of Communication[s], and Standard Chartered Bank are hereby DENIED due to insufficiency of evidence.
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> SO ORDERED.[33]

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[26] *Rollo* (G.R. No. 206309), p. 35; *rollo* (G.R. Nos. 206079-80), pp. 360-379.

[27] *Rollo* (G.R. No. 206309), p. 108.

[28] *Id.* at 112.

[29] Certificates of Final Tax Withheld at Source (BIR Form No. 2036), Summary of Monthly Final Income Taxes Withheld, and Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602).

[30] *Rollo* (G.R. No. 206309), pp. 112-113.

[31] *Id.* at 113.

[32] *Id.* at 113-114.

[33] *Rollo* (G.R. Nos. 206079-80), p. 378.

The Court of Tax Appeals Special First Division denied the separate motions for reconsideration filed by the parties. Thus, both parties filed separate appeals before the Court of Tax Appeals En Banc, which consolidated the cases.[34]

In its August 14, 2012 Decision, the Court of Tax Appeals En Banc denied the petitions and affirmed the decision of the Court of Tax Appeals Special First Division.[35] The Court of Tax Appeals En Banc sustained that PAL needed to prove the remittance of the withheld taxes because although remittance is the responsibility of the banks as withholding agents, remittance was put in issue in this case. Thus, the Court of Tax Appeals Special First Division correctly made a ruling on it.[36]

It found that PAL was able to establish the remittance of the taxes withheld by JPMorgan because the monthly remittance returns were identified by PAL's witness and were formally offered in the Court of Tax Appeals Special First Division without objections to their admissibility. It ruled that the monthly remittance returns may be considered even if they were only presented in the Court of Tax Appeals Special First Division as it is a court of record and is required to conduct a formal trial.[37]

It sustained that PAL failed to prove the remittance by Chinabank, PBCom, and Standard Chartered because it did not show that the amounts remitted by these Agent Banks pertained to the taxes withheld from PAL's interest income.[38]

Thus:

WHEREFORE, all the foregoing considered, the Commissioner's Petition for Review in CTA EB No. 749 and PAL's Petition for Review

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[34] *Rollo* (G.R. No. 206309), p. 36.

[35] *Id*. at 44.

[36] *Id*. at 41.

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

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

in CTA EB No. 757 are hereby **DENIED** for lack of merit. The assailed Decision dated November 9, 2010 and Resolution dated March 17, 2011 are hereby **AFFIRMED**.

SO ORDERED.[39] (Emphasis in the original)

The Court of Tax Appeals En Banc denied the motions for reconsideration.[40]

Hence, the present Petitions via Rule 45 have been filed.[41]

In G.R. Nos. 206079-80, PAL questions the denial of its refund claim for the taxes withheld by Chinabank, PBCom, and Standard Chartered. PAL argues that it adequately established the withholding and remittance of final taxes through the Certificates of Final Taxes Withheld issued to it by these Agent Banks.[42] It contends that these Certificates are *prima facie* evidence of actual remittance, and if they are uncontroverted, as in this case, they are sufficient proof of remittance.[43] It holds that the rule pertaining to Creditable Taxes Withheld in *CIR v. Asian Transmission Corporation*[44] and other Court of Tax Appeals En Banc cases[45] should apply to Final Taxes Withheld, as these are of the same nature.[46]

PAL also insists that it is unequivocally exempt from final withholding taxes,[47] and consequently, for as long as it duly

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[39] *Id*. at 44.

[40] *Id*. at 53.

[41] *Rollo* (G.R. Nos. 206079-80), pp. 35-52; *Rollo* (G.R. No. 206309), pp. 7-27.

[42] *Rollo* (G.R. Nos. 206079-80), p. 42.

[43] *Id*. at 43 and 46.

[44] *CIR v. Asian Transmission Corporation*, 655 Phil. 186 (2011) [Per *J*. Mendoza, Second Division].

[45] *Rollo* (G.R. Nos. 206079-80), pp. 44-45 citing *Winebrenner & Inigo Insurance Brokers v. CIR,* CTA EB Case No. 285, October 1, 2007; *PAL v. CIR,* CTA EB Case No. 665, January 5, 2012; *Sonoma v. CIR,* CTA Case No. 7911, August 16, 2012.

[46] *Rollo* (G.R. Nos. 206079-80), pp. 44-45.

[47] *Id*. at 47, citing *Commissioner of Internal Revenue v. Philippine Airlines*, 535 Phil. 95 (2006) [Per *C.J*. Panganiban, First Division].

establishes that taxes were withheld from its income, it must be refunded.[48] It maintains that proof of actual remittance is not necessary. [49]

PAL further claims that it need not establish the remittance of income taxes to the Bureau of Internal Revenue because this function is vested with the Agent Banks as the payors and withholding agents of the Commissioner.[50]

In G.R. No. 206309, the Commissioner questions the grant of refund to PAL for the final income taxes withheld by JPMorgan. She argues that PAL is not entitled to the refund as it failed to present its documentary evidence before the Bureau of Internal Revenue when it filed its administrative claim.[51]

In its June 10, 2013 Resolution, the two (2) cases were consolidated.[52]

The parties thereafter filed their respective Comments,[53] Replies,[54] and Memoranda.[55]

PAL argues that it is entitled to its claim for tax refund or tax credit and insists that it has adequately established that the final taxes on interest income withheld by the banks were remitted to the Bureau of Internal Revenue.[56] It contends that the Certificates of Final Taxes Withheld issued by the Agent Banks

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[48] *Rollo* (G.R. Nos. 206079-80), p. 47.

[49] *Id*.

[50] *Id.*, citing *CIR v. PNB,* CTA EB Case No. 285, October 1, 2007.

[51] *Rollo* (G.R. No. 206309), pp. 16-19.

[52] *Rollo* (G.R. Nos. 206079-80), p. 574.

[53] *Rollo* (G.R. Nos. 206079-80), pp. 575-585, PAL's Comment with Opposition; *rollo* (G.R. No. 206309), pp. 250-264, CIR's Comment.

[54] *Rollo* (G.R. Nos. 206079-80), pp. 595-302, PAL's Reply; *Rollo* (G.R. No. 206309), pp. 291-300, CIR's Reply.

[55] *Rollo* (G.R. Nos. 206079-80), pp. 275-347, PAL's Memorandum; *Rollo* (G.R. No. 206309), pp. 309-331, CIR's Memorandum.

[56] *Rollo* (G.R. No. 206309), p. 314.

are *prima facie* evidence of actual remittance.[57] As *prima facie* evidence, they are sufficient proof of the fact that PAL is establishing, if they are unexplained or uncontradicted.[58]

As such, PAL avers that the Commissioner had the burden to prove that the Agent Banks failed to remit the withheld taxes.[59] Nonetheless, the Commissioner simply submitted the case for decision based on the pleadings. It did not contradict or dispute the Certificates of Final Taxes Withheld.[60]

PAL further posits that the failure of the Agent Banks to remit the withheld taxes should not prejudice PAL, because they are the withholding agents accountable for proving remittance. PAL has no control or responsibility over the remittance of the taxes withheld.[61]

Moreover, PAL holds that there is no need for proof of actual remittance to be entitled to claim for refund,[62] and that this Court's rulings on creditable taxes withheld should also apply to final taxes withheld at source, as they are of the same nature.[63] Since PAL has shown that it is unequivocally exempt from paying final withholding taxes, its taxes were erroneously paid and must be refunded.[64]

PAL further asserts that the Court of Tax Appeals is a court of record, required to conduct a trial *de novo*. Thus, it should not be barred from considering new evidence not submitted in the administrative claim for refund.[65]

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[57] *Id*. at 316.

[58] *Id*. at 318.

[59] *Id*. at 315.

[60] *Id*. at 319.

[61] *Id*. at 316.

[62] *Id*. at 316 and 319.

[63] *Id*. at 317.

[64] *Id*. at 320.

[65] *Id*. at 321.

Assuming PAL is limited by the documents it submitted in the administrative level, the Commissioner had the burden to prove that PAL did not submit complete supporting documents. However, it neither showed what documents PAL presented nor established that PAL submitted incomplete supporting documents.[66]

PAL further submits that assuming it failed to present the remittance returns on final income tax withheld, the Commissioner could have retrieved these files from the records, as these are monthly returns filed with the Bureau of Internal Revenue.[67] As the Chief of the Bureau of Internal Revenue, the Commissioner has access to all tax returns including those of final income tax withheld at source, and thus, is in bad faith in not checking the records to determine whether or not the withheld taxes were remitted.[68] PAL maintains that the Commissioner's denial of the withholding of the taxes is not a specific denial, and thus, should be deemed as an admission of this fact.[69]

Finally, PAL holds that the denial of its refund because of its failure to submit monthly remittance returns is contrary to substantial justice, equity, and fair play.[70]

On the other hand, the Commissioner argues in her Memorandum[71] that PAL needed to prove, but did not prove, that the withheld taxes were remitted to the Bureau of Internal Revenue.[72]

She points out that PAL only showed the withheld amounts remitted by branches of Chinabank, PBCom, and Standard

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[66] *Id*. at 324-325.

[67] *Id*. at 326.

[68] *Id*. at 326 and 319.

[69] *Id*. at 327.

[70] *Id*.

[71] *Id*. at 342-355.

[72] *Id*. at 347.

Chartered, but there is no indication that the remitted amounts are the taxes withheld from PAL's interest income. She argues that PAL must first prove that the money remitted to the Bureau of Internal Revenue is attributable to it because tax refunds are strictly construed against the taxpayer.[73]

She further insists that PAL's claim must fail for insufficiency of evidence because it failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level.[74] She argues that even if the evidence was presented in the Court of Tax Appeals, it should not be considered because trial *de novo* in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim for refund.[75] The Court of Tax Appeals' judicial review is allegedly limited to whether the Commissioner rightfully ruled on the claim on the basis of the evidence presented in the administrative claim, and the ruling may only be set aside where there is gross abuse of discretion, fraud, or error of law.[76] Thus, she claims that the Court of Tax Appeals erred in considering the new evidence presented to it.[77] In allowing the presentation of new evidence, the Court of Tax Appeals did not conduct a judicial review. Rather, it adopted an entirely new proceeding.[78]

This Court resolves the following issues:

First, whether or not evidence not presented in the administrative claim for refund in the Bureau of Internal Revenue can be presented in the Court of Tax Appeals;

Second, whether or not Philippine Airlines, Inc. was able to prove remittance of its final taxes withheld to the Bureau of Internal Revenue; and

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[73] *Id*. at 348-349.

[74] *Id*. at 349.

[75] *Id*. at 351.

[76] *Id*. at 350.

[77] *Id*.

[78] *Id*. at 351-352.

Finally, whether or not proof of remittance is necessary for Philippine Airlines, Inc. to claim a refund under its charter, Presidential Decree No. 1590.

This Court sustains the factual findings of the Court of Tax Appeals that Philippine Airlines, Inc. failed to prove remittance of the withheld taxes.

Nonetheless, this Court grants the Petition of Philippine Airlines, Inc.

I

The Commissioner contends that PAL failed to present several of its documentary evidence before the Bureau of Internal Revenue during the administrative level.[79] Thus, she claims that the new evidence that petitioner presented in the Court of Tax Appeals should not have been considered because trial *de novo* in the Court of Tax Appeals must be limited to the evidence shown in the administrative claim.[80]

This Court rules that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the Court of Tax Appeals to support its case for tax refund.

Section 4 of the National Internal Revenue Code[81] states that the Commissioner has the power to decide on tax refunds, but his or her decision is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals:

> Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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[79] *Id*. at 349.

[80] *Id*. at 348 and 351.

[81] TAX CODE, Title I, Sec. 4, as amended by Rep. Act No. 8424 (1997), Tax Reform Act of 1997.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Republic Act No. 9282,[82] amending Republic Act No. 1125,[83] is the governing law on the jurisdiction of the Court of Tax Appeals. Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them:

Section 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.] (Emphasis supplied)

This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will

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[82] Rep. Act No. 9282 (2004).

[83] Rep. Act No. 1125 (1954).

be treated as a denial of the refund, and the Court of Tax Appeals is the only entity that may review this ruling.

The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:

> Section 8. *Court of record*; *seal*; *proceedings*. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.[84]

As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence.[85] No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals.[86] Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner.[87] As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

In *Commissioner of Internal Revenue v. Philippine National Bank*:[88]

> Finally, petitioner's allegation that the submission of the certificates of withholding taxes before the Court of Tax Appeals was late is

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[84] Rep. Act No. 1125 (1954), Sec. 8.

[85] *Commissioner of Internal Revenue v. Manila Mining Corp.,* 505 Phil. 650, 664 (2005) [Per *J*. Carpio Morales, Third Division].

[86] *Id*.

[87] *Rollo* (G.R. No. 206309), p. 350.

[88] 744 Phil. 299 (2014) [Per *J*. Leonen, Second Division].

untenable. The samples of the withholding tax certificates attached to respondent's comment bore the receiving stamp of the Bureau of Internal Revenue's Large Taxpayers Document Processing and Quality Assurance Division. As observed by the Court of Tax Appeals En Banc, "*[t]he Commissioner* is in no position to assail the authenticity of the CWT certificates due to PNB's alleged failure to submit the same before the administrative level since *he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt." Indeed, petitioner's inaction prompted respondent to elevate its claim for refund to the tax court.*

More importantly, *the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated de novo. Thus, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim."* [89] (Emphasis supplied, citations omitted)

In the case at bar, the Commissioner failed to act on PAL's administrative claim.[90] If she had acted on the refund claim, she could have directed PAL to submit the necessary documents to prove its case.

Furthermore, considering that the refund claim will be litigated anew in the Court of Tax Appeals, the latter may consider all pieces of evidence formally offered by PAL, whether or not they were submitted in the administrative level.

Thus, the Commissioner's contention must fail.

II

Both PAL and the Commissioner are contesting whether or not PAL has proven the Agent Banks' remittance of the withheld taxes on its interest income.[91]

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[89] *Id.* at 311-312.

[90] *Rollo* (G.R. No. 206309), p. 34.

[91] *Id.* at 314 and 347.

The Court of Tax Appeals Special First Division and En Banc ruled that PAL was able to prove JPMorgan's remittance of the withheld taxes but that it failed to prove those of Chinabank, PBCom, and Standard Chartered.[92]

This Court maintains the factual findings of the Court of Tax Appeals Special First Division and En Banc.

Firstly, in bringing forth the issue of remittance, the parties are raising a question of fact which is not within the scope of review on certiorari under a Rule 45 Petition.[93] An appeal under Rule 45 must raise only questions of law.[94]

> The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.[95] (Citations omitted)

There is a question of law when it seeks to determine whether or not the legal conclusions of the lower courts from a given set of facts are correct, i.e. what is the law, given a particular set of circumstances? On the other hand, there is a question of fact when the issue involves the truth or falsity of the parties' allegations. The test in determining if an issue is a question of law or fact is whether or not there is a need to evaluate evidence to resolve the issue. If there is a need to review the evidence

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[92] *Id*. at 39 and 113.

[93] *City Government of Valenzuela v. Agustines*, G.R. No. 209369 (Notice), January 28, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/resolutions/2015/01/209369.pdf> 3 [Per *J*. Leonen, Second Division].

[94] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 254 (2007) [Per *J*. Chico-Nazario, Third Division].

[95] *Spouses Miano v. Manila Electric Co*., G.R. No. 205035, November 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf> 4 [Per *J*. Leonen, Second Division].

or witnesses, it is a question of fact. If there is no need, it is a question of law. [96]

As stated, this Court will no longer entertain questions of fact in appeals under Rule 45. The factual findings of the lower courts are accorded respect and are beyond this Court's review.[97] However, the rule admits of exceptions, especially if it is shown that the factual findings are not supported by evidence, or the judgment is based on a misapprehension of facts:

> [T]he general rule for petitions filed under Rule 45 admits exceptions. *Medina v. Mayor Asistio, Jr.* lists down the recognized exceptions:
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> > (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.
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> These exceptions similarly apply in petitions for review filed before this Court involving civil, labor, tax, or criminal cases.[98] (Citations omitted)

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[96] *Id*.

[97] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 254 (2007) [Per *J.* Chico-Nazario, Third Division].

[98] *Spouses Miano v. Manila Electric Co*., G.R. No. 205035, November 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf> 4-5 [Per *J.* Leonen, Second Division].

A party filing the petition, however, has the burden of showing convincing evidence that the appeal falls under one of the exceptions. A mere assertion is not sufficient.[99]

Moreover, this Court has consistently held that the findings of fact of the Court of Tax Appeals, as a highly specialized court, are accorded respect and are deemed final and conclusive.[100]

In *Philippine Refining Company v. Court of Appeals*:[101]

> The Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases . . .
>
> Because of this recognized expertise, the findings of the CTA will not ordinarily be reviewed absent a showing of gross error or abuse on its part. The findings of fact of the CTA are binding on this Court and in the absence of strong reasons for this Court to delve into facts, only questions of law are open for determination . . . [102] (Citation omitted)

In *Commissioner of Internal Revenue v. Tours Specialists, Inc., and the Court of Tax Appeals*:[103]

> The well-settled doctrine is that the findings of facts of the Court of Tax Appeals are binding on this Court and absent strong reasons for this Court to delve into facts, only questions of law are open for determination . . . In the recent case of *Sy Po v. Court of Appeals* . . . we ruled that the factual findings of the Court of Tax Appeals are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence.[104]

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[99] *Id*.

[100] *Philippine Refining Company v. Court of Appeals,* 326 Phil. 680, 689 (1996) [Per *J*. Regalado, Second Division].

[101] 326 Phil. 680 (1996) [Per *J*. Regalado, Second Division].

[102] *Id*. at 689.

[103] 262 Phil. 437 (1990) [Per *J*. Gutierrez, Jr., *En Banc*]

[104] *Id*. at 442, citing *Nilsen v. Commissioner of Customs*, 178 Phil. 26-32 (1979) [Per *J*. Fernando, Second Division]; *Balbas v. Domingo*, 128

In the case at bar, both the Court of Tax Appeals Special First Division and En Banc ruled that PAL failed to sufficiently prove that Chinabank, PBCom, and Standard Chartered had remitted the withheld taxes.[105] It found that the presented documents[106] only showed the total amount of final taxes withheld for all branches of these Agent Banks.[107] It did not show that the amounts remitted by these Agent Banks pertained to the taxes withheld from PAL's interest income.[108]

However, it found that PAL was able to prove the remittance of the taxes withheld by JPMorgan because the monthly remittance returns were identified by PAL's witness and were formally offered in the Court of Tax Appeals Special First Division without objections to their admissibility.[109]

The Court of Tax Appeals Special First Division stated:

To prove that petitioner earned interest income on its bank deposits and that they were remitted to the BIR, petitioner offered in evidence the following certifications and Certificates of Final Tax Withheld at Source (BIR Form No. 2306) from various banks:

BANK	PERIOD COVERED	AMOUNT OF TAX WITHHELD	
		PESO	US DOLLAR
China Banking Corp. (Exhibit "C")	January 2002 – December 2002		38,974.75
JP Morgan Chase Bank (Exhibit "D")	September 2002 – December 2002	1,237,646.43	

Phil. 467-473 (1967) [Per *J.* Fernando, *En Banc*]; *Raymundo v. De Joya*, 189 Phil. 378-382 (1980) [Per *C.J.* Fernando, Second Division].

[105] *Rollo* (G.R. No. 206309), pp. 42 and 112.

[106] Certificates of Final Tax Withheld (BIR Form No. 2036), Summary of Monthly Final Income Taxes Withheld, Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602).

[107] *Rollo* (G.R. No. 206309), p. 113.

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

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

Phil. Bank of Communication[s] (Exhibit "E")	January 2002 – March 2002		7,698.63
Phil. Bank of Communication[s] (Exhibit "F")	April 2002 – June 2002	108,351.68	1,698.99
Phil. Bank of Communication[s] (Exhibit "G")	July 2002– September 2002	401,871.48	3,009.28
Phil. Bank of Communication[s] (Exhibit[s] "H" and "I")	October 2002 – December 2002		8,037.28
Standard Chartered [Bank] (Exhibit "J")	May 2002 – December 2002		6,458.14
TOTAL		₱1,747,869.59	$65,877.07

A careful scrutiny of the evidence presented reveals that only documents pertaining to the amount of taxes withheld and actually remitted to the BIR by depositary bank JP Morgan Chase, in the amount of ₱1,237,646.43, represents petitioner's valid claim . . .

. . . . . .

This Court cannot give credence to the other certifications and Certificates of Final Tax Withheld at Source issued by the various depositary banks because proof on the fact of remittance was not aptly complied with; thus, the amount of taxes to be refunded cannot be ascertained.

The amount of final withholding taxes as reflected on the Summary of Monthly Final Income Taxes Withheld on Philippine Savings Deposit and Foreign Currency Deposit and the Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602) provided by withholding agents China Banking Corporation, Philippine Bank of Communication, and Standard Chartered Bank were based on the total amount of final withholding taxes per branch of each depositary banks; while the total amount appearing on the documents of Monthly Remittance Return of Final Income Taxes (BIR Form No. 1602) was based on the total amount of final withholding taxes for all branches of the depositary banks.

Therefore, the amount of final income tax withheld from petitioner cannot be ascertained with particularity from the total amount of final withholding taxes that were remitted to the BIR by China Banking Corporation, Philippine Bank of Communication[s], and Standard Chartered Bank.[110]

These findings were affirmed by the Court of Tax Appeals En Banc:

Without doubt, there were amounts of withheld taxes which have been remitted by [Chinabank] to the BIR. However, from the supposed Stage 1 up to the last Stage of the paper trail, We fail to see, in the evidence pointed out by PAL, the inclusion of the final income taxes withheld from its interest income in the total amounts remitted by [Chinabank] to the BIR. In other words, there is no indication that the specific withheld amounts which have been remitted to the BIR by [Chinabank] referred to the taxes withheld on PAL's interest income. In fact, PAL's documentary evidence are merely to the effect that certain amounts have been remitted to the BIR by [Chinabank], and such amounts may be broken down as to which [Chinabank] branch offices the same are attributable.

The same holds true as regards the taxes withheld by [PBCom] and [Standard Chartered]. The documentary evidence of PAL relating to the supposed remittances of the said depositary banks are also wanting of any sign that portion of the remitted taxes pertain to the withheld taxes from PAL's interest income. Simply put, We cannot perceive, from such evidence, that pertinent items of the withheld taxes are attributable to PAL.[111]

In questioning these findings of the Court of Tax Appeals regarding the remittance of the taxes, the parties are raising questions of fact. To determine whether or not the taxes have been remitted to the Bureau of Internal Revenue requires an evaluation of the documents and other evidence presented by the parties. Thus, it is incumbent upon them to prove that the above-stated exceptions are present in this case.

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[110] *Id.* at 111-113.

[111] *Id.* at 43.

However, the parties failed to show that this case falls into any of the exceptions mentioned.[112]

The Court of Tax Appeals Special First Division and En Banc based their findings after an examination of all pieces of evidence presented by PAL. Both parties failed to show that the Court of Tax Appeals committed any gross error or abuse in making this factual determination. There is likewise no showing that the findings are conflicting or based on speculation, conjecture, or misapprehension or mistake of facts. There is no sign of any grave abuse of discretion.

Thus, this Court finds no reason to disturb the Court of Tax Appeals' factual findings.

III

Nonetheless, this Court rules that PAL is entitled to its claim for refund for taxes withheld by Chinabank, PBCom, and Standard Chartered.

Remittance need not be proven. PAL needs only to prove that taxes were withheld from its interest income.

III.A

First, PAL is uncontestedly exempt from paying the income tax on interest earned.

Under its franchise, Presidential Decree No. 1590,[113] petitioner may either pay a franchise tax or the basic corporate income tax, and is exempt from paying any other tax, including taxes on interest earned from deposits:

> Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:

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[112] See *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 254 (2007) [Per *J.* Chico-Nazario, Third Division].

[113] Pres. Decree No. 1590 (1978), Grant of New Franchise to Philippine Airlines, Inc. To Operate, *etc*. Air Transport Services.

(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; *provided*, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

. . . . . .

The grantee, shall, however, pay the tax on its real property in conformity with existing law. (Emphasis supplied)

In *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[114] this Court ruled that Section 13 of Presidential Decree No. 1590 is clear and unequivocal in exempting PAL from all taxes other than the basic corporate income tax or the 2% franchise tax:

While the Court recognizes the general rule that the grant of tax exemptions is strictly construed against the taxpayer and in favor of the taxing power, Section 13 of the franchise of respondent leaves no room for interpretation. Its franchise exempts it from paying any tax other than the option it chooses: either the "basic corporate income tax" or the two percent gross revenue tax.[115] (Citation omitted)

More recently, PAL's tax privileges were outlined and confirmed in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*[116]

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[114] 535 Phil. 95 (2006) [Per *C. J.* Panganiban, First Division].

[115] *Id.* at 109.

[116] G.R. Nos. 215705-07, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/215705-07.pdf> [Per *J.* Peralta, Second Division].

when Republic Act No. 9334 took effect, amending Section 131 of the National Internal Revenue Code.[117] Republic Act No. 9334 increased the rates of excise tax imposed on alcohol and tobacco products, and *removed the exemption from taxes*, duties and charges, including excise taxes, on importations of cigars, cigarettes, distilled spirits, wines and fermented liquor

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[117] Rep. Act No. 9334 (2004), amending Rep. Act No. 8424 (1997), Title II, Ch. 4, Sec. 131 reads in part: Section 131. *Payment of Excise Taxes on Imported Articles.* —

(A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory. (Emphasis supplied)

into the Philippines.[118] This Court ruled that PAL's tax exemptions remain:

> In the fairly recent case of *Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Airlines, Inc*., the core issue raised was whether or not PAL's importations of alcohol and tobacco products for its commissary supplies are subject to excise tax. This Court, ruling in favor of PAL, held that:
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> . . . . . .
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> That the Legislature chose not to amend or repeal [PD] 1590 even after PAL was privatized reveals the intent of the Legislature to let PAL continue to enjoy, as a private corporation, the very same rights and privileges under the terms and conditions stated in said charter. . . .
>
> To be sure, the manner to effectively repeal or at least modify any specific provision of PAL's franchise under PD 1590, as decreed in the aforequoted Sec. 24, has not been demonstrated. . . .
>
> . . . . . .
>
> Any lingering doubt, however, as to the continued entitlement of PAL under Sec. 13 of its franchise to excise tax exemption on otherwise taxable items contemplated therein, e.g., aviation gas, wine, liquor or cigarettes, should once and for all be put to rest by the fairly recent pronouncement in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*. In that case, the Court, on the premise that the "propriety of a tax refund is hinged on the kind of exemption which forms its basis," declared in no uncertain terms that PAL has "sufficiently prove[d]" its entitlement to a tax refund of the excise taxes and that PAL's payment of either the franchise tax or basic corporate income tax in the amount fixed thereat shall be in lieu of all other taxes or duties, and inclusive of all taxes on all importations of commissary and catering supplies, subject to the condition of their availability and eventual use. . . .

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[118] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.,* G.R. Nos. 215705-07, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/215705-07.pdf> [Per *J.* Peralta, Second Division].

In the more recent consolidated cases of Republic of the Philippines v. Philippine Airlines, Inc. *(PAL)* and *Commissioner of Internal Revenue v. Philippine Airlines, Inc. (PAL)*, this Court, echoing the ruling in the abovecited case of CIR v. PAL, held that:

> In other words, the franchise of PAL remains the governing law on its exemption from taxes. Its payment of either basic corporate income tax or franchise tax — whichever is lower — shall be in lieu of all other taxes, duties, royalties, registrations, licenses, and other fees and charges, except only real property tax. The phrase "in lieu of all other taxes" includes but is not limited to taxes, duties, charges, royalties, or fees due on all importations by the grantee of the commissary and catering supplies, provided that such articles or supplies or materials are imported for the use of the grantee in its transport and nontransport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price.[119] (Citations omitted)

PAL's tax liability was also modified on July 1, 2005, when Republic Act No. 9337[120] further amended the National Internal Revenue Code. Section 22 of Republic Act No. 9337 abolished the franchise tax and subjected PAL to corporate income tax and to value-added tax. Nonetheless, it maintained PAL's exemption from "any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement."[121]

> Section 22. Franchises of Domestic Airlines. — The provisions of *P.D. No. 1590 on the franchise tax of Philippine Airlines, Inc*., R.A. No. 7151 on the franchise tax of Cebu Air, Inc., R.A. No. 7583 on the franchise tax of Aboitiz Air Transport Corporation, R.A. No. 7909 on the franchise tax of Pacific Airways Corporation, R.A. No. 8339 on the franchise tax of Air Philippines, or any other franchise agreement or law pertaining to a domestic airline to the contrary notwithstanding:
>
> (A) The franchise tax is abolished;

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

[120] Rep. Act No. 9337 (2005), VAT Reform Act.

[121] Rep. Act No. 9337, Sec. 22.

(B) The franchisee shall be liable to the corporate income tax;

(C) The franchisee shall register for value-added tax under Section 236, and to account under Title IV of the National Internal Revenue Code of 1997, as amended, for value-added tax on its sale of goods, property or services and its lease of property; and

(D) The franchisee shall otherwise remain exempt from any taxes, duties, royalties, registration, license, and other fees and charges, as may be provided by their respective franchise agreement.

Again, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.,*[122] this Court maintained that despite these amendments to the National Internal Revenue Code, PAL remains exempt from all other taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays the corporate income tax as granted in its franchise agreement. It further emphasized that no explicit repeals were made on Presidential Decree No. 1590.[123]

Thus, Presidential Decree No. 1590 and PAL's tax exemptions subsist. Necessarily, PAL remains exempt from tax on interest income earned from bank deposits.

Moreover, Presidential Decree No. 1590 provides that any excess payment over taxes due from PAL's shall either be refunded or credited against its tax liability for the succeeding taxable year, thus:

Section 14. The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue . . .

. . . . . .

Any excess of the total quarterly payments over the actual annual franchise of income tax due as shown in the final or adjustment franchise or income-tax return *shall either be refunded to the grantee*

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[122] G.R. Nos. 215705-07, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/215705-07.pdf> [Per *J.* Peralta, Second Division].

[123] *Id*.

or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term "gross revenues" is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources.[124] (Emphasis supplied)

Thus, PAL is entitled to a tax refund or tax credit if excess payments are made on top of the taxes due from it.

Considering that PAL is not liable to pay the tax on interest income from bank deposits, any payments made for that purpose are in excess of what is due from it. Thus, if PAL erroneously paid for this tax, it is entitled to a refund.

III.B

PAL is likewise entitled to a refund because it is not responsible for the remittance of tax to the Bureau of Internal Revenue. The taxes on interest income from bank deposits are in the nature of a withholding tax. Thus, the party liable for remitting the amounts withheld is the withholding agent of the Bureau of Internal Revenue.

Interest income from bank deposits is taxed under the National Internal Revenue Code:

Section 27. *Rates of Income Tax on Domestic Corporations*.

. . . . . .

(D) *Rates of Tax on Certain Passive Incomes*. —

(1) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties*. — A final tax at the rate of twenty

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[124] Pres. Decree No. 1590 (1978), Sec. 14.

percent (20%) is hereby imposed upon the amount of *interest on currency bank deposit* and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: *Provided*, *however*, That *interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system* shall be subject to a final income tax at the rate of seven and one-half percent (7 ½%) of such interest income.[125] (Emphasis supplied)

The tax due on this income is a final withholding tax:

Section 57. *Withholding of Tax at Source*. —

(A) *Withholding of Final Tax on Certain Incomes*. — Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections . . . 27(D)(1), . . . of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.[126]

Final withholding taxes imposed on interest income are likewise provided for under Revenue Regulations No. 02-98, Section 2.57.1(G):[127]

(G) *Income Payment to a Domestic Corporation*. — The following items of income shall be subject to a final withholding tax in the hands of a domestic corporation, based on the gross amount thereof and at the rate of tax prescribed therefor:

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[125] TAX CODE, Title II, Ch.4, Sec. 27, as amended by Rep. Act No. 8424 (1997).

[126] TAX CODE, Sec. 57.

[127] BIR Revenue Reg. No. 02-98 (1998), *Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

(1) Interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements derived from sources within the Philippines — Twenty Percent (20%).

. . . . . .

(3) Interest income derived from a depository bank under the Expanded Foreign Currency Deposit System, otherwise known as a Foreign Currency Deposit Unit (FCDU) — Seven and one-half percent (7.5%).

When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. Thus, the liability for remitting the tax is on the withholding agent: [128]

Under Revenue Regulations No. 02-98, Section 2.57:

Section 2.57. *Withholding of Tax at Source*

(A) *Final Withholding Tax.* — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. *The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.* (Emphasis supplied)

Clearly, the withholding agent is the payor liable for the tax, and any deficiency in its amount shall be collected from it.[129] Should the Bureau of Internal Revenue find that the taxes were not properly remitted, its action is against the withholding agent, and not against the taxpayer.

The responsibility of the withholding agent is further underscored by Republic Act No. 8424, Section 58:

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[128] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57.

[129] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57(A).

Section 58. *Returns and Payment of Taxes Withheld at Source*.—

. . . . . .

(B) *Statement of Income Payments Made and Taxes Withheld*. — Every withholding agent required to deduct and withhold taxes under Section 57 shall *furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee,* but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

(C) *Annual Information Return*. — Every withholding agent required to deduct and withhold taxes under Section 57 shall submit to the Commissioner an *annual information return containing the list of payees and income payments, amount of taxes withheld from each payee and such other pertinent information as may be required by the Commissioner . . .*[130] (Emphasis supplied)

Revenue Regulations 09-28 further provides:

Section 2.57.4. *Time of Withholding*. — The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term "payable" refers to the date the obligation become due, demandable or legally enforceable.[131]

. . . . . .

Section 2.58. *Returns and Payment of Taxes Withheld at Source*.

. . . . . .

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[130] TAX CODE, Title II, Ch. 4, Sec. 58, as amended by Rep. Act No. 8424 (1997).

[131] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57.4.

(B) *Withholding tax statement for taxes withheld* — Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a *withholding tax statement, using the prescribed form (BIR Form 2307) showing the income payments made and the amount of taxes withheld therefrom*, for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

(C) *Annual information return for income tax withheld at source*. — The payor is required to file with the Commissioner, Revenue Regional Director, Revenue District Officer, Collection Agent in the city or municipality where the payor has his legal residence or principal place of business, where the government office is located in the case of a government agency, on or before January 31 of the following year in which payments were made, an Annual Information Return of Income Tax Withheld at Source (Form No. 1604), showing among others the following information:

(1) Name, address and taxpayer's identification number (TIN); and

(2) Nature of income payments, gross amount and amount of tax withheld from each payee and such other information as may be required by the Commissioner.[132] (Emphasis supplied)

These provisions state that the withholding agent must file the annual information return and furnish the payee written statements of the payments it made and of the amounts it deducted and withheld. They confirm that the remittance of the tax is not the responsibility of the payee, but that of the payor, the withholding agent.

Moreover, in *Commissioner of Internal Revenue v. Philippine National Bank*:[133]

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[132] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.58.

[133] 744 Phil. 299 (2014) [Per *J.* Leonen, Second Division].

Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

> . . . proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that *payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority.* Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the *responsibility of the payor* and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.[134] (Emphasis supplied, citations omitted)

In the case at bar, PAL is the income earner and the payee of the final withholding tax, and the Agent Banks are the withholding agents who are the payors responsible for the deduction and remittance of the tax.

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[134] *Id.* at 310-311.

Given the above provisions, the failure of the Agent Banks to remit the amounts does not affect and should not prejudice PAL. In case of failure of remittance of taxes, the Bureau of Internal Revenue's cause of action is against the Agent Banks.

Thus, PAL is not obliged to remit, let alone prove the remittance of, the taxes withheld.

III.C

To claim a refund, this Court rules that PAL needs only to prove that taxes were withheld.

Taxes withheld by the withholding agent are deemed to be the full and final payment of the income tax due from the income earner or payee.[135]

Section 2.57. *Withholding of Tax at Source*

(A) *Final Withholding Tax. — Under the final withholding tax system the amount of income tax withheld by the withholding agent is* ***constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent****. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.*

The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax.[136] (Emphasis supplied)

Certificates of Final Taxes Withheld issued by the Agent Banks are sufficient evidence to establish the withholding of the taxes.[137]

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[135] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57.

[136] BIR Revenue Reg. No. 02-98 (1998), Sec. 2.57(A).

[137] *Commissioner of Internal Revenue v. Philippine National Bank*, 744 Phil. 299, 309 (2014) [Per *J.* Leonen, Second Division].

In *Commissioner of Internal Revenue v. Philippine National Bank*:[138]

> The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.
>
> In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:
>
> > In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
> >
> > At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the *income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld.* It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.[139] (Emphasis supplied, citations omitted)

In the case at bar, the Court of Tax Appeals Special First Division noted that PAL offered in evidence the following Certificates of Final Tax Withheld at Source from the Agent Banks to prove the earned interest income on its bank deposits and the taxes withheld:[140]

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[138] 744 Phil. 299 (2014) [Per *J*. Leonen, Second Division].

[139] *Id*. at 309-310.

[140] *Rollo* (G.R. No. 206309), pp. 111-113.

BANK	PERIOD COVERED	AMOUNT OF TAX WITHHELD	
		PESO	US DOLLAR
China Banking Corp. (Exhibit "C")	January 2002 – December 2002		38,974.75
JP Morgan Chase Bank (Exhibit "D")	September 2002 – December 2002	1,237,646.43	
Phil. Bank of Communication[s] (Exhibit "E")	January 2002 – March 2002		7,698.63
Phil. Bank of Communication[s] (Exhibit "F")	April 2002 – June 2002	108,351.68	1,698.99
Phil. Bank of Communication[s] (Exhibit "G")	July 2002– September 2002	401,871.48	3,009.28
Phil. Bank of Communication[s] (Exhibit[s] "H" and "I")	October 2002 – December 2002		8,037.28
Standard Chartered [Bank] (Exhibit "J")	May 2002 – December 2002		6,458.14
TOTAL		₱1,747,869.59	$65,877.07

PAL also presented bank-issued Certificates of Final Tax Withheld at Source showing that the amounts it is seeking to refund were withheld.

For JPMorgan, PAL presented a Certificate of Income Tax Withheld for the Year 2002, which stated that its interest earned was ₱6,188,232.17 and that JPMorgan's withheld taxes were ₱1,237,646.43. This Certificate was signed by JPMorgan's Vice President and Operations Manager, Mamerto R. Natividad.[141]

For Chinabank, PAL presented a Bank Certification dated October 24, 2003, signed by Wilfredo A. Quijencio, Chinabank's International Banking Group Senior Manager.[142] It showed that Chinabank withheld final taxes amounting to US$38,974.75

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

[142] *Id*. at 62.

from PAL's interest income from its dollar time deposit with Chinabank for the year 2002:

This is to certify the amount[s] of tax withheld from US DOLLAR Time Deposit account of PHILIPPINE AIRLINES the year 2002 are as follows:

PRINCIPAL AMOUNT	PERIOD COVERED	MATURITY VALUE	INTEREST INCOME (NET)	WITH-HOLDING TAX DEDUCTED	DATE REMITTED TO BIR
USD17,098,253.14	01/01/02 to 04/02/02	USD17,315,721.55	USD111,150.52	USD9,012.20	02/11/02, 03/11/02, 04/10/02, 05/10/02
USD17,315,721.55	04/02/02 to 09/30/02	USD17,617,709.54	USD301,987.99	USD24,485.51	05/10/02, 06/10/02, 07/10/02, 08/10/02, 09/10/02, 10/10/02
USD17,617,709.54	09/30/02 to 12/16/02	USD17,669,993.76	USD52,284.22	USD4,239.26	10/10/02, 11/11/02, 12/10/02, 01/10/03
USD10,669,993.76	12/16/02 to 12/31/02	USD10,807,210.62	USD11,309.08	USD916.95	01/10/03
USD7,000,000.00	12/23/02 to 12/31/02	USD7,086,558.17	USD3,956.95	USD320.83	01/10/03

This is to certify further that the said withholding tax deducted was duly remitted in accordance with existing rules and regulations of the Bureau of Internal Revenue.

This certification is being issued upon the request of the above client for whatever purpose/s it may serve.[143]

For PBCom, PAL presented Certificates of Income Tax Withheld for the four (4) quarters of Year 2002, all of which were signed by PBCom's Assistant Vice President, Carmencita L. Tan.[144]

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[143] *Id*.

[144] *Id*. at 65-72.

These Certificates stated the amounts of interest income PAL earned and the taxes withheld from its US dollar time deposits:[145]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
1st Quarter[146]	US$102,648.40	US$7,698.63
2nd Quarter[147]	US$ 22,653.20	US$1,698.99
3rd Quarter[148]	US$ 40,123.73	US$3,009.28
4th Quarter[149]	US$107,163.73	US$8,037.28
TOTAL[150]	US$ 272,589.06	US$ 20,443.19

These Certificates also showed the amounts of interest income PAL earned and the taxes withheld from its peso deposit accounts:[151]

CERTIFICATE FOR THE PERIOD	INTEREST INCOME	TAX WITHHELD
2nd Quarter[152]	₱541,758.42	₱108,351.67
3rd Quarter[153]	₱2,009,357.41	₱401,871.46
TOTAL	₱2,551,115.83	₱510,223.13

Moreover, PBCom's letter [154] dated April 10, 2003 stated:

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[145] *Id*.

[146] *Id*. at 65-66.

[147] *Id*. at 67-68.

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

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

[150] *Id*. at 73.

[151] *Id*. at 67-70.

[152] *Rollo* (G.R. Nos. 206079-80), p. 14.

[153] *Id*.

[154] *Rollo* (G.R. No. 206309), p. 73.

Dear Sir,

This is to certify that Philippine Airlines had various dollar & [peso savings accounts] placement[s] with our branch for the year 2002. The taxes withheld of which had been remitted to the BIR [are] as follows:

PSA	**MAY**	**JUNE**	**JULY**	**AUGUST**	**SEPTEMBER**
Principal Amount	186,000,000.03	192,490,557.00	244,661,600.04	104,420,160.01	104,842,017.46
Interest Paid	325,500.00	216,258.42	1,259,246.32	527,321.80	222,789.29
With-holding Tax	65,100.00	43,251.67	251,849.25	105,464.35	44,557.86
	1ST. QRTR.	**2ND QRTR.**	**3RD QRTR.**	**4TH QRTR.**	
Dollar Time Deposit					
Interest Paid	102,648.40	22,653.20	40,123.73	107,163.73	
With-holding Tax	7,698.63	1,698.99	3,009.28	8,037.28	

This certification is hereby issued for whatever legal purpose it may serve.

Very truly yours,
(SGD)
Ms. Carmencita L. Tan, AVP
Branch Manager[155]

For Standard Chartered, PAL presented a letter dated September 19, 2003, signed by Standard Chartered's Treasury Operations Officer, Bienvenido Nieto, listing PAL's interest income and withholding tax for its US dollar time deposit account from May 2002 to December 2002.[156]

This letter stated:

We confirm the above interest income and the 7.5% withholding tax for your Time Deposit Account and remitted to the Bureau of Internal Revenue.[157]

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[155] *Id*.

[156] *Id*. at 74-76.

[157] *Id*. at 76.

These bank-issued Certificates of Income Tax Withheld and BIR Forms were neither disputed nor alleged to be false or fraudulent. There was not even any denial from the Commissioner or the Agent Banks that the amounts were not *withheld* as final taxes from PAL's interest income from its money deposits.

Moreover, these Certificates of Final Tax Withheld, complete in relevant details, were declared under the penalty of perjury. As such, they may be taken at face value.[158]

Section 267 of the National Internal Revenue Code, as amended, provides:

> Section 267. *Declaration under Penalties of Perjury.*— Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.[159]

Considering that these Certificates were presented, the burden of proof shifts to the Commissioner, who needs to establish that they were incomplete, false, or issued irregularly.[160]

However, the Commissioner did no such thing.

Thus, these Certificates are sufficient evidence to establish the withholding of the taxes.

The taxes withheld from PAL are considered its full and final payment of taxes. Necessarily, when taxes were withheld and deducted from its income, PAL is deemed to have paid them.

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[158] *Commissioner of Internal Revenue v. Philippine National Bank*, 744 Phil. 299, 310 (2014) [Per *J.* Leonen, Second Division].

[159] TAX CODE, Title X, Ch. 1, Sec. 267, as amended by Rep. Act No. 8424 (1997).

[160] *Commissioner of Internal Revenue v. Philippine National Bank,* 744 Phil. 299, 310 (2014) [Per *J.* Leonen, Second Division].

Considering that PAL is exempted from paying the withholding tax, it is rightfully entitled to a refund.

III.D

This Court notes that the case of *Commissioner of Internal Revenue v. Philippine National Bank*[161] involves a refund of creditable withholding tax and not of final withholding tax. However, its ruling that proof of remittance is not necessary to claim a tax refund applies to final withholding taxes. The same principles used to rationalize the ruling apply to final withholding taxes: (i) the payor-withholding agent is responsible for the withholding and remitting of the income taxes; (ii) the payee-refund claimant has no control over the remittance of the taxes withheld from its income; (iii) the Certificates of Final Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by payee-refund claimant to the government itself and are declared under perjury.[162]

Thus, this Court sees no reason why it should not rule the same way.

III.E

Lastly, while tax exemptions are strictly construed against the taxpayer, the government should not misuse technicalities to keep money it is not entitled to.

> Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.[163] (Citations omitted)

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[161] 744 Phil. 299 (2014) [Per *J*. Leonen, Second Division].

[162] *Id*. at 310-311.

[163] *State Land Investment Corp. v. Commissioner of Internal Revenue,* 566 Phil. 113, 122 (2008) [Per *J*. Sandoval-Gutierez, First Division].

Considering that PAL presented sufficient proof that: (i) it is exempted from paying withholding taxes; (ii) amounts were withheld and deducted from its accounts; (iii) and the Commissioner did not contest the withholding of these amounts and only raises that they were not proven to be remitted, this Court finds that PAL sufficiently proved that it is entitled to its claim for refund.

Finally, both the Commissioner and the Court of Tax Appeals should have appreciated the unreasonable difficulty that it would have put the taxpayer—in this case PAL—to claim a statutory exemption granted to it. In requiring that it prove actual remittance, the court *a quo* and the Commissioner effectively put the burden on the payee to prove that both government and the banks complied with their legal obligation. It would have been near impossible for the taxpayer to demand to see the records of the payor bank or the ledgers of the government. The legislative policy was to provide incentives to the taxpayer by unburdening it of taxes. By administrative and judicial interpretation, such policy would have been unreasonably reversed. This is not this Court's view of equity. Clearly, the taxpayer in this case is entitled to relief.

WHEREFORE, premises considered, the Petition of Philippine Airlines, Inc. in **G.R. Nos. 206079-80** is **GRANTED**. The Petition of the Commissioner of Internal Revenue in **G.R. No. 206309** is **DENIED.** The August 14, 2012 Decision and February 25, 2013 Resolution of the Court of Tax Appeals En Banc in CTA CASE No. 6877 are **PARTIALLY REVERSED**. Philippine Airlines, Inc. is entitled to its claim for refund of ₱510,223.16 and US$65,877.07, representing the final income taxes withheld by China Banking Corporation, Philippine Bank of Communications, and Standard Chartered Bank.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 207074. January 17, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MICHELLE SORIANO GALLO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; CASE AT BAR.— In assailing the Court of Appeals' ruling that the change sought by Gallo was a mere correction of error, petitioner raises a question of fact not proper under a Rule 45 Petition, which should only raise questions of law. Time and again, it has been held that this Court is not a trier of facts. Thus, its functions do not include weighing and analyzing evidence adduced from the lower courts all over again. x x x In the case at bar, petitioner raises an issue which requires an evaluation of evidence as determining whether or not the change sought is a typographical error or a substantive change requires looking into the party's records, supporting documents, testimonies, and other evidence.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 9048 (CLERICAL ERROR LAW); VESTS THE AUTHORITY TO ENTERTAIN PETITIONS FOR CHANGE OF NAME AND CORRECTIONS OF CLERICAL OR TYPOGRAPHICAL ERROR TO THE CITY OR MUNICIPAL REGISTRAR OR CONSUL GENERAL CONCERNED; JUDICIAL PROCEEDINGS UNDER RULES 103 AND 108 OF THE RULES OF COURT ARE NECESSARY ONLY IF THE ADMINISTRATIVE PETITION HAS BEEN FILED AND LATER DENIED.— x x x Republic Act No. 9048 amended Articles 376 and 412 of the Civil Code, effectively removing clerical errors and changes of the name outside the ambit of Rule 108 and putting them under the jurisdiction of the civil registrar. x x x Republic Act No. 9048 also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register or changes in first names or nicknames. x x x Thus, a

person may now change his or her first name or correct clerical errors in his or her name through administrative proceedings. Rules 103 and 108 only apply if the administrative petition has been filed and later denied.

3. ID.; ID.; REPUBLIC ACT NO. 10172 (AUTHORITY TO CORRECT CERTAIN CLERICAL OR TYPOGRAPHICAL ERRORS APPEARING IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER); DEFINED "CLERICAL OR TYPOGRAPHICAL ERROR" AS A RECORDED MISTAKE WHICH IS VISIBLE TO THE EYES OR OBVIOUS TO THE UNDERSTANDING; AMENDED REPUBLIC ACT NO. 9048 TO INCLUDE CHANGE OF DAY AND MONTH IN THE DATE OF BIRTH OR SEX OF A PERSON WITHIN THE JURISDICTION OF THE CITY OR MUNICIPAL REGISTRAR WITHOUT JUDICIAL PROCEEDINGS; CASE AT BAR.— Republic Act No. 10172 defines a clerical or typographical error as a recorded mistake, "which is *visible to the eyes or obvious to the understanding.*" x x x By qualifying the definition of a clerical, typographical error as a mistake "visible to the eyes or obvious to the understanding," the law recognizes that there is a factual determination made after reference to and evaluation of existing documents presented. Thus, corrections may be made even though the error is not typographical if it is "obvious to the understanding," even if there is no proof that the name or circumstance in the birth certificate was ever used. This Court agrees with the Regional Trial Court's determination, concurred in by the Court of Appeals, that this case involves the correction of a mere error. As these are findings of fact, this Court is bound by the lower courts' findings. x x x In 2012, Republic Act No. 9048 was amended by Republic Act No. 10172. In addition to the change of the first name, the day and month of birth, and the sex of a person may now be changed without judicial proceedings. Republic Act No. 10172 clarifies that these changes may now be administratively corrected where it is patently clear that there is a clerical or typographical mistake in the entry. It may be changed by filing a subscribed and sworn affidavit with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept.

4. ID.; ID.; REPUBLIC ACT NO. 9048 (CLERICAL ERROR LAW); THE CIVIL REGISTRAR, NOT THE REGIONAL TRIAL COURT, HAS PRIMARY JURISDICTION OVER PETITION FOR CORRECTION OF CLERICAL ERRORS COMMITTED IN THE RECORDING OF ONE'S NAME; CHANGE OF SEX IS NOT A MERE CLERICAL OR TYPOGRAPHICAL ERROR BUT A SUBSTANTIVE MATTER THAT FALLS UNDER RULE 108 OF THE RULES OF COURT; CASE AT BAR.— Considering that Gallo had shown that the reason for her petition was not to change the name by which she is commonly known, this Court rules that her petition is not covered by Rule 103. Gallo is not filing the petition to change her current appellation. She is merely correcting the misspelling of her name. x x x As stated, Gallo filed her Petition for Correction of Entry on May 13, 2010. The current law, Republic Act No. 10172, does not apply because it was enacted only on August 19, 2012. The applicable law then for the correction of Gallo's name is Republic Act No. 9048. To reiterate, Republic Act No. 9048 was enacted on March 22, 2001 and removed the correction of clerical or typographical errors from the scope of Rule 108. It also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register, or changes of first name or nickname. x x x Therefore, it is the civil registrar who has primary jurisdiction over Gallo's petition, not the Regional Trial Court. Only if her petition was denied by the local city or municipal civil registrar can the Regional Trial Court take cognizance of her case. x x x Likewise, the prayers to enter Gallo's middle name as Soriano, the middle names of her parents as Angangan for her mother and Balingao for her father, and the date of her parents' marriage as May 23, 1981 fall under clerical or typographical errors as mentioned in Republic Act No. 9048. x x x [E]rrors "visible to the eyes or obvious to the understanding" fall within the coverage of clerical mistakes not deemed substantial. If it is "obvious to the understanding," even if there is no proof that the name or circumstance in the birth certificate was ever used, the correction may be made. Thus, as to these corrections, Gallo should have sought to correct them administratively before filing a petition under Rule 108. However, the petition to correct Gallo's biological sex was rightfully filed under Rule 108 as this was a substantial change

excluded in the definition of clerical or typographical errors in Republic Act No. 9048.

5. **ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; FAILURE TO OBSERVE THE DOCTRINE AFFECTS THE PARTY'S CAUSE OF ACTION BUT NOT THE COURT'S JURISDICTION.—** Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court. However, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court's jurisdiction. Thus, the doctrine may be waived.

6. **ID.; ID.; DOCTRINE OF PRIMARY JURISDICTION; REFERS TO THE COMPETENCE OF AN ADMINISTRATIVE TRIBUNAL TO EXERCISE JURISDICTION OVER A CONTROVERSY AT FIRST INSTANCE REQUIRING ITS SPECIAL KNOWLEDGE, EXPERIENCE AND SERVICES.—** x x x [U]nder the doctrine of primary administrative jurisdiction, if an administrative tribunal has jurisdiction over a controversy, courts should not resolve the issue even if it may be within its proper jurisdiction. This is especially true when the question involves its sound discretion requiring special knowledge, experience, and services to determine technical and intricate matters of fact. x x x Thus, the doctrine of primary administrative jurisdiction refers to the competence of x x x [an administrative tribunal] to take cognizance of a case at first instance. Unlike the doctrine of exhaustion of administrative remedies, it cannot be waived. However, for reasons of equity, in cases where jurisdiction is lacking, this Court has ruled that failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

LEONEN, *J.*:

Names are labels for one's identity. They facilitate social interaction, including the allocation of rights and determination of liabilities. It is for this reason that the State has an interest in one's name.

The name through which one is known is generally, however, not chosen by the individual who bears it. Rather, it is chosen by one's parents. In this sense, the choice of one's name is not a product of the exercise of autonomy of the individual to whom it refers.

In view of the State's interest in names as markers of one's identity, the law requires that these labels be registered. Understandably, in some cases, the names so registered or other aspects of one's identity that pertain to one's name are not reflected with accuracy in the Certificate of Live Birth filed with the civil registrar.

Changes to one's name, therefore, can be the result of either one of two (2) motives. The first, as an exercise of one's autonomy, is to change the appellation that one was given for various reasons. The other is not an exercise to change the label that was given to a person; it is simply to correct the data as it was recorded in the Civil Registry.

This is a Petition for Review[1] under Rule 45 assailing the April 29, 2013 Decision[2] of the Court of Appeals in CA-G.R.

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

[2] *Id*. at 26-33. The Decision was penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting of the Ninth Division, Court of Appeals, Manila.

CV No. 96358, which denied the Republic of the Philippines' appeal[3] from the Regional Trial Court December 7, 2010 Order[4] granting herein respondent Michelle Soriano Gallo's (Gallo) Petition for Correction of Entry of her Certificate of Live Birth.

Gallo has never been known as "Michael Soriano Gallo." She has always been female. Her parents, married on May 23, 1981, have never changed their names. For her, in her petition before the Regional Trial Court, her Certificate of Live Birth contained errors, which should be corrected. For her, she was not changing the name that was given to her; she was merely correcting its entry.

To accurately reflect these facts in her documents, Gallo prayed before the Regional Trial Court of Ilagan City, Isabela in Special Proc. No. 2155[5] for the correction of her name from "Michael" to "Michelle" and of her biological sex from "Male" to "Female" under Rule 108[6] of the Rules of Court.[7]

In addition, Gallo asked for the inclusion of her middle name, "Soriano"; her mother's middle name, "Angangan"; her father's middle name, "Balingao"; and her parent's marriage date, May 23, 1981, in her Certificate of Live Birth, as these were not recorded.[8]

As proof, she attached to her petition copies of her diploma, voter's certification, official transcript of records, medical certificate, mother's birth certificate, and parents' marriage certificate.[9]

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[3] Represented by the Office of the Solicitor General.

[4] *Rollo,* pp. 34-35. The Order, docketed as Special Proc. No. 2155, was penned by Acting Judge Isaac R. De Alban of Branch 18, Regional Trial Court, Ilagan, Isabela.

[5] *Id*. at 34, Regional Trial Court Order.

[6] RULES OF COURT, Rule 108.

[7] *Rollo,* p. 34, Regional Trial Court Order.

[8] *Id*. at 26-27, Court of Appeals Decision.

[9] *Id*. at 27.

The Regional Trial Court, having found Gallo's petition sufficient in form and substance, set a hearing on August 2, 2010. It also ordered the publication of the Notice of Hearing once a week for three (3) consecutive weeks in a newspaper of general circulation in the Province of Isabela.[10]

The Office of the Solicitor General authorized the Office of the Provincial Prosecutor to appear on its behalf.[11] Trial then ensued.

During trial, Gallo testified on her allegations. She showed that her college diploma, voter's certification, and transcript indicated that her name was "Michelle Soriano Gallo." The doctor who examined her also certified that she was female.[12] On cross-examination, Gallo explained that she never undertook any gender-reassignment surgery and that she filed the petition not to evade any civil or criminal liability, but to obtain a passport.[13]

The Regional Trial Court, in its December 7, 2010 Order, granted the petition.[14] It lent credence to the documents Gallo presented and found that the corrections she sought were "harmless and innocuous."[15] It concluded that there was a necessity to correct Gallo's Certificate of Live Birth and applied Rule 108 of the Rules of Court,[16] citing *Republic v. Cagandahan.*[17] Thus:

WHEREFORE, above premises considered, an order is hereby issued directing the Civil Registrar General, NSO through the

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[10] *Id*.

[11] *Id*.

[12] *Id*. The CA Decision did not mention the name of the doctor.

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

[14] *Id*. at 35, Regional Trial Court Order.

[15] *Id*. at 34.

[16] RULES OF COURT, Rule 108.

[17] *Republic v. Cagandahan,* 586 Phil. 637-653 (2008) [Per J. Quisumbing, Second Division].

Municipal Civil Registrar of Ilagan, Isabela to correct the entries in the Birth Certificate of the petitioner as well as in the National Statistics Office Authenticated copy particularly her first name "MICHAEL" to "MICHELLE", gender from "MALE" to "FEMALE", middle name of petitioner to be entered as "SORIANO", middle names of petitioner's parents to be properly supplied as "ANGANGAN" for the mother and "BALINGAO" for the father, as well as date of marriage of petitioner's parents to be recorded as "MAY 23, 1981", after payment of legal fees if there be any.

SO ORDERED.[18]

The Office of the Solicitor General appealed, alleging that the applicable rule should be Rule 103 of the Rules of Court for Petitions for Change of Name.[19] It argued that Gallo did not comply with the jurisdictional requirements under Rule 103 because the title of her Petition and the published Order did not state her official name, "Michael Gallo."[20] Furthermore, the published Order was also defective for not stating the cause of the change of name.[21]

The Court of Appeals, in its assailed April 29, 2013 Decision, denied the Office of the Solicitor General's appeal.[22] It found that Gallo availed of the proper remedy under Rule 108 as the corrections sought were clerical, harmless, and innocuous.[23]

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[18] *Rollo*, p. 35, Regional Trial Court Order.

[19] *Id*. at 28, Court of Appeals Decision.

[20] RULES OF COURT, Rule 103, Sec. 2.

SECTION 2. *Contents of petition*. — A petition for change of name shall be signed and verified by the person desiring his name changed, or some other person on his behalf, and shall set forth:

(a) That the petitioner has been a *bona fide* resident of the province where the petition is filed for at least three (3) years prior to the date of such filing;

(b) The cause for which the change of the petitioner's name is sought;

(c) The name asked for.

[21] *Rollo*, p. 28, Court of Appeals Decision.

[22] *Id*.

[23] *Id*. at 29.

It further clarified that Rule 108 is limited to the implementation of Article 412 of the Civil Code[24] and that the proceedings which stem from it can "either be summary, if the correction sought is clerical, or adversary . . . if [it] affects . . . civil status, citizenship or nationality . . . which are deemed substantial corrections."[25]

The Court of Appeals discussed that Rule 103, on the other hand, "governs the proceeding for changing the given or proper name of a person as recorded in the civil register."[26]

> Jurisprudence has recognized the following grounds as sufficient to warrant a change of name, to wit: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence of legitimation or adoption; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage; (e) when the change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest.[27]

The Court of Appeals also stated that Republic Act No. 10172, "the present law on the matter, classifies a change in the first name or nickname, or sex of a person as clerical error that may be corrected without a judicial order."[28] It applied this ruling on the inclusion of Gallo's middle name, her parents' middle names, and the latter's date of marriage, as they do not involve substantial corrections.[29]

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[24] CIVIL CODE, Art. 412. No entry in a civil register shall be changed or corrected, without a judicial order.

[25] *Rollo*, p. 29, Court of Appeals Decision, citing *Republic v. Bautista,* 239 Phil. 10-17 (1987) [Per *J*. Fernan, Third Division].

[26] *Id*.

[27] *Id*. at 29, citing *Republic v. Hernandez*, 323 Phil. 606-642 (1996) [Per *J*. Regalado, Second Division].

[28] *Id*. at 30, Court of Appeals Decision.

[29] *Id*.

As the petition merely involved the correction of clerical errors, the Court of Appeals held that a summary proceeding would have sufficed. With this determination, the Regional Trial Court's more rigid and stringent adversarial proceeding was more than enough to satisfy the procedural requirements under Rule 108.[30]

However, the Republic, through the Office of the Solicitor General, believes otherwise. For it, Gallo wants to change the name that she was given. Thus, it filed the present Petition via Rule 45 under the 1997 Rules of Civil Procedure. The Petition raises procedural errors made by the Regional Trial Court and the Court of Appeals in finding for Gallo.[31]

Citing *Republic v. Mercadera*,[32] petitioner argues that "only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised" in petitions for correction under Rule 108.[33] Thus, the correction must only be for a patently misspelled name.[34] As "Michael" could not have been the result of misspelling "Michelle," petitioner contends that the case should fall under Rule 103 for it contemplates a substantial change.[35]

Petitioner holds that since the applicable rule is Rule 103, Gallo was not able to comply with the jurisdictional requirements for a change of name under Section 2 of this Rule.[36] It also argues that the use of a different name is not a reasonable ground to change name under Rule 103.[37]

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[30] *Id*. at 31, Court of Appeals Decision.

[31] *Id*. at 8-25, Petition.

[32] 652 Phil. 195, 205 (2010) [Per *J*. Mendoza, Second Division].

[33] *Rollo,* pp. 13-14, Petition.

[34] *Id*.

[35] *Id*. at 14.

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

[37] *Id*. at 16.

Finally, petitioner insists that Gallo failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction[38] as Republic Act No. 9048 allegedly now governs the change of first name, superseding the civil registrar's jurisdiction over the matter.[39]

To support its claim, it cited *Silverio v. Republic,*[40] which held that "[t]he intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 . . . and 108 . . . of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied."[41]

Respondent Gallo, in her Comment,[42] counters that the issue of whether or not the petitioned corrections are innocuous or clerical is a factual issue, which is improper in a Petition for Review on Certiorari under Rule 45.[43] In any case, she argues that the corrections are clerical; hence, the applicable rule is Rule 108 and not Rule 103, with the requirements of an adversarial proceeding properly satisfied.[44] Lastly, she contends that petitioner has waived its right to invoke the doctrines of non-exhaustion of administrative remedies and primary jurisdiction when it failed to file a motion to dismiss before the Regional Trial Court and only raised these issues before this Court.[45]

Petitioner filed its Reply.[46] The case was then submitted for resolution after the parties filed their respective Memoranda.[47]

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[38] *Id.* at 12-13.

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

[40] 562 Phil. 953 (2007) [Per *J.* Corona, First Division].

[41] *Rollo,* p. 19, Petition.

[42] *Id.* at 47-57, Respondent's Comment.

[43] *Id.* at 51.

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

[45] *Id.* at 54.

[46] *Id.* at 60-67, Reply.

[47] *Id.* at 73-92, Republic's Memorandum; *rollo,* pp. 104-116, Gallo's Memorandum.

The issues for this Court's resolution are:

First, whether or not the Republic of the Philippines raised a question of fact in alleging that the change sought by Michelle Soriano Gallo is substantive and not a mere correction of error;

Second, whether or not Michelle Soriano Gallo's petition involves a substantive change under Rule 103 of the Rules of Court instead of mere correction of clerical errors; and

Finally, whether or not Michelle Soriano Gallo failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction.

This Court finds for the respondent. Hers was a Petition to correct the entry in the Civil Registry.

I

In assailing the Court of Appeals' ruling that the change sought by Gallo was a mere correction of error, petitioner raises a question of fact not proper under a Rule 45 Petition, which should only raise questions of law.

Time and again, it has been held that this Court is not a trier of facts. Thus, its functions do not include weighing and analyzing evidence adduced from the lower courts all over again.

In *Spouses Miano v. Manila Electric Co.*:[48]

> The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari.* It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.

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[48] G.R. No. 205035, November 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf> [Per *J.* Leonen, Second Division].

Bases Conversion Development Authority v. Reyes distinguished a question of law from a question of fact:

> Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised *without evaluating the evidence*, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[49] (Emphasis supplied)

In the case at bar, petitioner raises an issue which requires an evaluation of evidence as determining whether or not the change sought is a typographical error or a substantive change requires looking into the party's records, supporting documents, testimonies, and other evidence.

On changes of first name, Republic Act No. 10172, which amended Republic Act No. 9048, is helpful in identifying the nature of the determination sought.

Republic Act No. 10172[50] defines a clerical or typographical error as a recorded mistake, "which is *visible to the eyes or obvious to the understanding*." Thus:

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[49] *Id*., citing RULES OF COURT, Rule 45, Secs. 1 and 6; *Bases Conversion Development Authority v. Reyes*, 711 Phil. 631-643 (2012) [Per *J*. Perlas-Bernabe, Second Division]; *Quintos v. Nicolas,* 736 Phil. 438, 451 (2014) [Per *J*. Velasco, Third Division].

[50] Rep. Act No. 10172 (2012), *Authority to Correct Certain Clerical or Typographical Errors Appearing in the Civil Register Without Need of a Judicial Order*.

Section 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

. . . . . .

(3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however*, That no correction must involve the change of nationality, age, or status of the petitioner.[51]

Likewise, Republic Act No. 9048[52] states:

Section 2. *Definition of Terms*. — As used in this Act, the following terms shall mean:

. . . . . .

(3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, status or sex of the petitioner.[53]

By qualifying the definition of a clerical, typographical error as a mistake "visible to the eyes or obvious to the understanding," the law recognizes that there is a factual determination made after reference to and evaluation of existing documents presented.

Thus, corrections may be made even though the error is not typographical if it is "obvious to the understanding," even if

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[51] Rep. Act No. 10172 (2012), Sec. 2.

[52] Rep. Act No. 9048 (2001), *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname in Civil Register.*

[53] Rep. Act No. 9048 (2001), Sec. 2.

there is no proof that the name or circumstance in the birth certificate was ever used.

This Court agrees with the Regional Trial Court's determination, concurred in by the Court of Appeals, that this case involves the correction of a mere error. As these are findings of fact, this Court is bound by the lower courts' findings.

II.A

In any case, Rule 103 of the Rules of Court does not apply to the case at bar. The change in the entry of Gallo's biological sex is governed by Rule 108 of the Rules of Court while Republic Act No. 9048 applies to all other corrections sought.

Under Article 407 of the Civil Code, the books in the Civil Register include "acts, events and judicial decrees concerning the civil status of persons,"[54] which are *prima facie* evidence of the facts stated there.[55]

Entries in the register include births, marriages, deaths, legal separations, annulments of marriage, judgments declaring marriages void from the beginning, legitimations, adoptions, acknowledgments of natural children, naturalization, loss or recovery of citizenship, civil interdiction, judicial determination of filiation, voluntary emancipation of a minor, and *changes of name*.[56]

As stated, the governing law on changes of first name is currently Republic Act No. 10172, which amended Republic Act No. 9048. Prior to these laws, the controlling provisions on changes or corrections of name were Articles 376 and 412 of the Civil Code.

Article 376 states the need for judicial authority before any person can change his or her name.[57] On the other hand,

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[54] CIVIL CODE, Art. 407.

[55] CIVIL CODE, Art. 410.

[56] CIVIL CODE, Art. 408.

[57] CIVIL CODE, Art. 376. No person can change his name or surname without judicial authority.

Article 412 provides that judicial authority is also necessary before any entry in the civil register may be changed or corrected.[58]

Under the old rules, a person would have to file an action in court under Rule 103 for substantial changes in the given name or surname provided they fall under any of the valid reasons recognized by law, or Rule 108 for corrections of clerical errors.

This requirement for judicial authorization was justified to prevent fraud and allow other parties, who may be affected by the change of name, to oppose the matter, as decisions in these proceedings bind the whole world.[59]

Rule 103 procedurally governs judicial petitions for change of given name or surname, or both, pursuant to Article 376 of the Civil Code. This rule provides the procedure for an independent special proceeding in court to establish the status of a person involving his relations with others, that is, his legal position in, or with regard to, the rest of the community. In petitions for change of name, a person avails of a remedy to alter the "designation by which he is known and called in the community in which he lives and is best known." When granted, a person's identity and interactions are affected as he bears a new "label or appellation for the convenience of the world at large in addressing him, or in speaking of, or dealing with him." Judicial permission for a change of name aims to prevent fraud and to ensure a record of the change by virtue of a court decree.

The proceeding under Rule 103 is also an action *in rem* which requires publication of the order issued by the court to afford the State and all other interested parties to oppose the petition. When complied with, the decision binds not only the parties impleaded but the whole world. As notice to all, publication serves to indefinitely bar all who might make an objection. "It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it."

Essentially, a change of name does not define or effect a change of one's existing family relations or in the rights and duties flowing

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[58] CIVIL CODE, Art. 412.

[59] *Republic v. Mercadera*, 652 Phil. 195, 205 (2010) [Per J. Mendoza, Second Division].

therefrom. It does not alter one's legal capacity or civil status. However, "there could be instances where the change applied for may be open to objection by parties who already bear the surname desired by the applicant, not because he would thereby acquire certain family ties with them but because the existence of such ties might be erroneously impressed on the public mind." Hence, in requests for a change of name, "what is involved is not a mere matter of allowance or disallowance of the request, but a judicious evaluation of the sufficiency and propriety of the justifications advanced . . . mindful of the consequent results in the event of its grant . . ."[60] (Citations omitted)

Applying Article 412 of the Civil Code, a person desiring to change his or her name altogether must file a petition under Rule 103 with the Regional Trial Court, which will then issue an order setting a hearing date and directing the order's publication in a newspaper of general circulation.[61] After finding that there is proper and reasonable cause to change his or her name, the Regional Trial Court may grant the petition and order its entry in the civil register.[62]

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[60] *Id*. at 205-206.

[61] RULES OF COURT, Rule 103, Secs.1 and 3 provide:

Section 1. *Venue*. — A person desiring to change his name shall present the petition to the Court of First Instance of the province in which he resides, or, in the City of Manila, to the Juvenile and Domestic Relations Court.

. . . . . .

Section 3. *Order for hearing*. — If the petition filed is sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, and shall direct that a copy of the order be published before the hearing at least once a week for three (3) successive weeks in some newspaper of general circulation published in the province, as the court shall deem best. The date set for the hearing shall not be within thirty (30) days prior to an election nor within four (4) months after the last publication of the notice.

[62] RULES OF COURT, Rule 103, Secs. 5 and 6 provide:

Section 5. *Judgment*. — Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the allegations of the petition are true, the court shall, if proper and reasonable cause appears for changing the name of the petitioner, adjudge that such name be changed in accordance with the prayer of the petition.

On the other hand, Rule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register.[63] It also governs the correction of substantial errors in the entry of the information enumerated in Section 2 of this Rule[64] and those affecting the civil status, citizenship, and nationality of a person.[65] The proceedings under this rule may either be summary, if the correction pertains to clerical mistakes, or adversary, if it pertains to substantial errors.[66]

As explained in *Republic v. Mercadera*:[67]

Finally in *Republic v. Valencia*, the above[-]stated views were adopted by this Court insofar as even substantial errors or matters in a civil registry may be corrected and the true facts established, provided the parties aggrieved avail themselves of the appropriate adversary proceeding. "If the purpose of the petition is merely to correct the clerical errors which are visible to the eye or obvious to the understanding, the court may, under a summary procedure, issue an order for the correction of a mistake. However, as repeatedly

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Section 6. *Service of judgment.* — Judgments or orders rendered in connection with this rule shall be furnished the civil registrar of the municipality or city where the court issuing the same is situated, who shall forthwith enter the same in the civil register.

[63] *Republic v. Mercadera*, 652 Phil. 195, 207-209 (2010) [Per *J*. Mendoza, Second Division].

[64] RULES OF COURT, Rule 108, Sec. 2.

Section 2. *Entries subject to cancellation or correction.* — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) **changes of name**. (Emphasis supplied)

[65] *Republic v. Mercadera*, 652 Phil. 195, 207 (2010) [Per *J*. Mendoza, Second Division].

[66] *Id*.

[67] 652 Phil. 195 (2010) [Per *J*. Mendoza, Second Division].

construed, *changes which may affect the civil status from legitimate to illegitimate, as well as sex, are substantial and controversial* alterations which can only be allowed after appropriate adversary proceedings depending upon the nature of the issues involved. *Changes which affect the civil status or citizenship of a party are substantial in character* and should be threshed out in a proper action depending upon the nature of the issues in controversy, and wherein all the parties who may be affected by the entries are notified or represented and evidence is submitted to prove the allegations of the complaint, and proof to the contrary admitted . . . ." "Where such a change is ordered, the Court will not be establishing a substantive right but only correcting or rectifying an erroneous entry in the civil registry as authorized by law. In short, Rule 108 of the Rules of Court provides only the procedure or mechanism for the proper enforcement of the substantive law embodied in Article 412 of the Civil Code and so does not violate the Constitution."[68] (Emphasis in the original)

Following the procedure in Rule 103, Rule 108 also requires a petition to be filed before the Regional Trial Court. The trial court then sets a hearing and directs the publication of its order in a newspaper of general circulation in the province.[69] After the hearing, the trial court may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.[70]

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[68] *Id*. at 208, citing *Republic v. Valencia*, 225 Phil. 408-422 (1986) [Per *J*. Gutierrez, Jr., *En Banc*]; *Lee v. Court of Appeals,* 419 Phil. 392 (2001) [Per *J*. De Leon Jr., Second Division]; *Chiao Ben Lim v. Zosa*, 230 Phil. 444 (1986) [Per *J*. Cruz, *En Banc*] .

[69] RULES OF COURT, Rule 108, Sec. 4 provides:

Section 4. *Notice and publication*. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

[70] RULES OF COURT, Rule 108, Sec. 7 provides:

Section 7. *Order*. — After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

Mercadera clarified the applications of Article 376 and Rule 103, and of Article 412 and Rule 108, thus:

> The "change of name" contemplated under Article 376 and Rule 103 must not be confused with Article 412 and Rule 108. A change of one's name under Rule 103 can be granted, only on grounds provided by law. In order to justify a request for change of name, there must be a proper and compelling reason for the change and proof that the person requesting will be prejudiced by the use of his official name. To assess the sufficiency of the grounds invoked therefor, there must be adversarial proceedings.
>
> In petitions for correction, only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised. Considering that the enumeration in Section 2, Rule 108 also includes "changes of name," the correction of a patently misspelled name is covered by Rule 108. Suffice it to say, not all alterations allowed in one's name are confined under Rule 103. Corrections for clerical errors may be set right under Rule 108.
>
> This rule in "names," however, does not operate to entirely limit Rule 108 to the correction of clerical errors in civil registry entries by way of a summary proceeding. As explained above, *Republic v. Valencia* is the authority for allowing substantial errors in other entries like citizenship, civil status, and paternity, to be corrected using Rule 108 provided there is an adversary proceeding. "After all, the role of the Court under Rule 108 is to ascertain the truths about the facts recorded therein."[71] (Citations omitted)

However, Republic Act No. 9048[72] amended Articles 376 and 412 of the Civil Code, effectively removing clerical errors and changes of the name outside the ambit of Rule 108 and putting them under the jurisdiction of the civil registrar.[73]

In *Silverio v. Republic*:[74]

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[71] *Republic v. Mercadera,* 652 Phil. 195, 210-211 (2010) [Per *J*. Mendoza, Second Division].

[72] The law was enacted on March 22, 2001 and became effective on April 22, 2001.

[73] *Republic v. Mercadera*, 652 Phil. 195 (2010) [Per *J*. Mendoza, Second Division].

[74] 562 Phil. 953 (2007) [Per *J*. Corona, First Division].

The State has an interest in the names borne by individuals and entities for purposes of identification. A change of name is a privilege, not a right. Petitions for change of name are controlled by statutes. In this connection, Article 376 of the Civil Code provides:

ART. 376. No person can change his name or surname without judicial authority.

This Civil Code provision was amended by RA 9048 (Clerical Error Law) . . .

. . . . . .

RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. Under the law, therefore, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. It likewise lays down the corresponding venue, form and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.[75] (Citations omitted)

In *Republic v. Cagandahan*:[76]

The determination of a person's sex appearing in his birth certificate is a legal issue and the court must look to the statutes. In this connection, Article 412 of the Civil Code provides:

> ART. 412. No entry in a civil register shall be changed or corrected without a judicial order.

Together with Article 376 of the Civil Code, this provision was amended by Republic Act No. 9048 in so far as *clerical or typographical* errors are involved. The correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, Rep. Act No. 9048

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[75] *Id*. at 963-965.

[76] 586 Phil. 637 (2008) [Per *J*. Quisumbing, Second Division].

removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register.[77] (Emphasis in the original, citations omitted)

In *Republic v. Sali*:[78]

The petition for change of first name may be allowed, among other grounds, *if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community. The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition.* It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court.[79] (Emphasis supplied, citations omitted)

Republic Act No. 9048 also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register or changes in first names or nicknames.[80]

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.[81]

Thus, a person may now change his or her first name or correct clerical errors in his or her name through administrative proceedings. Rules 103 and 108 only apply if the administrative petition has been filed and later denied.

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[77] *Id*. at 647-648.

[78] G.R. No. 206023, April 3, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/206023.pdf> [Per J. Peralta, Second Division].

[79] *Id*. at 5.

[80] Rep. Act No. 9048 (2001), Sec. 1.

[81] Rep. Act No. 9048 (2001), Sec. 1.

In 2012, Republic Act No. 9048 was amended by Republic Act No. 10172.[82]

In addition to the change of the first name, the day and month of birth, and the sex of a person may now be changed without judicial proceedings. Republic Act No. 10172 clarifies that these changes may now be administratively corrected where it is patently clear that there is a clerical or typographical mistake in the entry. It may be changed by filing a subscribed and sworn affidavit with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept.[83]

> Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.*— No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and *change of first name or nickname*, the day and month in the date of birth or sex of a person *where it is patently clear that there was a clerical or typographical error or mistake in the entry*, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.[84] (Emphasis supplied)

However, Republic Act No. 10172 does not apply in the case at bar as it was only enacted on August 15, 2012—more than two (2) years after Gallo filed her Petition for Correction of Entry on May 13, 2010.[85] Hence, Republic Act No. 9048 governs.

II.B

As to the issue of which between Rules 103 and 108 applies, it is necessary to determine the nature of the correction sought by Gallo.

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[82] Rep. Act No. 10172 (2012).

[83] Rep. Act No. 9048 (2001), Sec. 5 as amended by Rep. Act No. 10172 (2012), Sec. 3.

[84] Rep. Act No. 10172, Sec. 1.

[85] *Rollo,* p. 26.

Petitioner maintains that Rule 103 applies as the changes were substantive while respondent contends that it is Rule 108 which governs as the changes pertain only to corrections of clerical errors.

Upon scrutiny of the records in this case, this Court rules that Gallo's Petition involves a mere correction of clerical errors.

A clerical or typographical error pertains to a

> [M]istake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous . . . which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records[.] [86]

However, corrections which involve a change in nationality, age, or status are not considered clerical or typographical.[87]

Jurisprudence is replete with cases determining what constitutes a clerical or typographical error in names with the civil register.

In *Republic v. Mercadera*,[88] Merlyn Mercadera (Mercadera) sought to correct her name from "Marilyn" to "Merlyn." [89] She alleged that "she had been known as MERLYN ever since" and she prayed that the trial court correct her recorded given name "Marilyn" "to conform to the one she grew up to."[90] The Office of the Solicitor General argued that this change was substantial which must comply with the procedure under Rule 103 of the Rules of Court.[91] However, this Court ruled that Rule

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[86] Rep. Act No. 10172 (2012), Sec. 2(3); Rep. Act No. 9048 (2001), Sec. 2(3).

[87] Rep. Act No. 10172 (2012), Sec. 2(3); Rep. Act No. 9048 (2001), Sec. 2(3).

[88] 652 Phil. 195 (2010) [Per *J*. Mendoza, Second Division].

[89] *Id*. at 199.

[90] *Id*. at 211.

[91] *Id*. at 209.

103 did not apply because the petition merely sought to correct a misspelled given name:

> In this case, the use of the letter "a" for the letter "e," and the deletion of the letter "i," so that what appears as "Marilyn" would read as "Merlyn" is patently a rectification of a name that is clearly misspelled. The similarity between "Marilyn" and "Merlyn" may well be the object of a mix-up that blemished Mercadera's Certificate of Live Birth until her adulthood, thus, her interest to correct the same.
>
> The [Court of Appeals] did not allow Mercadera the change of her name. What it did allow was the correction of her misspelled given name which she had been using ever since she could remember.[92]

Mercadera also cited similar cases in which this Court determined what constitutes harmless errors that need not go through the proceedings under Rule 103:

> Indeed, there are decided cases involving mistakes similar to Mercadera's case which recognize the same a harmless error. In *Yu v. Republic* it was held that "to change 'Sincio' to 'Sencio' which merely involves the substitution of the first vowel 'i' in the first name into the vowel 'e' amounts merely to the righting of a clerical error." In *Labayo-Rowe v. Republic*, it was held that the change of petitioner's name from "Beatriz Labayo/Beatriz Labayu" to "Emperatriz Labayo" was a mere innocuous alteration wherein a summary proceeding was appropriate. In *Republic v. Court of Appeals, Jaime B. Caranto and Zenaida P. Caranto*, the correction involved the substitution of the letters "ch" for the letter "d," so that what appears as "Midael" as given name would read "Michael." In the latter case, this Court, with the agreement of the Solicitor General, ruled that the error was plainly clerical, such that, "changing the name of the child from 'Midael C. Mazon' to 'Michael C. Mazon' cannot possibly cause any confusion, because both names can be read and pronounced with the same rhyme *(tugma)* and tone *(tono, tunog, himig)*.[93] (Citations omitted)

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[92] *Id.* at 212-213.

[93] *Id.* at 212.

Likewise, in *Republic v. Sali*,[94] Lorena Omapas Sali (Sali) sought to correct her Certificate of Live Birth, alleging that her first name was erroneously entered as "Dorothy" instead of "Lorena," and her date of birth as "June 24, 1968" instead of "April 24, 1968." She alleged that she had been using the name "Lorena" and the birth date "April 24, 1968" ever since. She also averred that she had always been known as "Lorena" in her community. She claimed that the petition was just to correct the error and not to evade any criminal or civil liability, or to affect any succession of another person.[95]

In response, the Office of the Solicitor General, representing the Republic, argued against Sali's claim, alleging that the petition was for a change of name under Rule 103 and not for the correction of a simple clerical error. It averred that there must be a valid ground for the name change, and the applicant's names and aliases must be stated in the title of the petition and the order setting it for hearing. It also contended that assuming Rule 108 was the proper remedy, Sali failed to exhaust her remedies when she did not file an affidavit under Republic Act No. 9048.[96]

In *Sali*, this Court held that Rule 103 did not apply because the petition was not for a change of name, but a petition for correction of errors in the recording of Sali's name and birth date. Sali had been using the name "Lorena" since birth, and she merely sought to have her records conform to the name she had been using as her true name. She had no intention of changing her name altogether. Thus, her prayer for the correction of her misspelled name is not contemplated by Rule 103.[97]

In the case at bar, petitioner, raising the same arguments as that in *Sali*, claims that the change sought by Gallo is substantial,

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[94] G.R. No. 206023, April 3, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/206023.pdf> [Per *J*. Peralta, Second Division].

[95] *Id*. at 2.

[96] *Id*. at 4.

[97] *Id*.

covered by Rule 103 because the two (2) names are allegedly entirely different from each other. It argues that "Michael" could not have been the result of a misspelling of "Michelle."[98]

On the other hand, Gallo argues that the corrections are clerical which fall under Rule 108, with the requirements of an adversarial proceeding properly complied.[99]

Considering that Gallo had shown that the reason for her petition was not to change the name by which she is commonly known, this Court rules that her petition is not covered by Rule 103. Gallo is not filing the petition to change her current appellation. She is merely correcting the misspelling of her name.

Correcting and changing have been differentiated, thus:

> To correct simply means "to make or set aright; to remove the faults or error from." To change means "to replace something with something else of the same kind or with something that serves as a substitute.[100]

Gallo is not attempting to replace her current appellation. She is merely correcting the misspelling of her given name. "Michelle" could easily be misspelled as "Michael," especially since the first four (4) letters of these two (2) names are exactly the same. The differences only pertain to an additional letter "a" in "Michael," and "le" at the end of "Michelle." "Michelle" and "Michael" may also be vocalized similarly, considering the possibility of different accents or intonations of different people. In any case, Gallo does not seek to be known by a different appellation. The lower courts have determined that she has been known as "Michelle" all throughout her life. She is merely seeking to correct her records to conform to her true given name.

However, Rule 108 does not apply in this case either.

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[98] *Rollo,* p. 14, Petition.

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

[100] *Republic v. Mercadera*, 652 Phil. 195, 204 (2010) [Per *J.* Mendoza, Second Division].

As stated, Gallo filed her Petition for Correction of Entry on May 13, 2010.[101] The current law, Republic Act No. 10172, does not apply because it was enacted only on August 19, 2012.[102]

The applicable law then for the correction of Gallo's name is Republic Act No. 9048.[103]

To reiterate, Republic Act No. 9048 was enacted on March 22, 2001 and removed the correction of clerical or typographical errors from the scope of Rule 108. It also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register, or changes of first name or nickname. Thus:

> Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.[104]

Therefore, it is the civil registrar who has primary jurisdiction over Gallo's petition, not the Regional Trial Court. Only if her petition was denied by the local city or municipal civil registrar can the Regional Trial Court take cognizance of her case. In *Republic v. Sali*,[105]

> Sali's petition is not for a change of name as contemplated under Rule 103 of the Rules but for correction of entries under Rule 108. What she seeks is the correction of clerical errors which were

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[101] *Rollo,* p. 26, Court of Appeals Decision.

[102] Rep. Act No. 10172 (2012).

[103] Gallo's Petition for Correction of Entries of Certificate of Live Birth was filed on May 13, 2010. Republic Act No. 9048 took effect on April 21, 2001. Thus, Republic Act No. 9048 applies.

[104] Rep. Act No. 9048 (2001), Sec. 1.

[105] G.R. No. 206023, April 3, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/206023.pdf> [Per *J*. Peralta, Second Division].

committed in the recording of her name and birth date. This Court has held that not all alterations allowed in one's name are confined under Rule 103 and that corrections for clerical errors may be set right under Rule 108. The evidence presented by Sali show that, since birth, she has been using the name "Lorena." Thus, it is apparent that she never had any intention to change her name. What she seeks is simply the removal of the clerical fault or error in her first name, and to set aright the same to conform to the name she grew up with.

Nevertheless, at the time Sali's petition was filed, R.A. No. 9048 was already in effect . . .

. . . . . .

The petition for change of first name may be allowed, among other grounds, if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community. The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition. It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court . . .

. . . . . .

In this case, the petition, insofar as it prayed for the change of Sali's first name, was not within the RTC's primary jurisdiction. It was improper because the remedy should have been administrative, *i.e.*, filing of the petition with the local civil registrar concerned. For failure to exhaust administrative remedies, the RTC should have dismissed the petition to correct Sali's first name.[106]

Likewise, the prayers to enter Gallo's middle name as Soriano, the middle names of her parents as Angangan for her mother and Balingao for her father, and the date of her parents' marriage as May 23, 1981 fall under clerical or typographical errors as mentioned in Republic Act No. 9048.

Under Section 2(3) of Republic Act No. 9048:

(3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing

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

or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, status or sex of the petitioner.[107]

These corrections may be done by referring to existing records in the civil register. None of it involves any change in Gallo's nationality, age, status, or sex.

Moreover, errors "visible to the eyes or obvious to the understanding"[108] fall within the coverage of clerical mistakes not deemed substantial. If it is "obvious to the understanding," even if there is no proof that the name or circumstance in the birth certificate was ever used, the correction may be made.

Thus, as to these corrections, Gallo should have sought to correct them administratively before filing a petition under Rule 108.

However, the petition to correct Gallo's biological sex was rightfully filed under Rule 108 as this was a substantial change excluded in the definition of clerical or typographical errors in Republic Act No. 9048.[109]

This was affirmed in *Republic v. Cagandahan*:[110]

> Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court.[111] (Citation omitted)

It was only when Republic Act No. 10172 was enacted on August 15, 2012 that errors in entries as to biological sex may

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[107] Rep. Act No. 9048 (2001), Sec. 2(3).

[108] Rep. Act No. 9048 (2001), Sec. 2(3).

[109] Rep. Act No. 9048 (2001), Sec. 2(3).

[110] 586 Phil. 637 [Per *J.* Quisumbing, Second Division].

[111] *Id*. at 648.

be administratively corrected, provided that they involve a typographical or clerical error.[112]

However, this is not true for all cases as corrections in entries of biological sex may still be considered a substantive matter.

In *Cagandahan*,[113] this Court ruled that a party who seeks a change of name and biological sex in his or her Certificate of Live Birth after a gender reassignment surgery has to file a petition under Rule 108.[114] In that case, it was held that the change did not involve a mere correction of an error in recording but a petition for a change of records because the sex change was initiated by the petitioner.[115]

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[112] Rep. Act No. 10172, Secs. 1 and 2(3) provide:

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.*— No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and **change of first name or nickname**, the day and month in the date of birth or sex of a person **where it is patently clear that there was a clerical or typographical error or mistake in the entry**, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

Section 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

. . . . . .

(3) "Clerical or typographical error" refers to a mistake **committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous**, such as **misspelled name** or misspelled place of birth, mistake in the entry of day and month in the date of birth or the **sex** of the person or the like, which is **visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records**: *Provided, however*, That **no correction must involve the change of nationality, age, or status of the petitioner**. (Emphasis supplied)

[113] *Republic v. Cagandahan,* 586 Phil. 637 (2008) [Per *J*. Quisumbing, Second Division].

[114] *Id*. at 647-678.

[115] *Id*.

IV

Considering that Gallo did not first file an administrative case in the civil register before proceeding to the courts, petitioner contends that respondent failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction under Republic Act No. 9048.[116]

On the other hand, respondent argues that petitioner has waived its right to invoke these doctrines because it failed to file a motion to dismiss before the Regional Trial Court and only raised these issues before this Court.[117]

This Court rules in favor of Gallo.

Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court.[118]

However, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court's jurisdiction.[119] Thus, the doctrine may be waived as in *Soto v. Jareno*:[120]

> Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and

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[116] *Rollo,* pp. 12-13 and 19, Petition.

[117] *Id*. at 54, Comment.

[118] *Ongsuco v. Malones*, 619 Phil. 492-513 (2009) [Per *J*. Chico-Nazario, Third Division].

[119] *Soto v. Jareno*, 228 Phil. 117, 119 (1986) [Per *J*. Cruz, First Division].

[120] 228 Phil. 117 (1986) [Per *J*. Cruz, First Division].

the court can then take cognizance of the case and try it.[121] (Citation omitted)

Meanwhile, under the doctrine of primary administrative jurisdiction, if an administrative tribunal has jurisdiction over a controversy, courts should not resolve the issue even if it may be within its proper jurisdiction. This is especially true when the question involves its sound discretion requiring special knowledge, experience, and services to determine technical and intricate matters of fact.[122]

In *Republic v. Lacap*:[123]

> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[124] (Citation omitted)

Thus, the doctrine of primary administrative jurisdiction refers to the competence of a court to take cognizance of a case at first instance. Unlike the doctrine of exhaustion of administrative remedies, it cannot be waived.

However, for reasons of equity, in cases where jurisdiction is lacking, this Court has ruled that failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches.[125]

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[121] *Id*. at 119.

[122] *Nestlé Philippines, Inc. v. Uniwide Sales, Inc.,* 648 Phil. 451-460 (2010) [Per *J*. Carpio, Second Division].

[123] 546 Phil. 87 (2007) [Per *J*. Austria-Martinez, Third Division].

[124] *Id*. at 96-98.

[125] *Tijam v. Sibonghanoy,* 131 Phil. 563 (1968) [Per *J*. Dizon, *En Banc*].

In *Tijam v. Sibonghanoy*:[126]

True also is the rule that jurisdiction over the subject-matter is conferred upon the courts exclusively by law, and as the lack of it affects the very authority of the court to take cognizance of the case, the objection may be raised at any stage of the proceedings. However, considering the facts and circumstances of the present case — which shall forthwith be set forth — We are of the opinion that the Surety is now barred by *laches* from invoking this plea at this late hour for the purpose of annulling everything done heretofore in the case with its active participation . . .

. . . . . .

A party may be estopped or barred from raising a question in different ways and for different reasons. Thus we speak of estoppels *in pais*, of estoppel by deed or by record, and of estoppel by *laches*.

Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

The doctrine of laches or of "stale demands" is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction . . . In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct *not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that*

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[126] 131 Phil. 556 (1968) [Per *J*. Dizon, *En Banc*].

such a practice cannot be tolerated — obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court . . . And in Littleton *vs.* Burgess, . . . the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.[127] (Emphasis supplied, citations omitted)

Thus, where a party participated in the proceedings and the issue of non-compliance was raised only as an afterthought at the final stage of appeal, the party invoking it may be estopped from doing so.

Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) *where there is estoppel on the part of the party invoking the doctrine;* (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) *where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant;* (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings . . .[128] (Emphasis supplied, citations omitted)

Petitioner does not deny that the issue of non-compliance with these two (2) doctrines was only raised in this Court. Thus,

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[127] *Id.* at 562-564.

[128] *Republic v. Lacap*, 546 Phil. 87, 96-98 [Per *J.* Austria-Martinez, Third Division].

in failing to invoke these contentions before the Regional Trial Court, it is estopped from invoking these doctrines as grounds for dismissal.

WHEREFORE, premises considered, the petition is **DENIED**. The April 29, 2013 Decision of the Court of Appeals in CA-G.R. CV No. 96358 is **AFFIRMED**. The Petition for Correction of Entry in the Certificate of Live Birth of Michelle Soriano Gallo is **GRANTED**. This Court directs that the Certificate of Live Birth of Michelle Soriano Gallo be corrected as follows:

1) Correct her first name from "Michael" to "Michelle";

2) Correct her biological sex from "Male" to "Female";

3) Enter her middle name as "Soriano";

4) Enter the middle name of her mother as "Angangan";

5) Enter the middle name of her father as "Balingao"; and

6) Enter the date of her parents' marriage as "May 23, 1981."

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 218245. January 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS EMPUESTO *y* SOCATRE,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT ARE ACCORDED RESPECT BY THE SUPREME COURT; CASE AT BAR.—** Jurisprudence instructs that the assessment of the credibility of witnesses is a task most properly within the domain of trial courts. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying: her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath"; all of which are useful aids for an accurate determination of a witness' honesty and sincerity. x x x The Court had meticulously examined the records of this case but found no reason to depart from the findings of the trial court, which were affirmed by the CA. Accused-appellant failed to show that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; THREE GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** x x x [T]he Court had scrupulously applied in this case the three principles that had consistently guided it in reviewing rape cases, *viz*: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and arrived at the unyielding conclusion that the prosecution was able to efficaciously discharge its burden of proving the guilt of accused-appellant beyond reasonable doubt.

3. **ID.; ID.; ID.; ELEMENTS; PROVEN IN CASE AT BAR.—** For a charge of rape under Article 266-A(1) of Republic Act 8353 to prosper, it must be proved that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such

act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. The gravamen of rape under Article 266-A (1) is carnal knowledge of a woman against her will or without her consent. Moreover, what is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor. Records will confirm that AAA was able to positively identify accused-appellant as the person who surreptitiously entered her house. She knew accused-appellant because they were neighbors. Her husband was the godfather of accused-appellant's eldest son, thus, he called her "marehan." On the early dawn of 3 July 2005, AAA was roused from her sleep when she heard a noise coming through the bamboo slats floor of her house. Because the room where Elsa and her children were sleeping was lighted, she was able to distinctly see accused-appellant armed with a bolo and standing beside the mosquito net. She saw accused-appellant turn off the light and get inside the mosquito net. x x x AAA testified that because she was immobilized by fear, accused-appellant was the one who removed her panty. Accused-appellant then positioned himself on top of her and inserted his penis into her vagina; these he did while she was breastfeeding her child. Undeniably, all the elements of rape had been clearly and effectively proven by the prosecution and convinced the Court to sustain the findings of the trial court.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ACCUSED MAY BE CONVICTED OF THE CHARGE OF RAPE ON THE BASIS OF THE RAPE VICTIM'S CREDIBLE TESTIMONY; CASE AT BAR.— It must be remembered that "(I)n rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis." The Court notes that the testimony of AAA was credible and straightforward and replete with details which can only be known to her because these were the truth. Contrary to the claim of accused-appellant, there was actually no inconsistency in AAA's testimony.

5. ID.; ID.; ID.; ID.; DEFENSES OF DENIAL AND ALIBI, IF UNSUBSTANTIATED, IS INHERENTLY WEAK AND SELF-SERVING THAT DESERVES NO WEIGHT IN LAW; CASE AT BAR.— The defense of denial and alibi offered by accused-appellant in order to extricate himself from any liability was inherently weak. His assertions that he was attending a wake on 2 July 2005 from 7:00 p.m. until 7:00 p.m. the following day, and that he was with Basilio and Sanie all that time, fail to convince. x x x "Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case. Likewise, *alibi* is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut." To merit approbation, accused-appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Accused-appellant admits that the house of Elsa was only 400 meters away from the house of Bautista; thus, it was not physically improbable for him to have been at the scene of the crime when it was committed. Coupled with the fact that neither Basilio's nor Sanie's testimony fortified the accused-appellant's defense that he was at the vigil the whole night of 2 July 2005 until 7:00 a.m. the following day, there is evidently enough basis to readily strike down his defense of denial and alibi as without merit.

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 accused-appellant Jesus Empuesto y Socatre *(Empuesto)* seeking the reversal and setting aside of

the 5 September 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CEB CR HC No. 01680 which affirmed, with modification as to the award of damages, the 23 July 2012 Decision[2] of the Regional Trial Court *(RTC)*, [redacted] Bohol, finding him guilty of Rape under Art. 266-A 1(a) of the Revised Penal Code (*RPC*), as amended.

THE FACTS

In an Information[3] docketed as Crim. Case No. 06-1679, accused-appellant was charged with rape, the accusatory portion of which reads as follows:

> That on or about the 3rd day of July 2005 in the Municipality of [redacted] Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with criminal intent, that is, carnal lecherous desire, with force, threat, and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge with victim AAA by inserting his penis into the vagina of the said victim against her will and consent, to her damage and prejudice in the amount to be proved during the trial.
>
> Acts committed contrary to law, that is, Art. 266-A 1(a) of the Revised Penal Code, as amended.

When arraigned, accused-appellant pleaded not guilty,[4] hence, trial proceeded.

Version of the Prosecution

The prosecution tried to prove its case through the testimony of private complainant AAA,[5] BBB, Rebecca Bantilan *(Rebecca)*,

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[1] CA *rollo*, pp. 76-87; penned by Associate Justice and Chairperson Edgardo L. Santos and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez.

[2] Records, pp. 156-170; penned by Acting Presiding Judge Marivic Trabajo Daray.

[3] *Id.* at 46.

[4] *Id.* at 56.

[5] The true name of the victim had been replaced with fictitious initials in conformity to Administrative Circular No. 83-2015 (Subject: *Protocols*

and [redacted] Municipal Health Officer Dr. Jaime Gregorio L. Salarda *(Dr. Salarda)*.

On 1 July 2005, accused-appellant went to Rebecca's house to invite her husband to attend the Parents-Teachers Association *(PTA)* meeting. Rebecca's husband is the brother of AAA's husband. Because Rebecca's husband was plowing the field at that time, he asked Rebecca to come with accused-appellant instead. At about 2:30 p.m. of that day, when Rebecca and accused-appellant were already in front of AAA's house on their way to the school to attend the PTA meeting, accused-appellant peeped through the window of AAA's house and called out to ask AAA, "Marehan, is padrehan still in Cebu?" AAA answered that her husband was still in Cebu. Accused-appellant calls AAA "marehan" because AAA's husband is the godfather of his eldest child.[6]

On 3 July 2005, at about 1:00 a.m., accused-appellant stealthily entered AAA's house through a hole on the floor. AAA's house had GI roofing but the floor was made of bamboo slats and elevated from the ground. While she and her four children were sleeping inside the mosquito net, AAA heard a noise coming through the floor. To AAA's right was her youngest child and BBB, her eight-year old daughter; while to her left were her two sons. Because the light was on, AAA saw that it was accused-appellant who entered the house. Armed with a bolo, accused-appellant switched off the light and entered the mosquito net. He poked his bolo at AAA and told her not to make any noise, otherwise, he would kill her and her children. He told her that he needed only her. He told AAA to remove

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And Procedures In the Promulgation, Publication, And Posting On The Websites Of Decisions, Final Resolutions, And Final Resolutions, And Final Orders Using Fictitious Names). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 ("*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*"); R.A. No. 8508 ("*Rape Victim Assistance And Protection Act of 1998*"); R.A. No. 9208 ("*Anti-Trafficking In Persons Act Of 2003*"); R.A. No. 9262 ("*Anti-Violence Against Women And Their Children Act Of 2004*"); and R.A. No. 9344 ("*Juvenile Justice And Welfare Act Of 2006*").

[6] TSN, 13 July 2010, pp. 4-9.

her panty but she could not move because of fear. BBB woke up but she likewise did not move because she heard the threat made by accused-appellant to her mother. BBB also heard accused-appellant tell her mother "matagal na kitang gusto."[7]

Because AAA's youngest child was crying, accused-appellant told AAA to breastfeed her child. It was while AAA was breastfeeding that accused-appellant removed her panty, placed himself on top of her, and forcefully inserted his penis into her vagina. After his carnal knowledge of AAA, accused-appellant left while AAA just cried out of fear. Thereafter, AAA and BBB found that accused-appellant was able to enter the house through a hole on the floor. She saw a black female panty on the floor which she believed belonged to accused-appellant because whenever she washed clothes at the river she would usually see him there taking a bath and wearing a black panty. She found out that the bolo he used to threaten her with actually belonged to them; she had placed it that night on the floor near where she and her children lay.[8]

That same morning, AAA went to the house of her parents-in-law and narrated to them what happened to her. On that same day, she went to the police as advised by her parents-in-law and submitted herself to a medical examination by Dr. Salarda. A medico-legal examination report[9] was issued to her after she paid ₱100.00.[10] Due to the filing of this case against accused-appellant, she incurred around ₱20,000.00 going to the Municipal Circuit Trial Court in Dagohoy. Her husband, who was earning ₱5,000.00 weekly while working at a furniture company in Banilad, Cebu, also lost his job as a result of the filing of this case.[11]

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[7] TSN, 16 July 2009, pp. 5-7 and 15; TSN, 10 November 2009, p. 6.

[8] *Id*. at pp. 8-9, 17.

[9] Records, p. 8; Exh. "B".

[10] *Id*. at 7; Exh. "C".

[11] TSN, 16 July 2009, pp. 10-13; TSN, 13 July 2010, p. 14.

Version of the Defense

In his defense, accused-appellant, his brother Basilio, and Sanie[12] Bautista *(Sanie)* testified.

On 2 July 2005, accused-appellant, a barangay tanod, and Basilio went to the house of Kagawad Dioscoro Lofranco *(Lofranco)* to ask for instructions on what to do for the conduct of a vigil before proceeding to the house of the deceased barangay captain, Pedro Bautista *(Bautista)*. Lofranco told accused-appellant to stay at the plaza near the house of Bautista. Accused-appellant and Basilio proceeded to the plaza to await Bautista's body. Basilio stayed with accused-appellant all the time during the vigil.[13]

Sanie arrived at the house of Bautista, his cousin, at around 7:00 p.m. He saw accused-appellant sitting on a bench at the plaza. He also stayed with accused-appellant from 10:00 p.m. until 7:00 a.m. the following day.[14]

Because Bautista's body had not arrived, accused-appellant and Basilio went home at around 6:00 a.m. the following day. At around 8:00 a.m., while on his way back to the vigil, accused-appellant was arrested by the police officers and brought to the [redacted] Philippine National Police *(PNP)* station where he was investigated about the rape case filed by AAA. There he saw AAA and Rebecca.[15]

The Ruling of the RTC

The RTC found that the testimony of AAA was straightforward and believable because it was not shown that there was a reason for her to falsely charge accused-appellant with rape if this was not true. The RTC noted that, although BBB did not know how accused-appellant came to their house on 3 July 2005 and

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[12] Also referred to as "Sonnie" in the TSN.

[13] TSN, 7 October, 2010, pp. 5-6; TSN, 9 November 2010, pp. 2-5; TSN, 9 December 2010, pp. 3-4; TSN, 9 August 2011, pp. 4-6.

[14] TSN, 9 August 2011, pp. 4-6, 8.

[15] TSN, 9 November 2010, pp. 6-9.

threatened her mother, this however did not weaken the case of the prosecution since AAA's testimony was sufficient to prove that she was raped, which was further confirmed by the testimony of Dr. Salarda. Moreover, Rebecca's testimony revealed a circumstantial fact that showed accused-appellant made sure that AAA's husband was not around.[16]

The RTC found the alibi of accused-appellant very weak viewed against the positive testimony of AAA. The RTC held that it was not physically impossible for accused-appellant to be at the house of AAA since Bautista's house was just within the neighborhood.[17] Hence, the RTC resolved the charge of AAA against accused-appellant as follows:

> WHEREFORE, considering the foregoing, the court hereby finds accused Jesus Empuesto y Socatre GUILTY beyond reasonable doubt for the crime of Rape. In accordance with the penalty set forth under Article 266-A of the Revised Penal Code, this court hereby sentences him to suffer the penalty of RECLUSION PERPETUA. He is likewise sentenced to pay civil indemnity to the victim AAA in the amount of FIFTY THOUSAND PESOS (₱50,000.00), Philippine Currency.
>
> As it appears on record that the accused is under detention at the [redacted] District Jail, said accused shall be credited with the full period of his detention subject to an assessment by the Jail Warden on his demeanor while in said detention center.
>
> SO ORDERED.

The Ruling of the CA

The CA, Nineteenth Division ruled that AAA's positive and categorical testimony sufficiently established the commission of rape upon her by accused-appellant. The CA found that accused-appellant's contention on the inconsistency of AAA's testimony as to when she realized he had entered her house cannot overthrow the veracity of her testimony. Moreover, AAA's failure to shout or seek for help cannot destroy her

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[16] CA *rollo,* pp. 166-168.

[17] *Id*. at pp. 168-169.

credibility or negate the commission of rape. The CA further held that AAA's credibility was fortified by her acts right after the incident, i.e., seeking help from her parents-in-law and, acting upon their advice, reporting the incident to the police and submitting herself to medical examination.[18]

While it affirmed the RTC decision, the CA found the need to award to AAA moral damages and exemplary damages in the amount of ₱50,000.00 and ₱30,000.00, respectively, with interest at the rate of six percent (6%) per annum on all the damages awarded from the date of finality of judgment until fully paid.

The dispositive portion of the CA's decision reads:

> WHEREFORE, the decision of the Regional Trial Court, [redacted] Bohol, dated July 23, 2012, finding accused-appellant Jesus Empuesto y Socatre guilty beyond reasonable doubt of the crime of Rape is hereby AFFIRMED with the following MODIFICATIONS –
>
> (1) Moral damages is awarded in the amount of Fifty Thousand Pesos (₱50,000.00);
>
> (2) Exemplary damages is likewise awarded in the amount of ₱30,000.00; and
>
> (3) Interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.

ISSUE

THE COURT A QUO ERRED IN PRONOUNCING THE GUILT OF JESUS EMPUESTO DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

OUR RULING

The appeal lacks merit.

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[18] *Id.* at pp. 83-85.

The findings of fact of the trial court are accorded respect by the Court.

Jurisprudence instructs that the assessment of the credibility of witnesses is a task most properly within the domain of trial courts.[19] Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying: her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath"; all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[20] Thus, in a catena of cases, the Court has consistently ruled as follows:

> Time and again, this Court has held that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe the elusive and incommunicable evidence of witnesses' deportment on the stand while testifying which is denied to the appellate courts. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more strictly applied if the appellate court has concurred with the trial court as in this case.[21]

The Court had meticulously examined the records of this case but found no reason to depart from the findings of the trial court, which were affirmed by the CA. Accused-appellant failed to show that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.[22] Conjunctively, the Court

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[19] *People v. Gerola*, G.R. No. 217973, 19 July 2017.

[20] *Id*. citing *People v. Gahi*, 727 Phil. 642, 658 (2014); *People v. Amistoso*, 701 Phil. 345, 356-357 (2013); *People v. Aguilar*, 565 Phil. 233, 247 (2007).

[21] *People v. Labraque*, G.R. No. 225065, 13 September 2017; citing *People v. Alberca*, G.R. No. 217459, 7 June 2017.

[22] *People v. Amar,* G.R. No. 223513, 5 July 2017.

had scrupulously applied in this case the three principles that had consistently guided it in reviewing rape cases, *viz*: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense[23]; and arrived at the unyielding conclusion that the prosecution was able to efficaciously discharge its burden of proving the guilt of accused-appellant beyond reasonable doubt.

The elements of rape were proven.

For a charge of rape under Article 266-A(1)[24] of Republic Act 8353[25] to prosper, it must be proved that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[26] The gravamen of rape under

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[23] *People v. Rubillar*, G.R. No. 224631, 23 August 2017.

[24] "Article 266-A. Rape: *When And How Committed.* — Rape is committed:

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

a) Through force, threat, or intimidation;

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

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[25] Entitled "*An Act Expanding The Definition Of The Crime Of Rape, Reclassifying The Same As a Crime Against Persons, Amending For The Purpose Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code, And For Other Purposes*" dated 30 September 1997.

[26] *People v. Francica*, G.R. No. 208625, 6 September 2017.

Article 266-A (1) is carnal knowledge of a woman against her will or without her consent.[27] Moreover, what is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.[28]

Records will confirm that AAA was able to positively identify accused-appellant as the person who surreptitiously entered her house. She knew accused-appellant because they were neighbors. Her husband was the godfather of accused-appellant's eldest son, thus, he called her "marehan." On the early dawn of 3 July 2005, AAA was roused from her sleep when she heard a noise coming through the bamboo slats floor of her house. Because the room where AAA and her children were sleeping was lighted, she was able to distinctly see accused-appellant armed with a bolo and standing beside the mosquito net. She saw accused-appellant turn off the light and get inside the mosquito net.

Indeed, even if accused-appellant turned off the light, she was sure that it was he who got inside the mosquito net because she clearly recognized his voice, *viz*: when he threatened her not to make any noise, otherwise, he would kill her and her children; when he told her that he needed only her; when he ordered her to remove her panty; and when he instructed her to breastfeed her youngest child who was then crying.

AAA testified that because she was immobilized by fear, accused-appellant was the one who removed her panty. Accused-appellant then positioned himself on top of her and inserted his penis into her vagina; these he did while she was breastfeeding her child. Undeniably, all the elements of rape had been clearly and effectively proven by the prosecution and convinced the Court to sustain the findings of the trial court.

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[27] *People v. Corpuz*, G.R. No. 208013, 3 July 2017.

[28] *People v. Udtohan*, G.R. No. 228887, 2 August 2017.

The testimony of AAA was credible and straightforward.

Accused-appellant's position that there was inconsistency on AAA's testimony as to when he entered her house. He claimed that AAA testified during the direct examination that somebody was making his way inside her house before he (accused-appellant) had come in; but during cross-examination she claimed that she noticed somebody was inside the house only upon seeing him standing beside the mosquito net.[29]

It must be remembered that "(I)n rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis."[30] The Court notes that the testimony of AAA was credible and straightforward and replete with details which can only be known to her because these were the truth.

Contrary to the claim of accused-appellant, there was actually no inconsistency in AAA's testimony. AAA stated during direct examination that she noticed that somebody had entered her house when she heard sounds coming through the bamboo slats floor; that thereafter she saw the accused-appellant with the bolo; and that accused-appellant then turned off the light and entered the mosquito net.[31] During cross-examination, AAA merely reiterated her earlier testimony.[32]

Granting for the sake of argument that there was inconsistency in AAA's testimony as to when she noticed that accused-appellant had come into her house, it must be stressed that the settled rule in our jurisprudence is that **inconsistencies in the testimony**

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[29] CA *rollo*, pp. 22-23.

[30] *People v. Descartin*, G.R. No. 215195, 7 June 2017.

[31] TSN, 16 July 2009, p. 6.

[32] *Id*. at 16.

of witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony.[33] These supposed discrepancies, not being elements of the crime, do not diminish the credibility of AAA's declarations.[34] The Court even underscores its unfailing pronouncement that "(I)naccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget."[35] Moreover, **"**minor inconsistencies strengthen the credibility of the witness and the testimony, because of a showing that such charges are not fabricated. What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor."[36]

Accused-appellant tried to dent AAA's credibility by raising an issue as to her testimony that BBB knew that it was he who entered the house because BBB recognized his voice. Accused-appellant claimed that when BBB testified, she claimed that she came to know who the intruder was only after the incident.[37]

The Court does not see any reason not to find AAA's testimony credible on the basis of BBB's admission that she was not able to recognize who entered their house on that fateful dawn of 3 July 2005. AAA, to stress, was able to positively identify the person who raped her. AAA's disclosure that the accused-appellant raped her is the most important proof of the commission of the crime.[38] Significantly, jurisprudence declares that in prosecuting a crime of rape, the accused may be convicted solely on the basis of the

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[33] *People v. Gerola*, *supra* note 19.

[34] *People v. Divinagracia, Jr.*, G.R. No. 207765, 26 July 2017.

[35] *People v. Tuballas*, G.R. No. 218572, 19 June 2017.

[36] *People v. Udtohan*, *supra* note 28.

[37] CA *rollo*, p. 24.

[38] *People v. Agudo*, G.R. No. 219615, 7 June 2017.

testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things,[39] as is true in this case. Likewise, it is settled in this jurisdiction that as long as the testimony of the witness, herein AAA, is coherent and intrinsically believable as a whole, discrepancies in minor details and collateral matters do not affect the veracity or detract from the essential credibility of the witness' declarations.[40]

AAA's credibility was further reinforced by her prompt report of the incident to her parents-in-law and her submission to an investigation by the police authorities and medical examination by a health officer. These facts confirm that she did not have the luxury of time to fabricate a rape story.[41] Also, the claim of AAA that she was raped was confirmed by Dr. Salarda's findings, *viz*: 0.5 cm. fresh laceration at the labia minora at 3 o'clock position and 0.3 cm. ulceration of labia minora at 6 o'clock position.

Noteworthy, the record is bereft of any showing that AAA had ill motive against accused-appellant sufficient to encourage her to fabricate falsehood that would expose her to shame and humiliation. Thus, there is no reason to depart from the well-ensconced doctrine that where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[42]

In his futile attempt to discredit AAA, accused-appellant averred that her failure to avail of assistance was inconsistent with her claim of forced or non-consensual sexual intercourse.[43]

Accused-appellant had threatened AAA that he would kill her and her children if she made noise. In rape cases, the

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[39] *People v. Carillo*, G.R. No. 212814, 12 July 2017.

[40] *Id*.

[41] *People v. Gunsay*, G.R. No. 223678, 5 July 2017.

[42] *People v. Fabro*, G.R. No. 208441, 17 July 2017.

[43] CA *rollo*, pp. 24-25.

perpetrator hopes to build a climate of extreme and psychological terror, which would numb his victim into silence and submissiveness,[44] as what had happened in this case. Undeniably, AAA, who was helpless, had no reason not to believe that accused-appellant would make good on his threat since he was armed with a bolo at that time, and that definitely he had the ease to accomplish his threat considering that her children, all minors, were beside her. Additionally, it is important to state the enlightened teaching that the workings of the human mind placed under emotional stress are unpredictable, and people react differently – some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.[45] For AAA, she would rather be defiled than see her children harmed.

The defense proffered by accused-appellant was inherently weak.

The defense of denial and alibi offered by accused-appellant in order to extricate himself from any liability was inherently weak. His assertions that he was attending a wake on 2 July 2005 from 7:00 p.m. until 7:00 a.m. the following day, and that he was with Basilio and Sanie all that time, fail to convince.

In his testimony, accused-appellant claimed that he went home at about 6:00 a.m. on 3 July 2005; and that at home were his children and Annie, the wife of his older brother.[46] On the one hand, to prove that they were together even after coming from the vigil, Basilio stated that he and accused-appellant went home at 7:00 a.m. and even had breakfast at their father's house.[47] Indeed, this testimony of Basilio fatally weakened his claim that he was with the accused-appellant the whole time on the night of 2 July 2005 until 7:00 a.m. the following day, considering that by the accused-appellant's account he was

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[44] *People v. Descartin*, *supra* note 30.

[45] *People v. Amar, supra* Note 22.

[46] TSN, 9 November 2010, p. 6.

[47] TSN, 9 December 2010, pp. 5-6.

already home by 6:00 a.m. and did not have his breakfast at his father's house. The inconsistency in Basilio's statement with that of the accused-appellant will only prove that Basilio would logically do anything to see his brother acquitted of the charge against him.

Sanie testified that he was inside Bautista's house at 8:00 p.m. on 2 July 2005 while accused-appellant was by the plaza waiting for Bautista's body.[48] Similar to Basilio, Sanie's testimony rendered ineffectual his claim that he was with the accused-appellant the whole night of 2 July 2005 until 7:00 a.m. the following day, taking into account his (Sanie's) admission that he served coffee and played cards during the vigil.[49]

"Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case. Likewise, *alibi* is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut."[50] To merit approbation, accused-appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[51]

Accused-appellant admits that the house of AAA was only 400 meters away from the house of Bautista;[52] thus, it was not physically improbable for him to have been at the scene of the crime when it was committed. Coupled with the fact that neither Basilio's nor Sanie's testimony fortified the accused-appellant's defense that he was at the vigil the whole night of 2 July 2005 until 7:00 a.m. the following day, there is evidently enough

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[48] TSN, 9 August 2011, p. 5.

[49] *Id*. at pp. 6-7.

[50] *People v. Amar*, *supra* note 45.

[51] *People v. Primavera*, G.R. No. 223138, 5 July 2017.

[52] TSN, 9 November 2010, p. 17.

basis to readily strike down his defense of denial and alibi as without merit.

Following the ruling in *People v. Jugueta*,[53] the damages awarded to AAA must be modified as follows: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; and exemplary damages of ₱75,000.00. Accused-appellant shall further pay interest of 6% *per annum* on the civil indemnity and moral and exemplary damages reckoned from the finality of this decision until full payment.

WHEREFORE, the appeal is **DENIED**. Jesus Empuesto y Socatre is hereby found guilty beyond reasonable doubt of Rape under Art. 266-A 1(a) of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. The civil indemnity and moral and exemplary damages shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 219435. January 17, 2018]

ALLIED BANKING CORPORATION, now merged with PHILIPPINE NATIONAL BANK, *petitioner, vs.* **REYNOLD CALUMPANG,** *respondent.*

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[53] *People v. Jugueta,* G.R. No. 202124, 5 April 2016, 788 SCRA 331, 372-373.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; PERMISSIBLE JOB CONTRACTING OR SUBCONTRACTING DISTINGUISHED FROM LABOR-ONLY CONTRACTING; AS A RULE, A CONTRACTOR IS PRESUMED TO BE A LABOR-ONLY CONTRACTOR; CASE AT BAR.— Permissible job contracting or subcontracting has been distinguished from labor-only contracting such that permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal, while labor-only contracting, on the other hand, pertains to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. x x x As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like. In the present case, petitioner failed to establish that RCI is a legitimate labor contractor as contemplated under the Labor Code. Except for the bare allegation of petitioner that RCI had substantial capitalization, it presented no supporting evidence to show the same. Petitioner never submitted financial statements from RCI. Even the Service Agreement allegedly entered into between petitioner and RCI, upon which petitioner relied to show that RCI was an independent contractor, had lapsed in August 2005, as admitted by petitioner in its Position Paper. Notably, petitioner failed to allege when the Service Agreement was executed, thus, making its claim that respondent was hired by RCI and assigned to petitioner in 2003 even more ambiguous.

2. ID.; ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; ESTABLISHED WHEN THERE IS A FINDING OF LABOR-ONLY CONTRACTING; THE LABOR-ONLY CONTRACTOR IS CONSIDERED AS A MERE AGENT OF THE PRINCIPAL, THE REAL EMPLOYER; CASE AT BAR.— A finding that a contractor is a labor-only contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship

between the principal and the employees of the supposed contractor, and the labor-only contractor is considered as a mere agent of the principal, the real employer. In this case, petitioner bank is the principal employer and RCI is the labor-only contractor. Accordingly, petitioner and RCI are solidarily liable for the rightful claims of respondent.

3. ID.; ID.; ID.; TERMINATION OF THE EMPLOYMENT; DISMISSAL OF AN EMPLOYEE IS JUSTIFIED WHERE THERE WAS A JUST CAUSE AND DUE PROCESS WAS AFFORDED THE EMPLOYEE; CASE AT BAR.— It is an established principle that the dismissal of an employee is justified where there was a just cause and the employee was afforded due process prior to dismissal. The burden of proof to establish these twin requirements is on the employer, who must present clear, accurate, consistent, and convincing evidence to that effect. x x x We find that petitioner's basis for terminating respondent rests on valid and legal grounds. At the very first instance, petitioner had already stressed in its position paper that respondent was found committing conduct prejudicial to the interests of the Branch when it was discovered that 1) respondent was plying his pedicab and ferrying passengers during his work hours and 2) he had been borrowing money from several clients of the Branch. Nowhere in the records was it shown that respondent denied these imputations against him. Absent any denial on the part of respondent, the Court is constrained to believe that respondent's silence can be construed as an admission of these accusations against him. The very nature of the actions imputed against respondent is serious and detrimental to the Bank's operations and reputation. Thus, petitioner's decision to relieve respondent from his employment is justified.

4. ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS; VIOLATED IN CASE AT BAR.— Nevertheless, We agree with the findings of the appellate court that there were procedural lapses in the dismissal of respondent. The importance of procedural due process was expounded by this Court in *King of Kings Transport, Inc. v. Mamac* x x x In the present case, it is uncontested that petitioner failed to give respondent ample opportunity to contest the legality of his dismissal since he was neither given a notice to explain nor a notice of termination. The first and second notice requirements have not been properly observed; thus, respondent's dismissal, albeit with valid grounds, is tainted with illegality.

5. ID.; ID.; ID.; ID.; AWARD OF BACKWAGES AND SEPARATION PAY IS NOT WARRANTED WHERE THERE ARE VALID AND SUBSTANTIVE GROUNDS TO TERMINATE EMPLOYMENT; NOMINAL DAMAGES MAY BE AWARDED FOR THE RECOGNITION AND VINDICATION OF A RIGHT; CASE AT BAR.— Considering that there were valid and substantive grounds to terminate respondent's employment, the award of backwages and separation pay is deleted. However, petitioner's violation of respondent's right to statutory procedural due process warrants the payment of indemnity in the form of nominal damages. Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right.

APPEARANCES OF COUNSEL

PNB Cebu-Bohol Legal Unit for petitioner *PNB Cebu.*

D E C I S I O N

VELASCO, JR., *J.:*

The Case

Before the Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court for the reversal and setting aside of the Decision[1] dated September 12, 2014 and the Resolution[2] dated June 9, 2015 of the Court of Appeals (CA) - Cebu City in CA-G.R. CEB SP No. 02906, which affirmed the findings of the National Labor Relations Commission (NLRC) and of the Labor Arbiter, declaring respondent to have been illegally dismissed by petitioner.

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[1] *Rollo*, pp. 11-21. Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino.

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

The Facts

Petitioner Allied Banking Corporation[3] ("Bank") and Race Cleaners, Inc. ("RCI"), a corporation engaged in the business of janitorial and manpower services, had entered into a Service Agreement whereby the latter provided the former with messengerial, janitorial, communication, and maintenance services and the personnel therefor.[4]

On September 28, 2003, respondent Reynold Calumpang was hired as a janitor by RCI and was assigned at the Bank's Tanjay City Branch ("the Branch"). He was tasked to perform janitorial work and messengerial/errand services. His job required him to be out of the Branch at times to run errands such as delivering statements and checks for clearing, mailing letters, among others.[5]

Petitioner, however, observed that whenever respondent went out on errands, it takes a long time for him to return to the Branch. It was eventually discovered that during these times, respondent was also plying his pedicab and ferrying passengers. Petitioner also found out through several clients of the Branch who informed the Bank Manager, Mr. Oscar Infante, that respondent had been borrowing money from them. Because of these acts, Mr. Infante informed respondent that his services would no longer be required at the Branch.[6]

Disgruntled, respondent thereafter filed a complaint for illegal dismissal and underpayment of wages against petitioner before the NLRC,[7] which was docketed as RAB VII-07-0094-2005-D.[8]

In his position paper, respondent asserted that the four-fold test of employer-employee relationship is present between him

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[3] Now merged with Philippine National Bank.

[4] *Rollo*, p. 35.

[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 87.

and the Bank.[9] First, he averred that he was a regular employee of the Bank assigned as a Janitor of the Branch with a salary of ₱4,200 payable every 15 days each month, and assigned such other tasks essential and necessary for the Bank's business.[10]

He alleged that petitioner engaged his services and exercised direct control and supervision over him through the Branch Head, Oscar Infante, not only as to the results of his work but also as to the means and methods by which the same was to be accomplished. According to respondent, Infante gives the direct orders on the work to be done and accomplished during working days, such as "m[o]pping, cleaning the comfort room of the [B]ank, arrang[ing] furniture and fixture, bank documents, throw[ing] garbage/waste disposal, cleaning the windows, tables and teller cage" as well as directing him to "do messengerial/ errand services such as mailing of letters, delivery of bank statements and deliver[ing] checks for clearing."[11]

As regards the payment of salary, respondent claimed that it was the Branch that directly paid his salaries and wages every "*quincina*."[12] As for the power of dismissal, respondent further alleged that it was petitioner Bank, through its Branch Head, who terminated his services.[13]

For its part, petitioner alleged that respondent was not its employee, but that of RCI, with which it had entered into a Service Agreement to provide "messengerial, janitorial, communications and maintenance services and the personnel therefor."[14] It claimed that while respondent was required to be out of the Branch at times to accomplish his tasks, it was observed that whenever he went out on these errands, he would

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[9] *Id*. at 73.

[10] *Id*. at 72.

[11] *Id*. at 73.

[12] *Id*.

[13] *Id*. at 74.

[14] *Id*. at 80-81.

take a long time to return to the Branch. Petitioner eventually discovered that during these times, respondent was "also plying his pedicab and ferrying passengers." Aside from this, petitioner averred that several clients of the Branch informed Infante that respondent had been borrowing money from them "owing to his familiarity with said clients." Upon discovering these incidents, petitioner "had no choice but to have complainant relieved and replaced." Accordingly, Infante informed respondent that his services would no longer be required by the Branch.[15]

Petitioner denied the existence of any employer-employee relationship between itself and respondent. It asserted that respondent was clearly an employee of RCI by virtue of the Service Agreement which clearly indicated in Article XI thereof that there would be no employer-employee relationship between RCI's employees and the Bank.[16] It further averred that RCI is a qualified job contractor because of its capitalization and the fact that it exercised control and supervision over its employees deployed at the branches of the petitioner in accordance with Rule VIII-A, Sec. 4, Pars. (d) and (e) of the Omnibus Rules Implementing the Labor Code.[17]

Furthermore, petitioner argued that it was merely exercising its prerogative under the Service Agreement to seek the replacement or relief of any personnel assigned by RCI when the Branch Head informed respondent that his services would no longer be required at the Branch. According to petitioner, this decision to replace respondent was not equivalent to termination of employment, especially since it was neither whimsical nor arbitrary.[18] Thus, petitioner concludes that, in the absence of any employer-employee relationship between the parties, respondent had no cause of action against petitioner for illegal dismissal, damages and other claims.[19]

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[15] *Id*. at 81.

[16] *Id*. at 82.

[17] *Id*. at 83.

[18] *Id*. at 83-84.

[19] *Id*. at 84.

Ruling of the Labor Arbiter

In its Decision[20] dated March 28, 2006, the Labor Arbiter ruled in favor of respondent, the dispositive portion of which reads:

> **WHEREFORE**, foregoing considered, complainant is hereby declared to be an employee of respondent Allied Banking Corporation. It is declared further that complainant has been illegally dismissed. Respondent Allied Banking Corporation is hereby ordered to reinstate complainant to his former position without loss of seniority rights or privileges, with full backwages from the time his salary was withheld until his actual reinstatement, which is tentatively computed in the amount of ₱37,800.00. Should reinstatement be unfeasible for valid reasons, respondent is ordered to pay the complainant separation pay of one month salary per year of service, a fraction of six months is considered as one year which is computed in the amount of ₱46,200.
>
> **SO ORDERED.**[21]

The Labor Arbiter held that there was an employer-employee relationship between petitioner and respondent, based on the following findings: (a) Respondent rendered services to petitioner for eleven (11) unbroken years; (b) There was no evidence of a Service Agreement between petitioner and RCI; (c) There was no evidence of a request for replacement of respondent made by petitioner with RCI; (d) Respondent was directly paid by petitioner and not through RCI; (e) Respondent's work was directly controlled and supervised by petitioner; (f) It was petitioner who terminated the services of respondent with no participation of RCI whatsoever; and (g) RCI disowned any employment relationship with respondent.[22]

Considering its finding of the existence of an employer-employee relationship between petitioner and respondent, the Labor Arbiter further ruled that the reason and manner by which respondent was terminated fell short of the requirements of the law since due process was not observed. Accordingly,

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[20] *Id*. at 87-93. Rendered by Labor Arbiter Fructuoso T. Villarin, IV.

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

[22] *Id*. at 90.

respondent was declared to have been illegally dismissed and ordered to be reinstated without loss of seniority or privileges, with full backwages.[23]

Aggrieved, petitioner immediately filed a Notice of Appeal and Memorandum of Appeal with the NLRC, which was docketed as NLRC Case No. V-000628-2006.[24]

Ruling of the National Labor Relations Commission

The NLRC affirmed the decision of the Labor Arbiter in its Decision dated February 16, 2007, to wit:

> **WHEREFORE**, premises considered, the appeal of respondent Allied Banking Corporation is hereby DISMISSED for lack of merit and the appealed Decision is AFFIRMED.
>
> **SO ORDERED.**[25]

Agreeing with the Labor Arbiter's findings, the NLRC ruled that petitioner exercised all the elements of an employer-employee relationship through the payment of wages, control and supervision over complainant's work and the power of dismissal.[26] The NLRC discredited petitioner's argument that it merely exercised its prerogative to seek for a replacement or relief of any personnel assigned by RCI absent any evidence that it sought respondent's relief from RCI.[27]

Petitioner moved for the reconsideration of the NLRC Decision,[28] but the same was denied in a Resolution dated May 17, 2007.[29] Thus, petitioner elevated the matter to the CA in a petition which was docketed as CA-G.R. SP No. 02906.[30]

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

[24] *Id*. at 94-103.

[25] *Id*. at 106.

[26] *Id*. at 105.

[27] *Id*. at 106.

[28] *Id*. at 108-116.

[29] *Id*. at 117-118.

[30] *Id*. at 119-134.

Ruling of the Court of Appeals

In the assailed Decision dated September 12, 2014, the CA denied the petition and upheld the rulings of the Labor Arbiter and the NLRC. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the petition is hereby **DENIED**. The NLRC Decision dated 16 February 2007 and the Resolution dated 17 May 2007, in RAB VII Case No. 07-0094-2005-D, is **AFFIRMED**.
>
> The Labor Arbiter is hereby ordered to re-compute the award of backwages and separation pay in accordance with the above disquisitions.
>
> **SO ORDERED.**[31]

The CA ruled that RCI is a labor-only contractor. It applied the test of independent contractorship that "whether one claiming to be an independent contractor has contracted to do work according to his own methods and without being subject to the control of the employer, except only as to the results of the work" in determining that RCI merely served as an agent of petitioner bank and that respondent was truly an employee of petitioner.[32]

As to the issue of the propriety of respondent's dismissal, the CA affirmed the findings of the Labor Arbiter and the NLRC that petitioner Bank failed to give respondent ample opportunity to contest the legality of his dismissal since no notice of termination was given to him. Consequently, the CA affirmed the award of reinstatement without loss of seniority rights and other privileges, and his full backwages inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld up to the time of his actual reinstatement.

Nevertheless, finding that there were strained relations between petitioner bank and respondent, the CA ordered the award of separation pay in lieu of reinstatement, equivalent to one (1)

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

[32] *Id*. at 15-19.

month salary for every year of service, with a fraction of a year of at least six (6) months to be considered as one (1) whole year, to be computed from the date he was hired until the finality of the decision, earning a legal interest at the rate of six percent (6%) *per annum* until full satisfaction.

Petitioner filed a *Motion for Reconsideration (of the Decision Dated 12 September 2014) with Entry of Appearance and Motion for Substitution of Party* dated October 16, 2014,[33] but it was denied in the assailed Resolution dated June 9, 2015.

Hence, this petition.

The Petition

Petitioner asserts that the CA erred in declaring RCI as a labor-only contractor. It claims that RCI carried an independent business as reflected in the Service Agreement that petitioner bank entered with RCI. Aside from the substantial capitalization of RCI, petitioner bank avers that RCI exercises control and supervision over its personnel deployed at its branches. Petitioner bank further argues that even assuming that respondent's work is related to its business, such work is not necessary in the conduct of the bank's principal business. Finally, petitioner contends that it does not have the power to dismiss respondent and control his work based on the Service Agreement with RCI.

Nevertheless, petitioner bank defends its right to ask for respondent's replacement under Article IV of the Service Agreement. Petitioner reiterates that respondent's acts of borrowing money from the bank's clients and plying/ferrying passengers for a fee during his hour of duty constitute conduct which is prejudicial to the interest of petitioner. Thus, in accordance with the Service Agreement, petitioner bank merely exercised its right to change or have respondent replaced instead of imposing disciplinary measures on him. According to petitioner, this act was erroneously construed by the CA as an exercise of the power of control over or of dismissal of respondent.

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[33] *Id.* at 146-159.

In a Resolution[34] dated September 28, 2015, We required respondent to comment on the petition within ten (10) days from notice. However, respondent has failed to file any comment thereon to date. Accordingly, respondent is deemed to have waived his right to comment on the petition and the Court shall now proceed to rule on its merits.

The Issues

Petitioner raises the following issues:

1. Whether or not the CA erred in declaring that RCI is a labor-only contractor.

2. Whether or not the CA erred in declaring that there exists an employer-employee relationship between the Bank and respondent.

3. Whether or not the CA erred in (i) declaring that respondent had been illegally dismissed, and (ii) granting his monetary claims.

Essentially, the principal issue is whether the CA erred in affirming the NLRC Decision which declared that RCI is a labor-only contractor, and in ordering the Labor Arbiter to re-compute the award of backwages and separation pay.

The Court's Ruling

The petition is partly meritorious.

RCI is a labor-only contractor

Article 106 of the Labor Code provides the relations which may arise between an employer, a contractor, and the contractors' employees, thus:

> ART. 106. *Contractor or subcontracting*.— Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

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[34] *Id*. at 166-167.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under the Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is labor-only contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Permissible job contracting or subcontracting has been distinguished from labor-only contracting such that permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal, while labor-only contracting, on the other hand, pertains to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal.[35]

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[35] *Sasan, Sr. v. National Labor Relations Commission 4th Division*, G.R. No. 176240, October 17, 2008, 569 SCRA 670.

These distinctions were laid out in the Omnibus Rules Implementing the Labor Code thus:

SECTION 8. Job Contracting. — There is job contracting permissible under the Code if the following conditions are met:

(a) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

SECTION 9. Labor-only contracting. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Rule, the Secretary of Labor and Employment shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden

of proving that it has the substantial capital, investment, tools and the like.[36]

In the present case, petitioner failed to establish that RCI is a legitimate labor contractor as contemplated under the Labor Code. Except for the bare allegation of petitioner that RCI had substantial capitalization, it presented no supporting evidence to show the same. Petitioner never submitted financial statements from RCI. Even the Service Agreement allegedly entered into between petitioner and RCI, upon which petitioner relied to show that RCI was an independent contractor, had lapsed in August 2005, as admitted by petitioner in its Position Paper.[37] Notably, petitioner failed to allege when the Service Agreement was executed, thus, making its claim that respondent was hired by RCI and assigned to petitioner in 2003 even more ambiguous.

Aside from this, petitioner's claim that RCI exercised control and supervision over respondent is belied by the fact that petitioner admitted that its own Branch Manager had informed respondent that his services would no longer be required at the Branch.[38] This overt act shows that petitioner had direct control over respondent while he was assigned at the Branch. Moreover, the CA is correct in finding that respondent's work is related to petitioner's business and is characterized as part of or in pursuit of its banking operations.

An employer-employee relationship exists between petitioner and respondent

A finding that a contractor is a labor-only contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and

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[36] *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL*, G.R. Nos. 173254-55 & 173263, January 13, 2016.

[37] CA *rollo*, pp. 38-39.

[38] *Id*. at 39.

the labor-only contractor is considered as a mere agent of the principal, the real employer.[39]

In this case, petitioner bank is the principal employer and RCI is the labor-only contractor. Accordingly, petitioner and RCI are solidarily liable for the rightful claims of respondent.

Petitioner had valid grounds to dismiss respondent

It is an established principle that the dismissal of an employee is justified where there was a just cause and the employee was afforded due process prior to dismissal.[40] The burden of proof to establish these twin requirements is on the employer, who must present clear, accurate, consistent, and convincing evidence to that effect.[41]

The Labor Arbiter haphazardly declared that respondent was illegally dismissed when it ruled that respondent's misconduct was not established since due process was not observed.[42] The NLRC also ruled in a similar manner and failed to address the grounds for termination raised by petitioner, specifically respondent's transgressions.[43] While the CA addressed the aspect of substantive due process, it simply disregarded the grounds raised by petitioner and concluded that petitioner failed to discharge the burden of proof that valid or authorized causes under the Labor Code exist.[44]

We, however, find that petitioner's basis for terminating respondent rests on valid and legal grounds. At the very first

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[39] *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL*, *supra* note 36.

[40] *Olympia Housing, Inc. v. Allan Lapastora and Irene Ubalubao*, G.R. No. 187691, January 13, 2016.

[41] *Hanjin Heavy Industries and Construction Co. Ltd. v. Ibaez*, G.R. No. 170181, June 26, 2008, 555 SCRA 537.

[42] *Rollo*, p. 59.

[43] *Id*. at 106.

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

instance, petitioner had already stressed in its position paper that respondent was found committing conduct prejudicial to the interests of the Branch when it was discovered that 1) respondent was plying his pedicab and ferrying passengers during his work hours and 2) he had been borrowing money from several clients of the Branch.

Nowhere in the records was it shown that respondent denied these imputations against him. Absent any denial on the part of respondent, the Court is constrained to believe that respondent's silence can be construed as an admission of these accusations against him.

The very nature of the actions imputed against respondent is serious and detrimental to the Bank's operations and reputation. Thus, petitioner's decision to relieve respondent from his employment is justified.

Respondent's right to procedural due process was violated

Nevertheless, We agree with the findings of the appellate court that there were procedural lapses in the dismissal of respondent.

The importance of procedural due process was expounded by this Court in *King of Kings Transport, Inc. v. Mamac*, thus:

> (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 calendar days from receipt of the notice x x x. 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. 288 [of the Labor Code] is being charged against the employees.

(2) After serving the first notice, the employees 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 x x x.

(3) After determining that termination is justified, the employer shall serve the employees a **written notice of termination** indicating that: (1) all the circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[45] (emphasis in the original)

In the present case, it is uncontested that petitioner failed to give respondent ample opportunity to contest the legality of his dismissal since he was neither given a notice to explain nor a notice of termination. The first and second notice requirements have not been properly observed; thus, respondent's dismissal, albeit with valid grounds, is tainted with illegality.

The award of backwages and separation pay is deleted but respondent is entitled to nominal damages

Considering that there were valid and substantive grounds to terminate respondent's employment, the award of backwages and separation pay is deleted. However, petitioner's violation of respondent's right to statutory procedural due process warrants the payment of indemnity in the form of nominal damages.

Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying

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[45] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-26.

the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right.[46]

In fixing the amount of nominal damages whose determination is addressed to our sound discretion, the Court should take into account several factors surrounding the case, such as: (1) the employer's financial, medical, and/or moral assistance to the sick employee; (2) the flexibility and leeway that the employer allowed the sick employee in performing his duties while attending to his medical needs; (3) the employer's grant of other termination benefits in favor of the employee; and (4) whether there was a bona fide attempt on the part of the employer to comply with the twin-notice requirement as opposed to giving no notice at all.[47]

Based on the factual considerations of the present case, We deem it appropriate to award nominal damages in the amount of Thirty Thousand Pesos (₱30,000) in favor of respondent as a result of petitioner's act of violating his right to procedural due process.

WHEREFORE, the petition is hereby **PARTIALLY GRANTED**. The Decision dated September 12, 2014 and the Resolution dated June 9, 2015 of the Court of Appeals-Cebu City in CA-G.R. CEB SP No. 02906 are hereby **AFFIRMED** with **MODIFICATION**. Since Race Cleaners Inc. is a labor-only contractor, petitioner Allied Banking Corporation now merged with Philippine National Bank is declared to be the employer of respondent Reynold Calumpang, whose dismissal is declared to be substantively valid for being based on sufficient and valid grounds. However, he was denied his right to procedural due process for lack of the required twin notices to explain and of dismissal.

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[46] *Libcap Marketing Corp., Johanna J. Celiz, and Ma. Lucia G. Mondragon v. Lanny Jean B. Baquial*, G.R. No. 192011, June 30, 2014.

[47] *Marlo A. Deoferio v. Intel Technology Philippines, Inc. and/or Mike Wentling*, G.R. No. 202996, June 18, 2014, 726 SCRA 679.

Consequently, petitioner is ordered to pay respondent nominal damages in the amount of ₱30,000 for its non-compliance with procedural due process.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 223142. January 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO SANTOS *y* ZARAGOZA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE DECLARATIONS OF WITNESSES DO NOT IMPAIR THEIR CREDIBILITY BUT EVEN ENHANCE THEIR TRUTHFULNESS AS THEY ERASE ANY SUSPICION OF A REHEARSED TESTIMONY.— The contention of Santos that the members of the raiding team gave an altogether different account as to who actually witnessed the implementation of the search warrant, is a trivial and inconsequential matter that does not affect the credibility of the prosecution witnesses. These matters do not deal with the central fact of the crime. Besides, it has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.

2. ID.; ID.; ID.; DENIAL; A NEGATIVE SELF-SERVING DEFENSE THAT CANNOT PREVAIL OVER

CONVINCING, STRAIGHTFORWARD, AND PROBABLE TESTIMONY ON AFFIRMATIVE MATTERS; CASE AT BAR.— x x x [T]he defense of denial proffered by Santos cannot prevail over the positive identification by the prosecution witnesses. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters. Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense.

3. **ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT AND THE APPELLATE COURT ON THE CREDIBILITY OF WITNESSES ARE ACCORDED RESPECT BY THE SUPREME COURT.—** Equally important is that it is the general rule that "the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions on the credibility of the witnesses on which said findings were anchored are accorded great respect. This great respect rests in the trial court's first-hand access to the evidence presented during the trial, and in its direct observation of the witnesses and their demeanor while they testify on the occurrences and events attested to." Settled also is the rule that factual findings of the appellate court affirming those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error. Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The Court had assiduously reviewed the records but found nothing to qualify these cases as falling within the exception to the general rule.

4. **ID.; CRIMINAL PROCEDURE; APPEALS; AN ISSUE NOT RAISED IN THE LOWER COURT CANNOT BE RAISED IN THE FIRST TIME ON APPEAL; CASE AT BAR.—** Santos asserted that the search warrant was only for an undetermined amount of shabu; thus, the discovery of the

incriminating items other than that described in the warrant must result from bodily search or seized in plain view to be admissible in evidence. The assertion of Santos has no merit considering that he did not question the admissibility of the seized items as evidence against him during the trial of these cases. It was only when he appealed the decision of the RTC before the CA that he raised the issue as to the admissibility of the seized items. Well-entrenched in our jurisprudence is that no question will be entertained on appeal unless it has been raised in the lower court.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT); LINKS IN THE CHAIN OF CUSTODY OF THE CONFISCATED ILLEGAL DRUG.— The Court has explained in a catena of cases the four (4) links that should be established in the chain of custody of the confiscated item: *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. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL FUNCTION; NOT OVERTURNED IN CASE AT BAR.— x x x [I]t needs to be stressed that Cruz is a public officer; thus, his reports carried the presumption of regularity. Besides, Sec. 44, Rule 130 of the Revised Rules of Court provides that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are *prima facie* evidence of the facts therein stated. It necessarily follows that the findings of Cruz as contained in Dangerous Drugs Report Nos. DDM-09-08 and DDM-09-47 were conclusive in view of the failure of the defense to present evidence showing the contrary.

7. ID.; ID.; VIOLATION OF SECTION 11, ARTICLE II THEREOF (POSSESSION OF DANGEROUS DRUGS);

ELEMENTS; ESTABLISHED IN CASE AT BAR.— In Crim. Case No. C-82010, Santos was charged with and convicted of violation of Sec. 11, Art. II of R.A. No. 9165, the elements of which are as follows: (1) the accused is in possession of an item or object, which is identified to be prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. Saul testified that when he frisked Santos, he found marijuana in the right pocket of his pants. Santos did not offer any explanation on why he was in possession of the marijuana or if he was authorized by law to possess the dangerous drug. Based on the Dangerous Drugs Report No. DDM-09-08, the dried crushed leaves and seeds wrapped in newspaper and contained in the transparent plastic tea bag marked as "ELS-21-8-09-06" and which gave a positive result for marijuana, had a net weight of 1.0022 grams.

8. ID.; ID.; VIOLATION OF SECTION 12, ARTICLE II THEREOF (POSSESSION OF EQUIPMENT, INSTRUMENT, APPARATUS AND OTHER PARAPHERNALIA FOR DANGEROUS DRUGS); ELEMENTS; PRESENT IN CASE AT BAR.— In Crim. Case No. C-82011, Santos was convicted of violation of Sec. 12, Art. II of R.A. No. 9165, its elements being as follows: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. Saul testified that when he served the search warrant on Santos at his house on 21 August 2009, he found thereat several strips of used aluminum foil in a transparent plastic bag, several pieces of used plastic sachet in a transparent tea bag, and a plastic tube intended for sniffing shabu, which he respectively marked "ELS-21-8-09-01," "ELS-21-8-09-04," and "ELS-21-8-09-05." Similar to the marijuana, Santos failed to justify his possession of these items. Significantly, Dangerous Drugs Report No. DD-09-47 showed that the examination made on the washings of these confiscated items yielded positive results for the presence of methamphetamine hydrochloride.

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 accused-appellant Rolando Santos y Zaragoza (*Santos*) seeking the reversal and setting aside of the 6 August 2014 Decision[1] and 2 March 2015 Resolution[2] of the Court of Appeals, Fourth Division (*CA*) in C.A.-G.R. CR-HC No. 05851, affirming the Decision[3] of the Regional Trial Court (*RTC*), Branch 120, Caloocan City, in Criminal Case Nos. C-82010 and C-82011 finding him guilty of Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia under Republic Act (R.A.) No. 9165, respectively.

THE FACTS

Accused-appellant Santos was charged before the RTC of Caloocan City with three (3) counts of violation of certain provisions of R.A. No. 9165, viz:

Crim. Case No. C-82009
(Violation of Sec. 6, Art. II of R.A. No. 9165)

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously maintain in his house at 21 Tagaytay St., Caloocan City, a drug den, dive or resort where dangerous drugs are habitually dispensed for use by the customers and addicts.[4]

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[1] *Rollo,* pp. 2-21.

[2] CA *rollo*, pp. 189-190.

[3] Records, pp. 408-422.

[4] *Id*. at 277.

Crim. Case No. C-82010
(Violation of Sec. 11, Art. II of R.A. No. 9165)

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody, and control dried crushed leaves and seeds wrapped in a newsprint and contained in transparent plastic "tea bag" marked "ELS-21-8-09-06" weighing 1.0022 grams, when subjected for laboratory examination gave positive result to the tests for Marijuana, a dangerous drug.[5]

Crim. Case No. C-82011
(Violation of Sec. 12, Art. II of R.A. No. 9165)

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and feloniously have in his possession, custody, and control several strips of used aluminum foil in a transparent plastic bag, several pieces of used plastic sachet in a transparent "tea bag," and a plastic tube intended for sniffing Methamphetamine Hydrochloride, a dangerous drug.[6]

In relation to Criminal Case No. C-82009 where Santos was charged for maintaining a drug den, Imee Baltazar Loquinario-Flores (*Loquinario-Flores*) who was found inside the house of Santos during the service of the search warrant, was charged with violation of Sec. 7, Art. II of R.A. No. 9165.[7]

When arraigned, both Santos and Loquinario-Flores pleaded not guilty.[8] Joint trial of the cases thereafter ensued.

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[5] *Id*. at 25.

[6] *Id*. at 48.

[7] *Id*. at 269, docketed as Crim. Case No. C-82012.

[8] *Id*. at 174.

Version of the Prosecution

The prosecution tried to prove its cases against Santos through the testimony of Special Investigator Elson Saul (*Saul*), Agents Jerome Bomediano (*Bomediano*), Henry Kanapi (*Kanapi*) and Atty. Fatima Liwalug (*Atty. Liwalug*), all from the Reaction, Arrest and Interdiction Division (*RAID*) of the National Bureau of Investigation (*NBI*), and Nicanor Cruz, Jr. (*Cruz*), of the NBI Forensic Chemistry Division (*FCD*).

Prior to the application on 20 August 2009 by Atty. Liwalug for a search warrant before the RTC, Manila, the RAID-NBI received information from their confidential informant that there was a group of individuals at Tagaytay St., Caloocan City, selling drugs and using minors as runners. After Atty. Liwalug interviewed the informant, she, along with an NBI team and the technical staff of *Imbestigador,* a GMA Channel 7 investigative program, went to the reported area to conduct surveillance. The actual surveillance, where videos were taken of the buying, selling, and use of drugs in the different houses on Tagaytay St., lasted for two weeks. During the first test-buy, Bomediano was able to buy shabu from Santos alias "Rolando Tabo." Two informants were used by the NBI for the surveillance but the spy camera was attached to only one of them. The informants were able to buy drugs from Santos and to use them inside his house.[9]

The first video,[10] taken by the staff of *Imbestigador,* showed the informants going inside a makeshift house on Tagaytay St. which, according to one of the informants, was owned by Santos. He was shown standing in front of a table while preparing the paraphernalia to sniff shabu. Also shown in the video was Jenny Coyocot, the adopted daughter of Santos, who, according to the informant, sold foil for the price of ₱2.00 per strip. The second video[11] depicted Erwin Ganata Ayon telling Jack, one

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[9] TSN, 29 March 2011, pp. 10-12; TSN, 4 October 2011, pp. 15-17.

[10] Records, p. 336, Exh. "O".

[11] *Id*.; Exh. "O-1".

of the occupants in Santos' house, "pasok kami sa bahay ni Tabo."[12] The videos were turned over by Mean de Chavez of *Imbestigador* to Atty. Liwalug. [13]

On 21 August 2009, Kanapi, Saul, Bomediano, and SI Junnel Malaluan, armed with a search warrant,[14] proceeded to the house of Santos on Tagaytay St. Kanapi and Malaluan guarded the perimeter of Santos' house to ensure that no one could exit from or enter the house during the service of the search warrant. Previous to the service of the warrant, the NBI RAID coordinated[15] with the Department of Justice (*DOJ*), the officials of the barangay, and the media.[16]

Saul knocked on the door of Santos' house. When nobody answered despite several minutes of waiting, the NBI team broke open the door. Saul, Bomediano, Malaluan, and the *Imbestigator* team proceeded to the second floor where they found a person who identified himself as Rolando Santos. Saul told Santos that the team was from the NBI and that they were to serve a search warrant on him, which copy was actually shown to Santos. The team waited for the representatives from the DOJ and the barangay before conducting the search.[17]

During the conduct of the search at the living room on the second floor of the house, Saul found inside the bedroom and beside the bed of Santos several used and unused foil strips either crumpled or rolled, the size of a cigarette stick. The foil strips,[18] numbering fourteen, were found inside a baby powder

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[12] TSN, 4 October 2011, p. 18; TSN, 8 November 2011, pp. 4-6.

[13] TSN, 8 November 2011, p. 8.

[14] Records, pp. 343-344; Exh. "G".

[15] Records, pp. 347-348; Exhs. "N" and "N-1".

[16] TSN, 4 October 2011, pp. 4-6; TSN, 29 September 2010, p. 10; TSN, 9 March 2011, p. 5.

[17] TSN, 29 September 2010, pp. 7-10.

[18] Exh. "K".

container.[19] He also found unused small plastic sachets.[20] Saul placed the foil and plastic sachets on the center table in the living room. When Saul frisked Santos, he found marijuana leaves wrapped in paper on the right pocket of his pants. Saul informed Santos of his constitutional rights and placed the marijuana leaves on top of the center table. Saul searched the rooms on the second floor but found nothing. From a trash can in the kitchen, Saul found used small transparent sachets which he also placed on the center table. Loquinario-Flores, who was caught on video selling to the informant aluminum foil to be used with drugs, and two minor children were found on the first floor of the house. The children admitted that they were part of a gang in the area.[21]

Santos, Assistant City Prosecutor Darwin Cañete, Kagawad Magno Flores, and media representative Eugene Lalaan of *Imbestigador* witnessed the inventory[22] of the seized items by Saul and when he marked them. Santos, Loquinario-Flores, and the two minors were brought to the NBI office. When Saul returned to the NBI office after the operation, he submitted the seized items to the NBI forensic chemist. A joint affidavit of arrest[23] was thereafter executed by Saul, Malaluan, Bomediano, and Kanapi.[24]

The testimony of Cruz, the forensic chemist, was dispensed with after the parties agreed to stipulate on the matters he would testify and after a short cross-examination by the defense.

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[19] Exh. "L".

[20] Exh. "M".

[21] TSN, 29 September 2010, pp. 10-14, 24; TSN, 10 November 2010, pp. 4-6; TSN, 29 March 2011, pp. 15-16; TSN, 4 October 2011, p. 10.

[22] Records, p. 345, Exh. "H".

[23] *Id*. at 330-332, Exhs. "I", "I-1", and "I-2".

[24] TSN, 29 September 2010, pp. 14-17, 20 and 25-26.

Version of the Defense

The version of the defense was established through the testimony of Loquinario-Flores, Santos, and Renamel Destriza (*Destriza*).

On 21 August 2009 at about 3:00 p.m., while Santos was alone at home playing his guitar, the NBI team armed with long firearms suddenly arrived looking for a certain Roland Tabo. Santos was made to lie face down and thereafter was frisked. The team took Santos' money amounting to ₱140.00 and his house was searched in the presence of a kagawad from Quezon City but the search team found nothing. As a result, the team brought out foil, lighters, and marijuana and took pictures. Loquinario-Flores was inside the house that time as she was called by Destriza to help bring down from the second floor an elderly who was hit by the door when the NBI team forcibly opened it. Loquinario-Flores was no longer allowed to leave while Destriza, who was carrying a child that time, was allowed to go out of the house. Santos, Loquinario-Flores, and the other persons arrested were brought to the NBI office. It was only during the inquest held the following day that Santos was informed that he was being charged of violating the provisions of R.A. No. 9165 and allowed to see the items allegedly seized from him.[25]

The Ruling of the RTC

The RTC[26] ruled that the entry in the house of Santos by the NBI team and the subsequent confiscation of the paraphernalia and marijuana were valid and legal since the team had a search warrant. Moreover, it held that the search was conducted following proper procedure. Thus, the RTC resolved the cases as follows:

Premises considered, this court finds and so holds the accused **Rolando Santos y Zaragoza GUILTY** beyond reasonable doubt for violation of Sections 6, 11 and 12, Article II of Republic Act

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[25] TSN, 22 May 2012, pp. 3-4; TSN, 26 June 2012, pp. 3-7; TSN, 31 July 2012, pp. 4-5.

[26] Records, pp. 408-422; penned by Judge Aurelio R. Ralar, Jr.

No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:

(1) In **Crim. Case No. C-82009**, the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00);

(2) In **Crim. Case No. C-82010**, the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00); and

(3) In **Crim. Case No. C-82011**, the penalty of Imprisonment of six (6) months and one (1) day to four (4) years and a fine of Ten Thousand Pesos (₱10,000.00).

Further, in **Crim. Case No. C-82012**, accused **Imee Baltazar Loquinario-Flores** was likewise found **GUILTY** beyond reasonable doubt for violation of Section 7 of the above-cited law and imposes upon her the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).

The drugs and drug paraphernalia subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.

The Ruling of the CA

Feeling aggrieved with the decision of the RTC, Santos appealed before the Court of Appeals.

In Criminal Case No. C-82009, the CA, Fourth Division[27] ruled that the RTC should not have given much weight to the video footages because these were not identified and authenticated by the confidential informant who took them. It held that the prosecution failed to present any witness who had personal knowledge and who could have testified that Santos'

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[27] CA *rollo*, pp. 189-190; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon.

house was a drug den. The team, on the other hand, failed to show that Santos or any other person was committing illegal activities inside the house. It found that the testimony of the confidential informant was essential and indispensable for the conviction of Santos because the NBI agents did not have any personal knowledge as to the alleged illegal activities in the house that would characterize it as a drug den.[28]

In Criminal Case No. C-82012, because of its ruling that the prosecution failed to establish that Santos was maintaining a drug den, the CA held that it necessarily followed that Loquinario-Flores, pursuant to Sec. 11 (a), Rule 122[29] of the Rules of Court, must be exonerated of the charge against her for violating Sec. 7, Art. II of R.A. 9165. Despite the fact that Loquinario-Flores did not appeal, the CA relied on the dictum that everything in an appealed case is open for review by the appellate court.[30]

In Criminal Case Nos. C-82010 and C-82011, the CA held that the prosecution was able to show the guilt of Santos beyond reasonable doubt. It held that the testimony of Saul was straightforward and that there was no proof that he had ill motive to testify against Santos. On the other hand, it found the defense of frame-up put up by Santos was self-serving which failed to rebut the overwhelming evidence presented by the prosecution; and that the alleged inconsistencies in the testimonies of Kanapi and Bomediano were on trivial and immaterial details that do not affect their credibility.[31] Hence, the appeal of Santos was decided as follows:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The Decision dated 26 September 2012 of the lower court is **MODIFIED** as follows:

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[28] *Rollo,* pp. 18-19.

[29] Section 11. Effect of appeal by any of several accused. —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

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[30] *Rollo,* p. 19.

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

1. The judgment in **Criminal Case No. C-82010** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 is hereby **AFFIRMED;**
2. The judgment in **Criminal Case No. C-82011** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of Illegal Possession of Drug Paraphernalia under Section 12, Article II of RA 9165 is hereby **AFFIRMED**;
3. The judgment in **Criminal Case No. C-82009** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of maintaining a Drug Den under Section 6, Article II of RA 9165 is **REVERSED** and **SET ASIDE**. Appellant Rolando Santos y Zaragoza is hereby **ACQUITTED** in Criminal Case No. C-82009 for insufficiency of evidence.
4. The judgment in **Criminal Case No. C-82012** finding the accused **Imee Baltazar Lquinario-Flores** guilty beyond reasonable doubt of the crime of Visiting a Drug Den under Section 7, Article II of RA 9165 is likewise **REVERSED** and **SET ASIDE**. She is hereby **ACQUITTED** in Criminal Case No. C-82012 for insufficiency of evidence.

SO ORDERED.

Santos sought for a partial reconsideration[32] of the decision of the CA insofar as it affirmed his conviction in Crim. Case Nos. C-82010 and C-82011. Finding no persuasive grounds or substantial bases to reconsider, however, the CA denied the motion.[33]

ISSUES

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

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[32] CA *rollo*, pp. 173-179.

[33] *Id*. at 189-190.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE INTEGRITY AND IDENTITY OF THE ALLEGED CONFISCATED DRUGS.

OUR RULING

The appeal is without merit.

It bears to stress that while an accused in a criminal case is presumed innocent until proven guilty, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.[34] The Court firmly holds that the prosecution was able to successfully discharge its burden of overcoming the constitutional presumption of innocence of Santos and in proving his guilt beyond reasonable doubt in Crim. Case Nos. C-82010 and C-82011.

The findings of the trial court and the appellate court as to the credibility of the prosecution witnesses are binding and conclusive upon the Court.

Santos claimed that the testimonies of the prosecution witnesses were indecisive, conflicting, and contradictory; as opposed to the version of the defense which was consistent, straightforward, and complementary with each other.[35]

To justify his claim, Santos averred that when Saul first testified he stated that the second floor of the house had a living room, kitchen, and two rooms. It was when Saul allegedly frisked Santos that he found several used and unused aluminum foil and a sachet of marijuana, but nothing was found inside the

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[34] *People v. Calantiao*, 736 Phil. 661, 674-675 (2014).

[35] CA *rollo*, p. 58.

two rooms. When Saul was again put on the witness stand, he allegedly admitted that the five disposable lighters and the strips of aluminum foil were found inside Santos' bedroom.[36]

Contrary to the claim of Santos, the testimonies of Saul were not inconsistent with each other. When first put on the stand, Saul admitted that he found the strips of aluminum foil in the living room; and that when he frisked Santos he found in the right pocket of his pants the marijuana leaves wrapped in paper.[37] Clearly, Saul was forthright in stating where he found the used and unused aluminum foil and the marijuana. Saul never claimed that the strips of aluminum foil were found on the body of Santos.

When Saul testified again, he described in detail that the strips of aluminum foil were found inside a plastic baby powder container.[38] Although Saul claimed that he found these in the bedroom of Santos, the Court took note of the fact that in most houses in urban areas, the living room is also used as the bedroom. What is important is that Saul was consistent that he found the strips of aluminum foil on the second floor of the house where the living room and bedroom were located.

It must be emphasized that the finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict.[39] The truth that the strips of aluminum foil were found in the house of Santos and the marijuana in his body, had not been successfully controverted by him. In fact, there was but the lame defense of frame-up offered by Santos to overcome the presumption. Enlightening at this point is the jurisprudence in *People v. Lagman,*[40] viz:

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[36] *Id*.

[37] TSN, 29 September 2010, pp. 10-12.

[38] TSN, 10 November 2010, pp. 4-5.

[39] *People v. Dela Trinidad*, 742 Phil. 347, 358 (2014).

[40] 593 Phil. 617, 625 (2008), citing *People v. Tira,* 474 Phil. 152, 173-174 (2004).

It held that illegal possession of regulated drugs is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.[41]

The contention of Santos that the members of the raiding team gave an altogether different account as to who actually witnessed the implementation of the search warrant,[42] is a trivial and inconsequential matter that does not affect the credibility of the prosecution witnesses. These matters do not deal with the central fact of the crime. Besides, it has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[43]

In stark contrast, the defense of denial proffered by Santos cannot prevail over the positive identification by the prosecution witnesses. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters.[44] Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense.[45]

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[41] *People v. Dela Trinidad*, *supra* note 39 at p. 348.

[42] CA *rollo*, pp. 58-59.

[43] *People v. Rebotazo*, 711 Phil. 150, 172-173 (2013).

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

[45] *Zalameda v. People*, 614 Phil. 710, 733 (2009).

Equally important is that it is the general rule that "the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions on the credibility of the witnesses on which said findings were anchored are accorded great respect. This great respect rests in the trial court's first-hand access to the evidence presented during the trial, and in its direct observation of the witnesses and their demeanor while they testify on the occurrences and events attested to."[46] Settled also is the rule that factual findings of the appellate court affirming those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error.[47] Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[48] The Court had assiduously reviewed the records but found nothing to qualify these cases as falling within the exception to the general rule.

Santos asserted that the search warrant was only for an undetermined amount of shabu; thus, the discovery of the incriminating items other than that described in the warrant must result from bodily search or seized in plain view to be admissible in evidence.[49]

The assertion of Santos has no merit considering that he did not question the admissibility of the seized items as evidence

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[46] *Luy v. People of the Philippines,* G.R. No. 200087, 12 October 2016, 805 SCRA 710, 718-719; citing *Gulmatico v. People*, 562 Phil. 78, 87 (2007); *People v. De Guzman,* 564 Phil. 282, 290 (2007); *People v. Cabugatan*, 544 Phil. 468, 479 (2007); *People v. Taan*, 536 Phil. 943, 954 (2006); *Perez v. People*, 515 Phil. 195, 203-204 (2006); *People v. Tonog, Jr.*, 477 Phil. 161, 177 (2004); *People v. Genita, Jr.*, 469 Phil. 334, 341-342 (2004); *People v. Pacheco*, 468 Phil. 289, 299 (2004); *People v. Abolidor,* 467 Phil. 709, 716 (2004); *People v. Santiago*, 465 Phil. 151, 162 (2004).

[47] *People v. Bontuyan*, 742 Phil. 788, 798 (2014).

[48] *People v. Dahil*, 750 Phil. 212, 225 (2015).

[49] CA *rollo,* p. 60.

against him during the trial of these cases. It was only when he appealed the decision of the RTC before the CA that he raised the issue as to the admissibility of the seized items. Well-entrenched in our jurisprudence is that no question will be entertained on appeal unless it has been raised in the lower court.[50]

There was an unbroken chain in the custody of the seized drugs and paraphernalia.

It was the position of Santos that there was doubt as to the whether the marijuana and paraphernalia seized from him were the very same objects offered in court as *corpus delicti*. He claimed that there was no explanation given regarding the items confiscated from Santos from the time these were seized until their turnover for laboratory examination.[51]

"*Corpus delicti* is the 'actual commission by someone of the particular crime charged.' In illegal drug cases, it refers to the illegal drug item itself."[52]

The Dangerous Drugs Board (DDB) – the policy making and strategy formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified, and balanced national drug abuse prevention and control strategy[53] – has expressly defined chain of custody involving dangerous drugs and other substances in the following terms in Sec. 1(b) of DDB Regulation No. 1, Series of 2002,[54] to wit:

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[50] *Tionco v. People*, 755 Phil. 646, 654 (2015).

[51] CA *rollo,* p. 62.

[52] *Rontos v. People*, 710 Phil. 328, 336-337 (2013).

[53] Sec. 77, R.A. No. 9165.

[54] 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 R.A. No. 9165.

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.[55]

The exacting requirement as to the chain of custody of seized drugs and paraphernalia is highlighted in R.A. No. 9165 as follows:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs. Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

On the one hand, the Implementing Rules and Regulations (IRR) settles the proper procedure to be followed in Sec. 21(a) of R.A. No. 9165, viz:

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation,

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[55] *People v. Gonzales*, 708 Phil. 121, 129-130 (2013).

> 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.

The Court has explained in a catena of cases the four (4) links that should be established in the chain of custody of the confiscated item: *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.[56]

On the first link, jurisprudence dictates that "'(M)arking' is the placing by the apprehending officer of some distinguishing signs with his/her initials and signature on the items seized. It helps ensure that the dangerous drugs seized upon apprehension are the same dangerous drugs subjected to inventory and photography when these activities are undertaken at the police station or at some other practicable venue rather than at the place of arrest. Consistency with the 'chain of custody' rule requires that the 'marking' of the seized items – to truly ensure

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[56] *People v. Holgado*, 741 Phil. 78, 94-95 (2014); citing *People v. Nandi,* 639 Phil. 134, 144-145 (2010).

that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation."[57]

Saul testified that after he gathered the drug paraphernalia and the marijuana which he confiscated from Santos, he prepared the inventory of seized items/property[58] in the presence of Santos, and the respective representatives of the DOJ, media, and the barangay. In addition to the inventory, he marked the confiscated items as follows:

1. five (5) pieces of disposable lighters "ELS-21-8-09"
2. several pieces or strips of unused aluminum foil "ELS-21-8-09-01"
3. several pieces/strips of used aluminum foil "ELS-21-8-09-02"
4. several pieces unused small plastic sachet "ELS-21-8-09-03"
5. several pieces used small plastic sachet "ELS-21-8-09-04"
6. one (1) improvised plastic pipe "ELS-21-8-09-05"
7. undetermined amount of marijuana leaves and seed wrapped in newspaper "ELS-21-8-09-06"

Anent the second and third links, on the same day that Saul arrived at the NBI RAID office after the service of the search warrant, he forthwith prepared the disposition form[59] for the turnover of the seized items to the FCD. The seized items were received by the FCD on 21 August 2009 at 11:05 p.m. A certification[60] dated 21 August 2009 was likewise issued by

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[57] *People v. Somoza*, 714 Phil. 368, 387-388 (2013).

[58] Records, p. 345, Exh. "H".

[59] *Id*. at p. 201, Exh. "A".

[60] *Id*. at 204, Exh. "D".

the FCD confirming that the confiscated items marked as "ELS-21-8-09-02", "ELS-21-8-09-04", and "ELS-21-8-09-05" yielded positive results for the presence of methamphetamine hydrochloride, and positive results for marijuana for "ELS-21-8-09-06". On 25 August 2009, the FCD released its Dangerous Drugs Report Nos. DDM-09-08[61] and DD-09-47.[62]

On the fourth link, the testimony of Cruz was dispensed with after the parties had agreed to stipulate on the following facts:

That he is an expert witness, and as such is of the receipt of a letter request dated 21 August 2009;

That attached to the letter request were several pieces/strips of used aluminum foil marked as ELS-21-8-09-02; several pieces of used small plastic sachet marked as ELS-21-8-09-04; one (1) improvised plastic pipe marked as ELS-21-8-09-05, and undetermined amount of marijuana leaves and seed wrapped in a newspaper marked as ELS-21-8-09-06;

That he conducted laboratory examination on the specimen submitted to their office, the result of which he reduced into writing as evidenced by Dangerous Drugs Report No. DDM-09-08, stating that upon examination conducted on the dried crushed leaves and seeds wrapped in a newsprint gave positive results for "marijuana" and by Dangerous Drugs Report No. DDM-09-47, stating that upon examinations conducted on the several strips of used aluminum foil in a transparent plastic bag; several pieces of used plastic sachets in a transparent "tea bag" and a plastic sachet tube gave positive results for the presence of Methamphetamine Hydrochloride, respectively;

That he issued a Certification dated 21 August 2009 to the effect that he conducted examination upon the above-mentioned specimen submitted to their office.[63]

As opposed therefore, to the claim of Santos, there was no significant gap in the chain of custody of the seized items. Moreover, the assertion of Santos that the forensic chemist did

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[61] *Id*. at 202, Exh. "E".

[62] *Id*. at 203, Exh. "F".

[63] TSN, 11 November 2009, pp. 9-10.

not testify to explain the measures undertaken to preserve the integrity and identity of the substance examined until their presentation in court,[64] has no merit. As earlier mentioned, both the prosecution and the defense had agreed to dispense with the testimony of the forensic chemist upon stipulation on certain facts. Moreover, the defense counsel had the opportunity to cross-examine the forensic chemist but, as revealed by the records, his cross-examination never dealt on matters pertaining to the measures carried out by the NBI team to maintain the integrity of the confiscated items.

In the same vein, it needs to be stressed that Cruz is a public officer; thus, his reports carried the presumption of regularity. Besides, Sec. 44, Rule 130 of the Revised Rules of Court provides that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are prima facie evidence of the facts therein stated.[65] It necessarily follows that the findings of Cruz as contained in Dangerous Drugs Report Nos. DDM-09-08 and DDM-09-47 were conclusive in view of the failure of the defense to present evidence showing the contrary.

Noteworthy, the legal teaching in our jurisprudence is that "the integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties."[66] Santos had miserably failed in presenting any evidence that would justify a finding that the NBI team had ill motive in tampering with the evidence in order to hold him liable for these grave offenses.

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[64] CA *rollo*, p. 62.

[65] *Zalameda v. People*, *supra* note 45 at p. 740.

[66] *People v. Dela Trinidad*, *supra* note 39 at p. 360.

The prosecution was able to fully discharge its burden of proving beyond reasonable doubt its charges against Santos.

In Crim. Case No. C-82010, Santos was charged with and convicted of violation of Sec. 11, Art. II of R.A. No. 9165,[67] the

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[67] Section 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;
(2) 10 grams or more of morphine;
(3) 10 grams or more of heroin;
(4) 10 grams or more of cocaine or cocaine hydrochloride;
(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";
(6) 10 grams or more of *marijuana* resin or *marijuana* resin oil;
(7) 500 grams or more of *marijuana*; and
(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or

elements of which are as follows: (1) the accused is in possession of an item or object, which is identified to be prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[68]

Saul testified that when he frisked Santos, he found marijuana in the right pocket of his pants. Santos did not offer any explanation on why he was in possession of the marijuana or if he was authorized by law to possess the dangerous drug. Based on the Dangerous Drugs Report No. DDM-09-08, the dried crushed leaves and seeds wrapped in newspaper and contained in the transparent plastic tea bag marked as "ELS-21-8-09-06" and which gave a positive result for marijuana, had a net weight of 1.0022 grams.

Pursuant to Sec. 11, Art. II of R.A. No. 9165, the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00), shall be imposed if the quantity of marijuana is less than three hundred (300) grams. Thus, the penalty of imprisonment of twelve (12) years and one (1) day to fourteen

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marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500) grams of *marijuana*; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

[68] *People v. Dela Trinidad*, *supra* note 39 at p. 357.

(14) years, and a fine of Three Hundred Thousand Pesos (₱300,000.00) as imposed by the RTC and affirmed by the CA, is hereby sustained.

In Crim. Case No. C-82011, Santos was convicted of violation of Sec. 12, Art. II of R.A. No. 9165,[69] its elements being as follows: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[70]

Saul testified that when he served the search warrant on Santos at his house on 21 August 2009, he found thereat several strips of used aluminum foil in a transparent plastic bag, several pieces of used plastic sachet in a transparent tea bag, and a plastic tube intended for sniffing shabu, which he respectively marked "ELS-21-8-09-01," "ELS-21-8-09-04," and "ELS-21-8-09-05." Similar to the marijuana, Santos failed to justify his possession of these items. Significantly, Dangerous Drugs Report No. DD-09-47 showed that the examination made on the washings of these

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[69] Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

[70] *Zalameda v. People, supra* note 45 at p. 727.

confiscated items yielded positive results for the presence of methamphetamine hydrochloride.

Pursuant to Sec. 12, Art. 11 of R.A. No. 9165, the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years, and a fine ranging from Ten Thousand Pesos (₱10,000.00) to Fifty Thousand Pesos (₱50,000.00) shall be imposed for violation of this provision of the Act. Finding no error in the penalty of imprisonment of six (6) months and one (1) day to four (4) years, and a fine of Ten Thousand Pesos (₱10,000.00) imposed by the RTC, which was affirmed by the CA, the Court hereby maintains the same.

WHEREFORE, the appeal is **DENIED**. The 6 August 2014 Decision and 2 March 2015 Resolution of the Court of Appeals, Fourth Division in C.A.-G.R. CR-HC No. 05851 are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 225642-43. January 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUVY D. AMARELA AND JUNARD G. RACHO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AN ACCUSED MAY BE CONVICTED OF THE CHARGE OF RAPE SOLELY ON THE VICTIM'S

TESTIMONY THAT IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS; GUIDELINES ON THE ISSUE OF CREDIBILITY OF WITNESSES; CASE AT BAR.— This opinion borders on the fallacy of *non sequitor*. And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today, we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights. In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception. It is important to weed out these unnecessary notions because an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim. x x x We follow certain guidelines when the issue of credibility of witnesses is presented before us, to *wit*: First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded. And third, the rule is even more stringently applied if the CA concurred with the RTC.

2. ID.; ID.; ID.; ID.; INCONSISTENCIES BETWEEN THE AFFIDAVIT AND THE TESTIMONY OF A WITNESS DO NOT IMPAIR THE CREDIBILITY OF THE RAPE VICTIM ONLY IF THE INCONSISTENCIES ARE MINOR AND TRIVIAL; CASE AT BAR.— It has often been noted that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight

since affidavits being taken ex parte are usually incomplete and inadequate. We usually brush aside these inconsistencies since they are trivial and do not impair the credibility of the rape victim. In this case, however, the version in AAA's affidavit-complaint is remotely different from her court testimony. At the first instance, AAA claims that she was pulled away from the vicinity of the stage; later, in court, she says that she was on her way to the rest room when she was grabbed. By this alone, we are hesitant to believe AAA's retraction because it goes into whether it was even possible for Amarela to abduct AAA against her will.

3. **ID.; ID.; ID.; WHILE A MEDICO-LEGAL REPORT IS NOT INDISPENSABLE TO THE PROSECUTION OF A RAPE CASE, IT BEING MERELY CORROBORATIVE IN NATURE, IT CAN RAISE SERIOUS DOUBT AS TO THE CREDIBILITY OF THE ALLEGED RAPE VICTIM; CASE AT BAR.—** [T]he challenge to AAA's credibility is further supported by the medical findings of the medico-legal officer. The medico-legal certificate dated 12 February 2009 would reflect that AAA had no pertinent physical findings /or physical injuries: x x x Insofar as the evidentiary value of a medical examination is concerned, we have held that a medico-legal report is not indispensable to the prosecution of a rape case, it being merely corroborative in nature. In convicting rapists based entirely on the testimony of their victim, we have said that a medico-legal report is by no means controlling. Thus, since it is merely corroborative in character, a medico-legal report could even be dispensed with. A medico-legal's findings are at most corroborative because they are mere opinions that can only infer possibilities and not absolute necessities. A medico-legal, who did not witness the actual incident, cannot testify on what exactly happened as his testimony would not be based on personal knowledge or derived from his own perception. Consequently, a medico-legal's testimony cannot establish a certain fact as it can only suggest what most likely happened. In the same way, a medico-legal's findings can raise serious doubt as to the credibility of the alleged rape victim. Based on the testimony of the medico-legal officer who conducted the medical examination on AAA, she diagnosed that the ano-genital findings were caused by a blunt force or penetrating trauma. x x x In the instant case, the lacerations were found only at the 9 o'clock and 3 o'clock positions of the hymen. Considering the locality

of these lacerations, we cannot completely rule out the probability that AAA voluntarily had sex that night. Moreover, the absence of bruises on AAA's thighs—when she said she was punched there twice—reinforces the theory that AAA may have had consensual intercourse.

4. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; CONVICTION OF THE ACCUSED MUST BE BASED ON PROOF BEYOND REASONABLE DOUBT; ACQUITTAL OF THE ACCUSED IS PROPER IN CASE AT BAR.—** In the end, what needs to be stressed here is that a conviction in a criminal case must be supported by proof beyond reasonable doubt or moral certainty that the accused is guilty. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Thus, the prosecution has the primordial duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. The prosecution in this case miserably failed to present a clear story of what transpired. Whether AAA's ill-fated story is true or not, by seeking relief for an alleged crime, the prosecution must do its part to convince the court that the accused is guilty. Prosecutors are given ample resources of the government to present a logical and realistic account of every alleged crime, and they should, to the best of their ability, present a detailed story to get a conviction. But here we cannot ascertain what happened based on the lone testimony of AAA. It should have been the prosecution's duty to properly evaluate the evidence if it had enough to convict Amarela or Racho. Henceforth, we are constrained to reverse the RTC and the CA rulings due to the presence of lingering doubts which are inconsistent with the requirement of guilt beyond reasonable doubt as quantum of evidence to convict an accused in a criminal case. Amarela and Racho are entitled to an acquittal, as a matter of right, because the prosecution has failed to prove their guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the 17 February 2016 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR HC Nos. 01226-MIN and 01227-MIN affirming *in toto* the 26 June 2012 Joint Judgment[2] of the Regional Trial Court, Branch 11 of Davao City *(RTC)*. The RTC found Juvy D. Amarela *(Amarela)* and Junard G. Racho *(Racho)* guilty beyond reasonable doubt of two (2) different charges of rape.

THE FACTS

The two (2) Informations in this case read:

Criminal Case No. 64,964-09

That on or about February 10, 2009, in the City of [redacted] Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], against her will, immediately after boxing her legs.[3]

Criminal Case No. 64,965-09

That on or about February 11, 2009, in the City of [redacted] Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], against her will, immediately after grappling her.[4]

These two (2) cases were jointly tried before the RTC, and Amarela and Racho's appeals, although separate, were consolidated in the CA on 13 November 2015.[5]

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[1] *Rollo*, pp. 3-14

[2] CA *rollo* (CA-G.R. CR HC No. 01226-MIN), pp. 22-28.

[3] Records (Criminal Case No. 64,964-09), p. 1.

[4] Records (Criminal Case No. 64,965-09), p. 1.

[5] CA *rollo* (CA-G.R. HC No. 01227-MIN), pp. 81-82.

The RTC summarized the factual milieu of this case:

Prosecution presented [AAA], single, housekeeper and a resident of [redacted] City. On February 10, 2009, at around 6:00 o'clock in the evening, she was watching a beauty contest with her aunt at [redacted] City. The contest was being held at a basketball court where a make-shift stage was put up. The only lights available were those coming from the vehicles around.

She had the urge to urinate so she went to the comfort room beside the building of the [redacted] Cooperative near the basketball court. Between the cooperative building and the basketball court were several trees. She was not able to reach the comfort room because [Amarela] was already waiting for her along the way. Amarela suddenly pulled her towards the day care center. She was shocked and was no match to the strength of Amarela who pulled her under the stage of the day care center. He punched her in the abdomen which rendered her weak. Then Amarela undressed her. She tried to resist him but he was stronger. He boxed her upper thigh and she felt numb. He placed himself on top of her and inserted his penis inside her vagina and made a push and pull movement. She shouted for help and then three (3) men came to her rescue [so] Amarela fled.

The three (3) persons brought her to a hut. But they closed the hut and had bad intentions with her. So she fled and hid in a neighboring house. When she saw that the persons were no longer around, she proceeded on her way home. She went to the house of Godo Dumandan who brought her first to the Racho residence because Dumandan thought her aunt was not at home. Dumandan stayed behind So Neneng Racho asked her son [Racho] to bring her to her aunt's house instead.

x x x x x x x x x

[AAA] then said that [Racho] brought her to a shanty along the way against her will. She was told to lie down. When she refused, [Racho] boxed her abdomen and she felt sick. She resisted by kicking him but he succeeded in undressing her. He, then, undressed himself and placed himself on top of [AAA]. [Racho] then inserted his penis into [AAA]'s vagina. After consummating the act, [Racho] left her. So [AAA] went home alone.

When she reached home, her parents were already asleep. She went inside her room and cried. The following morning, she decided to leave home. Her mother was surprised at her decision until

eventually, [AAA] told her mother about what happened to her. She told her [eldest] brother first who got very angry.

They reported the matter to the police and eventually [Amarela] and [Racho] were arrested.[6]

For the defense, Amarela testified for himself denying that he had anything to do with what happened with AAA:

Defense presented [Amarela] who confirmed the fact that on February 10, 2009, he attended the fiesta celebrations in [redacted] City. He said he met private complainant, [AAA], at the cooperative building at around 4:00 o'clock in the afternoon. [AAA] asked him if he knew a person by the name of Eric Dumandan who was allegedly her boyfriend. After a while, Eric Dumandan passed by and so he told him that [AAA] was looking for him. Then he left.

Amarela said he had a drinking spree with his friend Asther Sanchez. While drinking, he felt dizzy and fell down from the bench. So Sanchez brought him to the house of his elder brother Joey in [redacted]. He did not know what happened next because he slept and woke up at six o'clock in the morning.[7]

On his part, Racho confirmed that he went with AAA to bring her home but also denied raping her:

Defense also presented [Racho], a resident of [redacted] City. He testified that he was at the house of his mother on February 10, 2009. At around 10:00 o'clock in the evening, [AAA] arrived with Godo Dumandan. [AAA] was asking for help while crying because she was allegedly raped by three persons in the pineapple plantation.

His mother advised her to just take a bath and change clothes and sleep at his brother's house. But [AAA] wanted to go home. Since he was the only one who was not drunk, Racho was instructed by [his] mother to accompany [AAA] in going to her aunt's house.

When they reached Caniamo, [AAA] did not want to be brought to her aunt's house because she knows the latter would just scold

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[6] CA *rollo* (CA-G.R. No. 01226-MIN), pp. 23-24.

[7] *Id.* at 24-25.

her. Instead, she wanted to be conveyed to their house at Ventura. Since Ventura was far, Racho did not go with her and instead went back home.

When asked about the charge of rape against him, Racho said he could not have done that because his hand is impaired while showing a long scar on his left arm. This was a result allegedly of a hacking incident on September 21, 2008. He offered a Medical Certificate (Exh. 1) issued by Dr. Lugi Andrew Sabal of the [redacted] Medical Center which indicates that Racho was confined in the said hospital from September 21, 2008 up to October 1, 2008 after an operation on his left forearm. He said that his left arm was placed in a plaster cast but that he removed the cast after three (3) months. He said that even after he removed the cast, his arm was still painful and he could not move it around.

Racho said he was surprised when policemen came to his house on February 11, 2009 and invited him to the police station because there was a complaint for rape against him.

Anita Racho testified that she was at home in the evening of February 10, 2009 together with her husband and sons Bobby and [Racho]. Godo Dumandan arrived together with [AAA] who was allegedly raped by three (3) men. [AAA] appeared madly and wet so she advised her to take a bath and not to go home anymore since it was late. [AAA] insisted on going home, so she asked her son [Racho] to accompany her. [Racho] at first refused pointing to his elder brother Bobby to accompany her. He eventually brought [AAA] home. He came back at around 10:00 o'clock in the evening and then he went to sleep.

The following day, she was surprised when [Racho] was arrested allegedly for raping [AAA]. [Racho] denied raping [AAA].[8]

Ruling of the Trial Court

In its joint judgment, the RTC found AAA's testimony, positively identifying both Amarela and Racho, to be clear, positive, and straightforward. Hence, the trial court did not give much weight to their denial as these could not have overcome the categorical testimony of AAA. As a result, Amarela and Racho were convicted as follows:

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

In view of all the foregoing, judgment is hereby rendered in Criminal Case No. 64964-09 finding [Amarela] GUILTY beyond reasonable doubt of the crime of RAPE and hereby imposes upon him the penalty of *reclusion perpetua*.

He is further sentenced to pay [AAA] the sum of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity and the further sum of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages.

In Criminal Case No. 64965-09, judgment is hereby rendered finding [Racho] GUILTY beyond reasonable doubt of the crime of RAPE and hereby imposes upon him the penalty of *reclusion perpetua*.

He is further sentenced to pay [AAA] the sum of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity and the further sum of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages.[9]

The Assailed CA Decision

Before the CA, Amarela and Racho pointed out that although there were other witnesses, the only material testimony on record was that of AAA. They argued that there were several circumstances casting doubt on AAA's claim that she was raped because her testimony does not conform to common knowledge and to ordinary human experience.

In the assailed decision, the CA affirmed the RTC's judgment *in toto* finding no reason to reverse the trial court's factual findings. It held:

[AAA] has testified in a straightforward manner during her direct examination and remained steadfast in her cross-examination that Amarela sexually abused her on February 10, 2009, and [Racho] abused her five hours later. The first rape incident took place in the daycare center. She was pulled by Amarela while she was on her way to the comfort room located at the back of the x x x cooperative building. Private complainant, full of mud and wet, with dress torn, took refuge at the house of her boyfriend and sought for help. Her boyfriend's father took her to the house of the in-laws of her cousin. [AAA], who was still wet and muddy, begged the mother-in-law of her cousin that she be taken to the house of her aunt. While the in-laws of her cousin helped her by having escorted her to her aunt's

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

house, it turned out however, that [Racho] her escort had another plan in mind. [Racho] sexually abused [AAA], who had no more strength to fight him.

The records render no reason to reverse the factual findings of the court *a quo*. Both of the appellants' denials miserably fail in contrast to [AAA's] positive identification of the accused-appellants as the person who sexually abused her. There is no doubt in our mind that both appellants had carnal knowledge of [AAA]. Her credibility is cemented by her lack of motive to testify against the two appellants, Amarela and [Racho]. There is no evidence to suggest that she could have been actuated by such motive. The People has ably demonstrated the existence of the elements of Rape under the Revised Penal Code, as amended by R.A. No. 8353, or the Anti-Rape Law of 1997, which states:

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The Court sees no reason to deviate from the well-entrenched rule that in matters of credibility of witnesses, the assessment made by the trial court should be respected and given preponderant weight. [AAA's] ordeal is so traumatic that she would rather forget the whole incident. But once a rape victim has decided to seek justice, that means she is willing to recall the dastardly detail of the animalistic act committed on her person.

[Racho] would have us believe that the charge against him was merely fabricated because, according to him, being raped by two different assailants, on two different occasions and only hours apart, is contrary to the normal course of things.

We are not convinced.

The Supreme Court has once said that rape in itself is prompted by the abnormal need of a man to overpower and control a woman by way of sexual abuse. There is no typical mode, norm, or circumstance in committing rape or sexual abuse for the evil in man has no conscience. In fact, in a catena of cases, the Supreme Court had ruled that rape is no respecter of time or place. Thus, we cannot agree with [Racho]'s argument that just because [AAA] had been raped five hours earlier, the possibility that she might get raped again is nil.

Undeterred, appellants posit that [AAA's] testimony is not substantially corroborated by medical findings as the medical certificate

does not show any physical injuries resulting from the alleged use of force by the appellants.

We do not agree.

The absence of any superficial abrasion or contusion on the person of the offended party does not militate against the claim of the latter whose clear and candid testimony bears the badges of truth, honesty, and candor. It must be stressed that *the absence or presence of visible signs of injury on the victim depends on the degree of force employed by the accused to consummate the purpose which he had in mind to have carnal knowledge with the offended woman*. Thus, the force employed in rape need not be so great nor of such a character as could not be resisted. It is only that the force used by the accused is sufficient to enable him to consummate his purpose.

Appellant Amarela also argues that [AAA] could not have identified her assailant because it was very dark at the place where [AAA] was allegedly pulled by her assailant and the place where she was allegedly raped.

[AAA], in her re-direct examination, testified that she knew it was Amarela who raped her because she saw Amarela's fact while Amarela brought her from the cooperative building to the daycare center.

Time and time again, the High Court has repeatedly ruled that positive identification prevails over denial, a negative defense that is inherently unreliable. We have no reason to doubt [AAA's] unwavering assertions positively establishing the identities of the two accused-appellants. We find the guilt of each of the accused-appellants to have been proven beyond reasonable doubt.

FOR THESE REASONS, the assailed judgment is AFFIRMED *in toto*.[10]

OUR RULING

More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant. In doing so, we have hinged on the impression that *no young*

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[10] *Rollo*, pp. 10-13.

Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor.[11] However, this misconception, particularly in this day and age, not only puts the accused at an unfair disadvantage, but creates a travesty of justice.

The "women's honor" doctrine surfaced in our jurisprudence sometime in 1960. In the case of *People v. Taño*,[12] the Court affirmed the conviction of three (3) armed robbers who took turns raping a person named Herminigilda Domingo. The Court, speaking through Justice Alejo Labrador, said:

> It is a well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. We cannot believe that the offended party would have positively stated that intercourse took place unless it did actually take place.[13]

This opinion borders on the fallacy of *non sequitor*. And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today, we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.

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[11] *People v. Gan*, 150-B Phil. 593, 603 (1972); *People v. Sarmiento*, 183 Phil. 499, 506 (1979); *People v. Gamez*, 209 Phil. 209, 218 (1983); *People v. Quidilla*, 248 Phil. 1005, 1017 (1988); *People v. Fabro*, 269 Phil. 409, 419 (1990) citing *People v. Sambangan*, 211 Phil. 72, 76 (1983); *People v. Patilan*, 274 Phil. 634, 648 (1991) citing *People v. Ramilo*, 230 Phil. 342, 351 (1986); *People v. Esquila*, 324 Phil. 366, 373 (1996); *People v. Manahan*, 374 Phil. 77, 88 (1999); *People v. Dreu*, 389 Phil. 429, 435 (2000) citing *People v. Barcelona*, 382 Phil. 46, 57 (2000); *People v. Durano*, 548 Phil. 383, 396 (2007) citing *People v. Domingo*, 297 Phil. 167, 188 (1993); *People v. Madsali*, 625 Phil. 431, 446 (2010) citing *People v. Loyola*, 404 Phil. 71, 77 (2001).

[12] 109 Phil. 912 (1960).

[13] *Id*. at 914-915.

In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception. It is important to weed out these unnecessary notions because an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[14] Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim.

In an appeal from a judgment of conviction in rape cases, the issue boils down, almost invariably, to the credibility and story of the victim and eyewitnesses. The Court is oftentimes constrained to rely on the observations of the trial court who had the unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling and at times unfriendly, examination.[15] It has since become imperative that the evaluation of testimonial evidence by the trial court be accorded great respect by this Court; for it can be expected that said determination is based on reasonable discretion as to which testimony is acceptable and which witness is worthy of belief.[16] Although we put a premium on the factual findings of the trial court, especially when they are affirmed by the appellate court,[17] this rule is not absolute and admits exceptions, such as when some facts or circumstances of weight and substance have been overlooked, misapprehended, and misinterpreted.

We follow certain guidelines when the issue of credibility of witnesses is presented before us, to *wit*:

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[14] *People v. Zamoraga*, 568 Phil. 132, 140 (2008); *People v. Achas*, 612 Phil. 652, 662 (2009); *People v. Banig*, 693 Phil. 303, 312 (2012); *People v. Gahi*, 727 Phil. 642, 657 (2014); *People v. Pitalla*, G.R. No. 223561, 19 October 2016.

[15] *People v. Parcia*, 425 Phil. 579, 585-586 (2002).

[16] *Id.* at 586.

[17] *People v. Nerio, Jr.*, 764 Phil. 565, 575 (2015) citing *People v. CA*, 755 Phil. 80, 111 (2015); *People v. Regaspi*, 768 Phil. 593, 598 (2015) citing *People v. Cabungan*, 702 Phil. 177, 188-189 (2013).

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC.[18]

After a careful review of the records and a closer scrutiny of AAA's testimony, reasonable doubt lingers as we are not fully convinced that AAA was telling the truth. The following circumstances, particularly, would cast doubt as to the credibility of her testimony: (1) the version of AAA's story appearing in her affidavit-complaint differs materially from her testimony in court; (2) AAA could not have easily identified Amarela because the crime scene was dark and she only saw him for the first time; (3) her testimony lacks material details on how she was brought under the stage against her will; and (4) the medical findings do not corroborate physical injuries and are inconclusive of any signs of forced entry.

First, AAA narrates that she was on her way to the comfort room, isolated from the crowd at the beauty contest and made it easy for Amarela to grab her without anyone noticing:

Q: Now, you said that you watched the beauty contest at around 7:00 in the evening on Feb. 10, 2009. After that, Ms. Witness, while watching, what did you do?
A: I was on my way to the CR.

Q: And where is the CR located?
A: Near the coop.

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[18] *People v. Pareja*, 724 Phil. 759, 773 (2014) citing *People v. Sanchez*, 681 Phil. 631, 635-636 (2012).

Q: Can you please tell us the name of that cooperative?
A: Cooperative.

Q: Can you recall the exact name?
A: [redacted] Cooperative.

Q: And, where is this [redacted] Cooperative, Ms. Witness, in relation to the basketball court where the beauty contest was held?
A: It's near.

x x x x x x x x x

Q: Now, between the basketball court and the cooperative you referred to, what separates these two buildings?
A: Durian trees and cacao.

Q: You said that you were going to the CR located at the back of the [redacted] Cooperative to relieve yourself. And, were you able to go to the CR at the back of the [redacted] Cooperative?
A: No more.

Q: Why not?
A: [Amarela] was waiting for me.

Q: Exactly, can you please tell us the location where he was waiting for you?
A: At the back of the cooperative.

Q: And, upon seeing [Amarela] at the back of the cooperative, Ms. Witness, tell us what happened?
A: He pulled me.

Q: Going to what place?
A: Going towards the day care center.[19]

Meanwhile, her affidavit-complaint would indicate that Amarela pulled AAA away from the beauty contest stage to the day care center:

6. At around 6:00 in the afternoon, I, my aunt [BBB] together with her siblings and grand children went back to [redacted] Cooperative Building to watch a beauty contest. My

[19] TSN, 12 May 2009, pp. 16-17.

companions stayed at the multicab at the parking area of said building, while my cousin [CCC] and I went closer to the stage. While at there, the person of [Amarela], drunk, suddenly appeared and introduced himself to me. I resisted to get his hand on my hands because he is holding it tightly and forcibly brought me to the back portion of the building. I asked for help but nobody heard me maybe because of the high volume of the sound system.

7. While at the back of said building I saw my boyfriend Eric Dumandan coming and [Amarela] told him, "*Ran* (Eric's palayaw) *naa si gemma diri!*" and Eric responded, "*ahh! tinga-a.*"

8. When Eric left us, [Amarela] grabbed me going to the purok beside the daycare center of [redacted] District [more or less] 20 meters away from the [cooperative] building. I shouted for help but still nobody heard me.[20]

It has often been noted that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken ex parte are usually incomplete and inadequate.[21] We usually brush aside these inconsistencies since they are trivial and do not impair the credibility of the rape victim.[22] In this case, however, the version in AAA's affidavit-complaint is remotely different from her court testimony. At the first instance, AAA claims that she was pulled away from the vicinity of the stage; later, in court, she says that she was on her way to the rest room when she was grabbed. By this alone, we are hesitant to believe AAA's retraction because it goes into whether it was even possible for Amarela to abduct AAA against her will.

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[20] Records (Criminal Case No. 64,964-09), p. 3.

[21] *People v. Manigo*, 725 Phil. 324, 333 (2014) citing *People v. Villanueva, Jr.*, 611 Phil. 152, 172 (2009).

[22] *People v. Velasco*, 722 Phil. 243, 254 (2013), *People v. Laurino*, 698 Phil. 195, 201 (2012); *People v. Villamor*, G.R. No. 202187, 10 February 2016, 783 SCRA 697, 707.

If we were to take into account AAA's initial claim that Amarela pulled her away from the vicinity of the stage, people facing the stage would easily notice that a man was holding a woman against her will. Thus, AAA's version that she was on her way to the rest room, instead of being pulled away from the crowd watching the beauty contest, would make it seem that nobody would notice if AAA was being taken away against her will. If indeed AAA was on her way to the rest room when she was grabbed by Amarela, why does her sworn statement reflect another story that differs from her court testimony? To our mind, AAA's testimony could have been concocted to just make her story believable rather than sticking to her original story that Amarela introduced himself and pulled her away from the stage. We cannot say that this inconsistency is simply a minor detail because it casts some doubt as to whether AAA was telling the truth – that she was abducted against her will before she was raped.

Although we cannot acquit Amarela solely based on an inconsistency, this instance already puts AAA's credibility in question. Again, we must remember that if we were to convict based solely on the lone testimony of the victim, her testimony must be clear, straightforward, convincing, and consistent with human experience. We must set a high standard in evaluating the credibility of the testimony of a victim who is not a minor and is mentally capable.

Second, we also find it dubious how AAA was able to identify Amarela considering that the whole incident allegedly happened in a dark place. In fact, she had testified that the place was not illuminated and that she did not see Amarela's face:

Direct Examination

Q: Now, what separates this beauty contest from what you were testifying a while ago as the daycare center?
A: Coconut trees, durian trees, and cacao.

Q: What else?
A: Several trees.

Q: How about grass?
A: Yes, sir.

Q: Now, can you please tell us the illumination in that place?
A: It was dark.

Q: Why is it that it was dark?
A: Because there was no lighting.[23]

Cross-Examination

Q: Since it was already night time, it was very dark at that time, correct?
A: Yes, ma'am.

Q: And when you went to the CR to relieve yourself which CR was located at [redacted] Cooperative building, it was also dark on your way?
A: Yes, ma'am.

x x x x x x x x x

Q: Now, while under the makeshift stage of that day care center, it was dark, very dark?
A: Yes, ma'am.

Q: And you cannot see the face of [Amarela], was not clear to you because it was very dark, correct?
A: Yes, ma'am.[24]

Re-Direct Examination

Q: At the time that you said that while [Amarela] was undressing you could not see his face, would you confirm that?
A: Yes, sir.

Q: What about his body?
A: No, sir.

Q: Why, Ms. Witness?
A: It was dark.

x x x x x x x x x

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[23] TSN, 12 May 2009, p. 19.

[24] TSN, 19 May 2009, pp. 2-6.

Q: Now, at the time that you were raped you said that it was too dark, how did you then identify that [Amarela] was the one who raped you?
A: I know him when he brought me from the Coop.

Q: From the Coop. to the day care center that was the time that you identified him?
A: Yes, sir.[25]

From AAA's testimony, we are unsure whether she was able to see Amarela given the lighting conditions in the crime scene. In her re-direct examination, AAA clarified that she identified Amarela while she was being pulled to the day care center. Even so, the prosecution failed to clarify as to *how* she was able to do so when, according to AAA herself, the way to the day care center was dark and covered by trees. Thus, leaving this material detail unexplained, we again draw reservations from AAA's testimony.

Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. The identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.[26]

Third, her claim that she was forcibly brought under a makeshift stage, stripped naked, and then raped seems unrealistic and beyond human experience. She said:

Q: At the day care center, where exactly did he bring you?
A: Under.

Q: Under what?
A: Under the makeshift stage.

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[25] *Id*. at 15.

[26] *People v. Caliso*, 675 Phil. 742, 752 (2011) cited in *People v. Espera*, 718 Phil. 680, 694 (2013).

Q: You said there was also a makeshift stage at the day care center?
A: Yes.

Q: Was it finished makeshift stage or not?
A: Not yet finished.

Q: You said that he brought you under that makeshift stage?
A: Yes.

Q: Please tell us how did you fit in that makeshift stage?
A: Because the flooring is about 2 feet high.

Q: Since you said he pulled you towards that makeshift stage, what was your reaction, Ms. Witness?
A: I was scared.

Q: And what did you do?
A: I did not know what to do then.

x x x x x x x x x

Q: Now, after that, what happened, Ms. Witness?
A: He pushed me under.

Q: What happened after that?
A: He [punched] me in my abdomen.

Q: What else did he do to you?
A: I felt weak.

Q: After that what happened?
A: He undressed me.

Q: While he was undressing you, what did you do, Ms. Witness?
A: I was just lying down.

x x x x x x x x x

Q: What else did he do to you while you were resisting his advances?
A: He boxed my upper left thigh.

Q: What did you feel when he boxed your left thigh?
A: I felt numbness.

x x x x x x x x x

Q: Now, you said that he undressed you, Ms. Witness, and you said he also undressed himself. What, then, [did he] do to you?
A: He placed himself on top of me.

Q: What did he do after that?
A: He inserted his penis in my sex organ.[27]

From this, AAA would like us to believe that Amarela was able to undress himself and AAA, and place himself on top of her while under a 2-feet high makeshift stage. It is physically impossible for two human beings to move freely under a stage, much more when the other person is trying to resist sexual advances. Moreover, AAA failed to mention how exactly Amarela pulled her to the makeshift stage without any sign of struggle or resistance. If indeed she was being held against her will, AAA could have easily called for help or simply run away.

Fourth, the challenge to AAA's credibility is further supported by the medical findings of the medico-legal officer. The medico-legal certificate dated 12 February 2009 would reflect that AAA had no pertinent physical findings /or physical injuries:[28]

FINDINGS			
GENERAL PHYSICAL FINDINGS			
Height	5 feet & 4 inches	Weight	44 Kg
General Survey	Awake, afebrile, not in respiratory distress		
Mental Status	Conscious, coherent, respond well to questions when asked and maintained eye to eye contact.		
Pertinent Physical Findings/Physical Injuries	Normal findings		

[27] TSN, 12 May 2009, pp. 21-25.

[28] Records (Criminal Case No. 64,964-09), p. 9.

ANO-GENITAL EXAMINATION	
External Genitalia	Normal findings
Urethra and Periurethral Area	Normal findings
Perihymenal Area and Fossa Narvicularis	(+) Hyperemic/Erythematous perihymenal area.
Hymen	(+) Complete laceration at 9 o'clock and 3 o'clock positions with minimal bloody secretion on the lacerated area.
Perineum	Normal findings
Discharge	None
Internal and Speculum exam	Not done
Anal Examination	Good sphincteric tone
DIAGNOSTIC AND EVIDENCE GATHERING	
Forensic Evidence and Laboratory Results	Pending laboratory results (Spermatocyte determination gram staining).
IMPRESSONS	
Anogenital findings are diagnostic of blunt force or penetrating trauma.[29]	

Insofar as the evidentiary value of a medical examination is concerned, we have held that a medico-legal report is not indispensable to the prosecution of a rape case, it being merely corroborative in nature.[30] In convicting rapists based entirely on the testimony of their victim, we have said that a medico-legal report is by no means controlling.[31] Thus, since it is merely

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[29] *Id*.

[30] *People v. Pamintuan*, 710 Phil. 414, 424 (2013) citing *People v. Opong*, 577 Phil. 571, 593 (2008); *People v. Lou*, 464 Phil. 413, 423 (2004); *People v. Baltazar*, 385 Phil. 1023, 1036 (2000); *People v. Lasola*, 376 Phil. 349, 360 (1999).

[31] *People v. Ferrer*, 415 Phil. 188, 199 (2001).

corroborative in character, a medico-legal report could even be dispensed with.[32]

A medico-legal's findings are at most corroborative because they are mere opinions that can only infer possibilities and not absolute necessities. A medico-legal, who did not witness the actual incident, cannot testify on what exactly happened as his testimony would not be based on personal knowledge or derived from his own perception. Consequently, a medico-legal's testimony cannot establish a certain fact as it can only suggest what most likely happened.

In the same way, a medico-legal's findings can raise serious doubt as to the credibility of the alleged rape victim. Based on the testimony of the medico-legal officer who conducted the medical examination on AAA, she diagnosed that the ano-genital findings were caused by a blunt force or penetrating trauma.

In a study conducted by Radostina D. Miterva,[33] the most common sites for lacerations were determined, "in rape victims with ring-shaped hymens, lacerations were most commonly located as followed at dorsal recumbence of the patient: (1) one laceration at 6 o'clock position in 42.02% of cases; (2) two lacerations at 5 and 7 o'clock positions in 24.55% cases; (3) three lacerations at 3, 6 and 9 o'clock positions in 45.36% of cases; and (4) four lacerations at 3, 5, 6 and 9 o'clock positions in 25% of cases." These findings were supported by an earlier study that described patterns of genital injury resulting from sexual abuse.[34]

However, in a similar study comparing injuries from consensual and non-consensual intercourse, the authors discovered that the statistical results of the locations of vaginal

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[32] *People v. Dion*, 668 Phil. 333, 351 (2011).

[33] Localization and Number of Defloration Lacerations in Annular Hymens, *J Biomed Clin Res* Suppl. 1 Vol. 2 No. 1, 2009.

[34] M.S. Sommers, Defining Patterns of Genital Injury from Sexual Assault, TRAUMA VIOLENCE & ABUSE, Vol. 8, No. 3, July 2007.

laceration are almost the same.[35] Their findings suggest that the injuries are similar after consensual and non-consensual intercourse.[36]

From all this, we observe that a specific location of a vaginal laceration cannot distinguish consensual from non-consensual sex. Rather, other factors should be considered (such as, the frequency of lacerations and whether they are located in different positions) to determine whether the sexual act was consensual or not. If the frequency of lacerations is located in different areas of the vaginal orifice, then it would be a good indicator that there was sexual abuse. On the other hand, if the lacerations are found in a specific area, it could indicate forced rape, but could also suggest consensual intercourse.

In the instant case, the lacerations were found only at the 9 o'clock and 3 o'clock positions of the hymen. Considering the locality of these lacerations, we cannot completely rule out the probability that AAA voluntarily had sex that night. Moreover, the absence of bruises on AAA's thighs—when she said she was punched there twice—reinforces the theory that AAA may have had consensual intercourse.

Rape is essentially a crime committed through force or intimidation, that is, *against the will of the female*.[37] It is also committed without force or intimidation when carnal knowledge of a female is alleged and shown to be *without her consent*.[38] Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent.[39] The female must not at any time consent; her consent, given at any time prior to

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[35] S. Anderson, *et al., Genital Findings of Women After Consensual and Nonconsensual Intercourse, Journal of Forensic Nursing*, Vol. 2, No. 2, Summer 2006.

[36] *Id*.

[37] *People v. Butiong*, 675 Phil. 621, 631 (2011).

[38] *Id*. at 631-632.

[39] *Id*. at 632.

penetration, however reluctantly given, or if accompanied with mere verbal protests and refusals, prevents the act from being rape, provided the consent is willing and free of initial coercion.[40]

Although Amarela or Racho did not raise consensual intercourse as a defense, we must bear in mind that the burden of proof is never shifted and the evidence for the prosecution must stand or fall on its own merits. Whether the accused's defense has merit is entirely irrelevant in a criminal case. It is fundamental that the prosecution's case cannot be allowed to draw strength from the weakness of the evidence for the defense.[41]

As to Racho's case, we note that AAA testified only once for both criminal cases. This means that both Amarela and Racho were convicted based on her lone testimony. When we rely on the testimony of the private complainant in rape cases, we require that her testimony be entirely credible, trustworthy, and realistic. For when certain parts would seem unbelievable, especially when it concerns one of the elements of the crime, the victim's testimony as a whole does not pass the test of credibility. Since we doubt AAA's account on how she was raped by Amarela, we have to consider her testimony against Racho under the same light.

In her testimony, AAA claimed that Racho was instructed to bring her to her aunt's house, but instead forced her to go inside a house along the way. While inside the house, Racho supposedly boxed AAA's abdomen, undressed himself, placed himself on top of AAA, and inserted his penis into AAA's vagina. Afterwards, Racho got dressed and left AAA to go home by herself.[42]

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[40] *Id*.

[41] *People v. Cruz*, 736 Phil. 564, 571 (2014) citing *People v. Painitan*, 402 Phil. 297, 312 (2001); *People v. Bormeo*, 292-A Phil. 691, 702-703 (2014) citing *People v. Quintal*, 211 Phil. 79, 94 (1983); *People v. Garcia*, 289 Phil. 819, 830 (1992).

[42] TSN, 11 March 2009, pp. 29-32.

We find it odd that AAA was not brought to the police right after she arrived at Godo Dumandan's house to seek help. Instead, she was brought to the Racho residence where she told Neneng Racho what happened. Again, instead of reporting the incident to the police, AAA insisted that she be brought to her aunt's house nearby. This is way beyond human experience. If AAA had already told other people what happened, there was no reason for her not to report the incident to the proper authorities.

Faced with AAA's doubtful narration before she went home alone, we are inclined to believe Racho's version that they parted ways when AAA insisted that she wanted to go home. To begin with, Racho did not even want to bring AAA to her aunt's house nearby.[43] If he had the intention to have sex with AAA, Racho would not have declined her mother's instruction. To add, Racho said he left AAA by herself because he did not want to bring AAA to her house since this was in another town from her aunt's house.[44] His reason for leaving AAA to go home alone is supported by the fact that he was able to immediately come home right after he left with AAA. Unlike AAA's testimony, the version offered by Racho is corroborated by the testimony of his mother.

Undeniably, the defenses of denial and alibi are commonly raised in rape cases. Nevertheless, we have dismissed such defenses for being inherently weak, self-serving, and, more often than not, uncorroborated. To recall, Racho did not deny that he accompanied AAA to her aunt's house, but he said he left her when AAA insisted that she wanted to go home. Racho's mother corroborated this part of the story. To our mind, if the denial and alibi are readily available, Racho could have easily raised these defenses and denied that AAA ever came to the house. His mother could have likewise covered up this story, but she did not and confirmed that Racho was with AAA that night. If indeed Racho raped AAA that night, the best defense available for him was alibi which he thought he did not have

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[43] TSN, 22 February 2012, p. 6.

[44] TSN, 6 June 2011, p. 7.

to raise, given that he was telling the truth when he left AAA by herself to go home. To our mind, these are badges of truth which persuade us that Racho might be telling the truth.

In the end, what needs to be stressed here is that a conviction in a criminal case must be supported by proof beyond reasonable doubt or moral certainty that the accused is guilty.[45] Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender.[46] Thus, the prosecution has the primordial duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion.[47]

The prosecution in this case miserably failed to present a clear story of what transpired. Whether AAA's ill-fated story is true or not, by seeking relief for an alleged crime, the prosecution must do its part to convince the court that the accused is guilty. Prosecutors are given ample resources of the government to present a logical and realistic account of every alleged crime, and they should, to the best of their ability, present a detailed story to get a conviction. But here we cannot ascertain what happened based on the lone testimony of AAA. It should have been the prosecution's duty to properly evaluate the evidence if it had enough to convict Amarela or Racho.

Henceforth, we are constrained to reverse the RTC and the CA rulings due to the presence of lingering doubts which are inconsistent with the requirement of guilt beyond reasonable doubt as quantum of evidence to convict an accused in a criminal case. Amarela and Racho are entitled to an acquittal, as a matter of right, because the prosecution has failed to prove their guilt beyond reasonable doubt.

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[45] *People v. Bautista*, 426 Phil. 391, 413 (2002).

[46] *People v. Jampas*, 610 Phil. 652, 669 (2009).

[47] *Id*. 670.

WHEREFORE, premises considered, the 26 June 2012 Joint Judgment of the Regional Trial Court, Branch 11 of Davao City, in Criminal Case Nos. 64964-09 and 64965-09, as well as the 17 February 2016 Decision of the Court of Appeals in CA-G.R. CR HC Nos. 01226 and 01227-MIN are hereby **REVERSED** and **SET ASIDE.**

Accused-appellants Juvy D. Amarela and Junard G. Racho are **ACQUITTED** of the charge of rape on the ground of reasonable doubt. Their **IMMEDIATE RELEASE** from custody is hereby ordered unless they are being held for other lawful cause.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 225690. January 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERALD ARVIN ELINTO RAMIREZ and BELINDA GALIENBA LACHICA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; TO SUSTAIN A CONVICTION THEREFOR, THE DRUGS, THE *CORPUS DELICTI* OF THE OFFENSE, MUST BE PRESERVED AND PROVEN AS THE VERY SAME ITEM SEIZED DURING THE BUY-BUST OPERATION.— It is

of prime importance that the identity of the dangerous drug be established beyond reasonable doubt, and that it must be proven that the item seized during the buy-bust operation is the same item offered in evidence. As the drug itself constitutes the very *corpus delicti* of the offense, its preservation is essential to sustain a conviction for illegal sale of dangerous drugs. Thus, like any other element of a crime or offense, the *corpus delicti* must be proven beyond reasonable doubt.

2. ID.; ID.; SECTION 21(A) ARTICLE II, IMPLEMENTING RULES AND REGULATIONS; THE PHYSICAL INVENTORY AND PHOTOGRAPH SHALL BE CONDUCTED AT THE PLACE WHERE THE SEARCH WARRANT WAS SERVED, OR AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING OFFICER/TEAM, IN CASE OF BUY-BUST OPERATION; CASE AT BAR.— To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21(a), Article II of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed. x x x In *People v. Beran*, we made a distinction based on R.A. No. 9165 and its IRR as to when the physical inventory and photography shall be conducted. In seizures covered by search warrants, the physical inventory and photograph must be conducted at the place where the search warrant was served. On the other hand, in case of warrantless seizures such as a buy-bust operation, the physical inventory and photography shall be done at the nearest police station or office of the apprehending officer/team, whichever is practicable.

3. ID.; ID.; ID.; MARKING OF THE SEIZED ITEMS MUST BE DONE IMMEDIATELY UPON CONFISCATION IN THE PRESENCE OF THE APPREHENDED VIOLATOR; CASE AT BAR.— R.A. No. 9165 is silent on when and where marking should be done. Marking is the first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence. This is when the apprehending officer or poseur-buyer places his or her initials and signature on the item/s seized. Thus, in *People*

v. Sanchez, we ruled that marking should be done in the presence of the apprehended violator **immediately upon confiscation** to truly ensure that they are the same items that enter the chain of custody. We must remember that marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference. Marking serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, thus preventing switching, planting, or contamination of evidence. x x x IO1 Bautista admits that he marked the confiscated items in Quezon City, almost one (1) hour away from the crime scene. Considering that IO1 Bautista was the only PDEA agent who was there at the time of seizure, none of the other PDEA operatives could attest that they saw him take custody of the confiscated items. Also, they rode in separate vehicles going to Quezon City. Even granting that IO1 Bautista did mark the sachets, breaks in the chain of custody had already taken place: (1) when he confiscated the sachets without marking them at the place of apprehension; and (2) as he was transporting them to Quezon City, thus casting serious doubt upon the value of the said links to prove the *corpus delicti*.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL DUTY; CANNOT PREVAIL OVER THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE; LAPSES IN THE PROCEDURES COMMITTED BY THE AGENTS OF THE LAW ARE PROOFS OF IRREGULARITY.— [W]e cannot apply the presumption of regularity of performance of official duty. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. More importantly, the presumption of regularity cannot prevail over the constitutional presumption of innocence and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity

> is just a mere presumption disputable by contrary proof. Without the presumption of regularity, the testimonies of the police witnesses must stand on their own merits and the defense cannot be hurdled having to dispute these testimonies. x x x Here, the time and distance from the scene of the arrest before the drugs were marked are too substantial that we cannot but think that the alleged evidence could have been tampered with.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

MARTIRES, *J.*:

We resolve the petition for review assailing the 23 September 2015 Decision[1] and the 9 June 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 06602 affirming the conviction of Belinda Galienba Lachica *(Lachica)* and Gerald Arvin Elinto Ramirez *(Ramirez)* for illegal sale of shabu.

THE FACTS

Lachica and Ramirez were charged before the Regional Trial Court, Branch 259, Parañaque City *(RTC),* in Criminal Case No. 08-1386 for violation of Section 5, in relation to Section 26, Article II of Republic Act *(R.A.)* No. 9165. The Information dated 3 November 2008 reads:

> That on or about the 31st day of October 2008, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away

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[1] *Rollo*, pp. 39-57.

[2] *Id*. at 35-37.

to another, distribute, dispatch in transit or transport two (2) heat-sealed transparent plastic sachets of methylamphetamine hydrochloride (shabu), respectively, weighing 3.9632 grams and 4.4596 grams in the total of 8.4228 grams, a dangerous drug.[3]

During arraignment, Lachica and Ramirez, assisted by counsel, pleaded not guilty. Pre-trial and trial on the merits followed.

The prosecution's evidence can be summarized as follows:

On 30 October 2008, at around 3:00 P.M., a confidential informant went to the Philippine Drug Enforcement Agency *(PDEA)* Metro Manila Regional Office and reported that a certain "Linda" was engaged in illegal drug activity in Parañaque City and in Pasay City.[4] Acting on this information, Intelligence Officer 1 Johnrico Magdurulang *(IO1 Magdurulang)*, the leader of Team Delta, instructed the informant to call this person so that they could meet.[5] The informant then called Linda and made arrangements for them to meet in the afternoon of the following day at SM Bicutan in Parañaque City.[6]

Immediately thereafter, IO1 Magdurulang organized his team composed of seven (7) members, among whom was IO1 Marjuvel Bautista *(IO1 Bautista)* to act as the poseur-buyer.[7] IO1 Bautista was given the boodle money consisting of two (2) genuine pre-dusted ₱500.00 bills placed inside a white envelope.[8] The necessary buy-bust documents were likewise prepared before the operation.[9]

The following day or on 31 October 2008, the buy-bust team, along with the confidential informant, proceeded to the target

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[3] Records, p. 1.

[4] *Id*. at 46-47; TSN, 4 March 2009.

[5] *Id*. at 48-49.

[6] *Id*. at 49-51.

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

[8] *Id*. at 54-55.

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

area. IO1 Bautista and the informant waited inside a green Mitsubishi Adventure vehicle, while the rest of the team were strategically positioned around the parking lot. At about 5:00 P.M., the informant called Linda who replied that she was on her way. Almost half an hour later, two (2) persons started to approach their vehicle. IO1 Bautista verified with the confidential informant who these people were; the latter confirmed that one of them was Linda.

After a brief chat with the confidential informant, Linda was introduced to IO1 Bautista, the prospective buyer. Linda then asked for the payment but IO1 Bautista told her that he needed to see the items first. Linda complied and went inside the vehicle together with her male companion. IO1 Bautista then showed Linda the buy-bust money, so Linda instructed her male companion to hand the shabu to IO1 Bautista. Linda's companion gave IO1 Bautista a cigarette pack which, when examined by IO1 Bautista, contained two (2) heat-sealed transparent plastic sachets containing crystalline substances. Suspecting that the sachets contained shabu, IO1 Bautista gave the buy-bust money to Linda to consummate the transaction, while he tapped the confidential informant to give the pre-arranged signal. The informant then turned on the hazard lights as signal to their backup.

The rest of the buy-bust team quickly arrived and arrested Linda and her male companion. They identified themselves as PDEA agents and apprised them of their constitutional rights. After the arrest, they all proceeded to Barangay Pinyahan in Quezon City, where the physical inventory and the taking of photographs of the seized items were done before Barangay Kagawad Melinda Z. Gaffud *(Gaffud)*. At the barangay hall, the buy-bust team learned that Linda's last name was Lachica and that her male companion was Ramirez.

Lachica and Ramirez were then brought to the PDEA along with the seized drugs and the inventory documents. After IO1 Magdurulang prepared the request for laboratory examination, IO1 Bautista brought the seized drugs to the PDEA laboratory. The chemistry report shows that the two (2) heat-sealed

transparent plastic sachets contained 3.9632 grams and 4.4596 grams of methamphetamine hydrochloride or shabu.[10]

The version of the defense

Lachica and Ramirez denied the prosecution's version and claimed that the PDEA operatives made a mistake in arresting them. In his judicial-affidavit, Ramirez alleged that they were going to the parking lot coming from the mall when one of the operatives asked them if Lachica was one Linda from Taguig City. He replied that Lachica's name was actually Belinda and that they were from Laguna. This PDEA agent then walked away toward his companions but returned to ask for "the keys of a Mitsubishi Pajero." Ramirez said, "*Boss, mali po kayo ng taong kinakausap. Hindi ko po alam kung ano yung sinasabi ninyo.*" This did not sit well with the PDEA operatives so they forced Lachica and Ramirez to enter the car.[11]

While inside the car, the PDEA operatives asked Lachica and Ramirez about a certain "*Bakla*" who was a known drug dealer in Parañaque City. Ramirez pleaded that they be set free because they did not know this person. Nevertheless, they were brought to Quezon City and there detained.[12]

The RTC Ruling

In its 30 October 2013 decision,[13] the RTC found Lachica and Ramirez guilty as charged. It rejected their defense of denial and frame-up because it was self-serving, uncorroborated, and inherently weak. Meanwhile, the trial court said that the prosecution was able to prove a valid entrapment operation. Moreover, it held that the PDEA agents' failure to strictly comply with Section 21 of R.A. No. 9165 was excusable since there was substantial compliance in preserving the identity and integrity of the drugs seized. Thus, the RTC ruled:

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[10] *Id*. at 17.

[11] *Id*. at 492-494; Judicial Affidavit of Ramirez.

[12] *Id*. at 494-495.

[13] *Id*. at 602-613.

WHEREFORE, premises considered, the Court finds accused **GERALD ARVIN ELINTO RAMIREZ and BELINDA GALIENBA LACHICA** in Criminal Case No. 08-1386 for Violation of Sec. 5 in rel. to Sec. 26, Art. II of R.A. No. 9165, **GUILTY** beyond reasonable doubt and are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00 each. [14]

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The CA Ruling

On appeal, Lachica and Ramirez pointed out that (1) the physical inventory and the taking of photographs were not done at the place of arrest, and that (2) there were no media or DOJ representative present at the time the confiscated items were inventoried in Quezon City.

The CA affirmed *in toto* the trial court's decision. It held that the failure of the PDEA operatives to mark the seized items at the place of arrest would not impair the chain of custody as marking could be done at the nearest police station or office of the apprehending team. Furthermore, the CA said that the absence of the representatives from the media and the DOJ would not automatically render the confiscated items inadmissible provided that the integrity and evidentiary value of the seized drugs are preserved.

The CA's disposition reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated 30 October 2013 of the [RTC] in Criminal Case No. 08-1386 is hereby **AFFIRMED**.[15]

The case is now before us for final review.

OUR RULING

This would not be the first instance when the Court would reverse a conviction for these reasons: (1) there was a patent disregard of the procedure laid out in Section 21 of R.A.

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[14] *Id*. at 612-613.

[15] *Rollo*, p. 57.

No. 9165; (2) there were gaps in the chain of custody over the seized drugs; and (3) the lack of a valid excuse for noncompliance with Section 21 of R.A. No. 9165. The presence of these circumstances quantify as reasonable doubt involving the most important element in drug – related cases—the existence of the dangerous drug itself.

It is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt, and that it must be proven that the item seized during the buy-bust operation is the same item offered in evidence.[16] As the drug itself constitutes the very *corpus delicti* of the offense, its preservation is essential to sustain a conviction for illegal sale of dangerous drugs.[17] Thus, like any other element of a crime or offense, the *corpus delicti* must be proven beyond reasonable doubt.

Section 21 of R.A. No. 9165, prior to the amendment introduced by R.A. No. 10640,[18] provides:

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 source of dangerous drugs, controlled precursors and essential chemicals, as well as instrument/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

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[16] *People v. Gatlabayan*, 669 Phil. 240, 252 (2011).

[17] *People v. Frondozo*, 609 Phil. 188, 198 (2009); *People v. Bartolini*, G.R. No. 215192, 27 July 2016, 798 SCRA 711, 719 citing *People v. Dela Cruz*, 591 Phil. 259, 269 (2008); *People v. Jaafar*, G.R. No. 219829, 18 January 2017 citing *People v. Simbahon*, 449 Phil. 74, 81 (2003).

[18] An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; (emphasis ours)

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21(a), Article II of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed, to *wit*:

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 at the place where the search warrant was 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 noncompliance 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 and custody over said items.

These rules have been laid down as a safety precaution to address potential police abuses by narrowing the window of opportunity for tampering with evidence.[19] We recognized that by the very nature of anti-narcotics operations and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[20] Although an effective way to flush out illegal drug

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[19] *People v. Ancheta*, 687 Phil. 569, 577-579 citing *People v. Umipang*, 686 Phil. 1025, 1033-1038 (2012).

[20] *People v. Tan*, 401 Phil. 259, 273 (2000) citing *People v. Gireng*, 311 Phil. 12, 23 (1995) and *People v. Pagaura*, 334 Phil. 683, 689-690 (1997).

transactions, a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law – it is susceptible to police abuse, the most notorious of which is its use as a tool for extortion.[21] Accordingly, the police officers must comply with these specific procedures and the prosecution must adduce evidence that these procedures have been followed.

In *People v. Beran*,[22] we made a distinction based on R.A. No. 9165 and its IRR as to when the physical inventory and photography shall be conducted. In seizures covered by search warrants, the physical inventory and photograph must be conducted at the place where the search warrant was served. On the other hand, in case of warrantless seizures such as a buy-bust operation, the physical inventory and photography shall be done at the nearest police station or office of the apprehending officer/team, whichever is practicable.[23]

However, R.A. No. 9165 is silent on when and where marking should be done. Marking is the first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence. This is when the apprehending officer or poseur-buyer places his or her initials and signature on the item/s seized.

Thus, in *People v. Sanchez*,[24] we ruled that marking should be done in the presence of the apprehended violator **immediately upon confiscation** to truly ensure that they are the same items that enter the chain of custody. We must remember that marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference.[25] Marking

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[21] *People v. Garcia*, 599 Phil. 416, 427 (2009).

[22] 724 Phil. 788 (2014).

[23] *Id*. at 818.

[24] 590 Phil. 214, 241 (2008) cited in *People v. Ameril*, 14 November 2016.

[25] *People v. Nuarin*, 764 Phil. 550, 557-558 (2015).

serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, thus preventing switching, planting, or contamination of evidence.[26]

In the instant case, IO1 Bautista was in possession of the two (2) heat-sealed transparent plastic sachets from the time Ramirez handed him the cigarette pack containing these until the time it was marked at the barangay hall. During his cross-examination, IO1 Bautista said:

Q: Were there any threat to your life during the arrest?
A: We were tipped off that this certain Linda had connections with policemen and barangay [officials] that is why we were in a hurry to go out of the target area.

Q: What time did you leave the target area?
A: Before 7:00 in the evening, around 6:30, like that.

Q: After leaving the target area, where did you go next?
A: We went to Barangay Pinyahan, the barangay which has jurisdiction of the PDEA office.

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Q: How many hours did it take you from SM Bicutan to Barangay Pinyahan?
A: More or less one (1) hour or more than one (1) hour because it was traffic, October 31 and November 1 [were] holiday[s].

Q: How about the items seized, who kept those items?
A: I took custody of the items.

Q: You took custody of the items?
A: Yes, sir.[27]

From his testimony, we gather that IO1 Bautista claims that it was not safe that the marking, physical inventory, and photography be done at the parking lot of SM Bicutan. Contrary to the position taken by the lower courts, we cannot say that

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[26] *Id*. at 558.

[27] Records, pp. 362-366; TSN, 21 February 2011.

IO1 Bautista's failure to mark the two (2) heat-sealed transparent plastic sachet immediately after confiscation was excusable. We take note of the fact that there were more than enough PDEA agents at that moment to ensure that the area was secure for IO1 Bautista to mark the confiscated items. We do not think it would take more than five (5) to ten (10) minutes for IO1 Bautista to do this.

Instead, IO1 Bautista admits that he marked the confiscated items in Quezon City, almost one (1) hour away from the crime scene. Considering that IO1 Bautista was the only PDEA agent who was there at the time of seizure, none of the other PDEA operatives could attest that they saw him take custody of the confiscated items. Also, they rode in separate vehicles going to Quezon City. Even granting that IO1 Bautista did mark the sachets, breaks in the chain of custody had already taken place: (1) when he confiscated the sachets without marking them at the place of apprehension; and (2) as he was transporting them to Quezon City, thus casting serious doubt upon the value of the said links to prove the *corpus delicti*.

Under these circumstances, we cannot apply the presumption of regularity of performance of official duty. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[28]

More importantly, the presumption of regularity cannot prevail over the constitutional presumption of innocence and it cannot by itself constitute proof of guilt beyond reasonable doubt.[29] The presumption of regularity is just a mere presumption disputable by contrary proof.[30] Without the presumption of

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[28] *People v. Mendoza*, 736 Phil. 749, 770 (2014).

[29] *People v. Cantalejo*, 604 Phil. 658, 668-669 (2009).

[30] *Id*. at 669.

regularity, the testimonies of the police witnesses must stand on their own merits and the defense cannot be hurdled having to dispute these testimonies.[31]

Hence, it was wrong for the CA to even say or consider this:

> It is a well-entrenched rule that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witness 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*. Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.[32] (italics supplied)

Here, the time and distance from the scene of the arrest before the drugs were marked are too substantial that we cannot but think that the alleged evidence could have been tampered with.

Although we cannot help but note that the evidence for the defense is far from strong, if the prosecution cannot establish Lachica and Ramirez's guilt beyond reasonable doubt, the need for them to adduce evidence on their behalf never arises. Therefore, however weak the defense evidence may be, the prosecution's case still falls.

In sum, the gaps in the prosecution's evidence create reasonable doubt as to the existence of the *corpus delicti* for the illegal sale of shabu.

WHEREFORE, in the light of the foregoing, we **REVERSE** and **SET ASIDE** the 23 September 2015 Decision and the 9 June 2016 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 06602. Belinda Galienba Lachica and Gerald Arvin Elinto Ramirez are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They

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[31] *People v. Sanchez*, *supra* note 24 at 243. See also *Dissenting Opinion* of *J.* Brion in *People v. Agulay*, 588 Phil. 247, 293-294 (2008).

[32] *Rollo*, p. 56.

are ordered **IMMEDIATELY RELEASED** from detention unless they are legally confined for another cause.

Let a copy of this Decision be sent to the officer-in-charge of their place of detention for immediate implementation. Such person is directed to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 233395. January 17, 2018]

NORLINA G. SIBAYAN, *petitioner, vs.* **ELIZABETH O. ALDA, through her Attorney-in-Fact, RUBY O. ALDA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; TECHNICAL RULES OF PROCEDURE AND EVIDENCE ARE NOT STRICTLY ADHERED TO IN ADMINISTRATIVE PROCEEDINGS; RESORT TO DISCOVERY PROCEDURES UNDER THE RULES OF COURT IS NOT MANDATORY FOR THE OFFICE OF THE GENERAL COUNSEL AND LEGAL SERVICES OF THE BANGKO SENTRAL NG PILIPINAS (OGCLS-BSP).— [I]t bears stressing that the proceeding involved in the present case is administrative in nature. Although trial courts are enjoined to observe strict enforcement of the rules on evidence, the same does not hold true for administrative bodies.

The Court has consistently held that technical rules applicable to judicial proceedings are not exact replicas of those in administrative investigations. Recourse to discovery procedures as sanctioned by the Rules of Court is then not mandatory for the OGCLS-BSP. Hence, We cannot subscribe to Norlina's tenacious insistence for the OGCLS-BSP to strictly adhere to the Rules of Court so as not to purportedly defeat her rights.

2. ID.; ID.; ID.; THE NATURE OF THE PROCEEDINGS BEFORE ADMINISTRATIVE BODIES, LIKE OGCLS-BSP, IS SUMMARY; THE PURPOSE IS TO ACHIEVE AN EXPEDITIOUS AND INEXPENSIVE DETERMINATION OF CASES WITHOUT REGARD TO TECHNICAL RULES.— [I]t is important to emphasize that the nature of the proceedings before the OGCLS-BSP is summary in nature. x x x The rationale and purpose of the summary nature of administrative proceedings is to achieve an expeditious and inexpensive determination of cases without regard to technical rules. As such, in proceedings before administrative or quasi-judicial bodies, like the OGCLS-BSP, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence. To require otherwise would negate the summary nature of the proceedings which could defeat its very purpose.

3. REMEDIAL LAW; APPEALS; RULE 45 PETITION; GRAVE ABUSE OF DISCRETION, NOT A CASE OF; DENIAL OF PETITIONER'S PLEA FOR WRITTEN INTERROGATORIES AND PRODUCTION OF BANK DOCUMENTS BY OGCLS-BSP DOES NOT CONSTITUTE GRAVE ABUSE OF DISCRETION AND IT DID NOT EQUATE TO DENIAL OF HER RIGHT TO DUE PROCESS.— [T]he denial of Norlina's motions to resort to modes of discovery did not, and will definitely not, equate to a denial of her right to due process. It must be stressed that Norlina's fear of being deprived of such right and to put up a proper defense is more imagined than real. Norlina was properly notified of the charges against her and she was given a reasonable opportunity to answer the accusations against her. As correctly ruled by the lower tribunals, Norlina's attempt to resort to modes of discovery is frivolous and would merely cause unnecessary delay in the speedy disposition of the case. Thus, no error or grave abuse of discretion can be ascribed to the OGCLS-BSP in not granting Norlina's

plea for written interrogatories and production of bank documents. Absent any showing that the OGCLS-BSP had acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction, as in the present case, its orders dispensing with the need to resort to modes of discovery may not be corrected by *certiorari*.

APPEARANCES OF COUNSEL

Leynes Lozada-Marquez for petitioner.
Marcelino P. Arias for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the October 25, 2016 Decision[1] and the August 9, 2017 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 137921. The challenged rulings affirmed the June 9, 2014 and August 26, 2014 Orders[3] of the Office of the General Counsel and Legal Services of the Bangko Sentral ng Pilipinas (OGCLS-BSP) denying herein petitioner Norlina G. Sibayan's (Norlina) resort to modes of discovery in connection with an administrative case filed against her.

The Facts

The case stemmed from a letter-complaint filed by respondent Elizabeth O. Alda (Elizabeth), through her daughter and attorney-in-fact, Ruby O. Alda (Ruby), with the Office of Special Investigation of the Bangko Sentral ng Pilipinas (OSI-BSP).

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[1] Penned by Associate Justice Noel G. Tijam (now a Member of this Court) and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr.; *rollo*, pp. 52-63.

[2] *Id.* at 49-50.

[3] Issued by Hearing Officer Atty. Leymar K. Cañete; *id.* at 99-104.

Elizabeth charged Norlina, who was then the Assistant Manager and Marketing Officer of Banco De Oro Unibank, Inc. (BDO) San Fernando, La Union Branch, with unauthorized deduction of her BDO Savings Account with Account Number 0970097875, as well as for failure to post certain check deposits to the said account.[4]

The complaint alleged that while Elizabeth did not make any withdrawals from her BDO savings account from 2008-2009, its balance of One Million Seventy One Thousand Five Hundred Sixty One and 73/100 Pesos (₱1,071,561.73) as of July 22, 2008 was reduced to only Three Hundred Thirty Four and 47/100 Pesos (₱334.47) by October 31, 2008.[5]

Further, Elizabeth claimed that two crossed manager's checks, to wit: 1) United Coconut Planters Bank (UCPB) Check No. 0000005197 in the amount of Two Million Seven Hundred Forty Three Thousand Three Hundred Forty Six Pesos (₱2,743,346) issued to her by Ferdinand Oriente (Ferdinand), and 2) Bank of the Philippine Islands (BPI) Check No. 0000002688 in the amount of Two Million Two Hundred Thirty Seven Thousand Three Hundred Forty One and 89/100 Pesos (2,237,341.89) issued to her by Jovelyn Oriente (Jovelyn) were not posted on her BDO savings account despite the fact that the said checks were deposited on October 27, 2008.[6]

As for Norlina's defense, she argued that the charges were only meant to harass her and BDO as the latter previously filed a criminal case against Elizabeth, Ruby, and their cohorts, for theft, *estafa*, and violation of Republic Act No. 8484, otherwise known as the Access Devise Regulation Act of 1998.[7] The said case proceeded from the acts of Elizabeth and her co-defendants therein of withdrawing and laundering various amounts erroneously credited by BDO to Ruby's Visa Electron Fast Card Account (Fastcard) with Account Number 4559-6872-3866-

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[4] *Id*. at 53.

[5] *Id*.

[6] *Id*.

[7] *Id*.

2036, which Elizabeth opened for and in the name of Ruby on April 21, 2006.[8]

According to Norlina, when BDO merged with Equitable PCI Bank in May 2007, the former acquired all of the latter's accounts, products and services, including the Fastcard, which functions the same way as a regular Automated Teller Machine (ATM) card but with an added feature that allows its holders to withdraw local currencies from ATMs overseas bearing the Visa Plus logo. Thus, using her Fastcard at various ATMs in Dubai, United Arab Emirates, where she was based, Ruby was able to withdraw the funds sent to her by Elizabeth, who was then working in Taiwan.[9]

Sometime in September 2008, BDO, however, discovered that from November 15, 2007 to September 20, 2008, Ruby was able to withdraw the total amount of Sixty Four Million Two Hundred Twenty Nine Thousand Two Hundred Ninety Seven and 50/100 Pesos (₱64,229,297.50) despite Elizabeth only having remitted the amount of One Million Six Hundred Forty Five Thousand Four Hundred Eighty Six Pesos (₱1,645,486). BDO conducted an investigation and discovered that Ruby learned of the erroneous crediting of funds as early as November 2007 and utilized BDO's system error to successfully launder money by transferring funds withdrawn from Ruby's Fastcard Account to various bank accounts in the Philippines under the names of Elizabeth, Ruby and their friends and relatives.[10]

The foregoing facts were allegedly admitted by Ruby, as evidenced by her execution before the Philippine Consulate in Dubai of certain documents in BDO's favor, to wit:

1. Undertaking with Authorization[11] dated October 21, 2008 promising to pay BDO the total amount of money

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[8] *Id*. at 6.

[9] *Id*.

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

[11] *Id*. at 182-186.

erroneously credited to her Fastcard account, including all charges, and authorizing BDO to setoff and apply as payment whatever monies or properties to her credit or account on the books of BDO or any other entity;

2. Special Power of Attorney[12] dated October 22, 2008 authorizing BDO to setoff and apply any money or other property on the books of BDO and/or other entities, banks, and financial institutions under her name or account for the payment of her obligation; and

3. Deed of Dation in Payment[13] dated October 22, 2008 acknowledging her debt to BDO in the amount of Php62,670,681.60 and conveying to BDO all of her interests, rights and title in the properties described under the List of Properties[14] attached in the said Deed

Included in the afore-stated List of Properties purportedly ceded by Ruby to BDO are the following bank accounts:

Bank/ Account Number	Account Name
BDO Account No. 0970097875	Elizabeth O. Alda
UCPB Account No. 2351047157	Ferdinand Oriente
BPI Account No. 85890237923	Jovelyn Oriente

Pursuant to the foregoing documents executed by Ruby, BDO debited Elizabeth's savings account and the proceeds thereof were applied to Ruby's outstanding obligation to BDO. Thereafter, Ferdinand and Jovelyn, who are relatives of Elizabeth and Ruby, went to BDO San Fernando, La Union branch and

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[12] *Id*. at 189-191.

[13] *Id*. at 196-200.

[14] *Id*. at 199-200.

presented to Norlina the above-mentioned UCPB and BPI manager's checks, the proceeds of which were also purportedly applied as payment by Ruby to BDO.

After the parties' submission of their respective pleadings, the OSI-BSP issued a Resolution[15] dated June 13, 2012 finding a *prima facie* case against Norlina for Conducting Business in an Unsafe or Unsound Manner under Section 56.2[16] of Republic Act No. 8791 ("The General Banking Law of 2000"), punishable under Section 37 of Republic Act No. 7653 ("The New Central Bank Act"). The OGCLS-BSP then directed Norlina to submit her sworn answer to the formal charge filed by the OSI-BSP.

Meanwhile, on October 19, 2012, Norlina filed a Request to Answer Written Interrogatories[17] addressed to Elizabeth, Jovelyn, and Ferdinand. Norlina also filed a Motion for Production of Documents[18] praying that UCPB and BPI be ordered to produce and allow the inspection and copying or photographing of the Statements of Account pertaining to UCPB Account No. 2351047157 and BPI Account No. 85890237923, respectively, alleging that Ruby is the legal and beneficial owner of both accounts.

Elizabeth, through Ruby, and Ferdinand filed their respective Objections[19] to Norlina's request, while Jovelyn's counsel filed

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[15] As stated in the CA Decision, *id*. at 54.

[16] Section 56. *Conducting Business in an Unsafe or Unsound Manner.* — In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, quasi-banks or trust entities, may be deemed as conducting business in an unsafe or unsound manner for purposes of this Section, the Monetary Board shall consider any of the following circumstances:

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56.2. The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general.

[17] *Rollo*, pp. 105-152.

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

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

a Manifestation[20] stating that the former could not submit her answer since she is working overseas.

OGCLS-BSP Ruling

In its June 9, 2014 Order,[21] the OGCLS-BSP denied Norlina's motions, ruling as follows:

Motion for Production of Bank Documents

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The respondent also alleged that the examination is exempted from the rule on secrecy of bank deposit because the money deposited in the subject bank accounts is the subject matter of litigation. This Office rules otherwise. The present action is an administrative proceeding aimed at determining respondent's liability, if any, for violation of banking laws. A deposit account may be examined or looked into if it is the subject matter of a pending litigation. The phrase "subject matter of the action" pertains to physical facts, things, real or personal, money, lands, chattels, and the like by which the suit is prosecuted. It does not refer to the delict or wrong committed by the defendant.

Hence, the Motion for Production of Bank Documents filed by the respondent is DENIED.

Request to Answer Written Interrogatories

With respect to respondent's Request to Answer Written Interrogatories addressed to Mr. Ferdinand Oriente, Ms. Jovelyn Oriente, and Ms. Elizabeth Alda, the same is DENIED due to the fact that the aforementioned persons are all witnesses for the prosecution. Respondent will be afforded the right to confront these witnesses during the presentation of the prosecution's evidence. Moreover, this Office cannot compel Elizabeth Alda and Jovelyn Oriente to answer the written interrogatories since they are out of the country as manifested by the prosecution.

SO ORDERED.[22]

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[20] *Id*. at 215-216.

[21] *Id*. at 99-101.

[22] *Id*. at 100-101.

Norlina's motion for reconsideration was likewise denied by the OGCLS-BSP in its August 26, 2014 Order.[23]

Assailing that the OGCLS-BSP committed grave abuse of discretion in denying her motions, Norlina filed a petition for *certiorari* before the CA.

CA Ruling

In its October 25, 2016 Decision, the CA upheld the OGCLS-BSP's rulings, viz:

> **WHEREFORE**, premises considered, the Petition for Certiorari is **DENIED**. The Orders of Public Respondent dated June 9, 2014 and August 26, 2014 in Administrative Case No. 2012-047 are hereby **AFFIRMED**.
>
> **SO ORDERED**.[24]

The CA found that the OGCLS-BSP did not commit grave abuse of discretion when it denied Norlina's motion for the production of bank documents and requests to answer written interrogatories. It highlighted the fact that the proceedings before the OGCLS-BSP is summary in nature and to grant Norlina's motions would merely delay the resolution of the case. The CA ruled that Norlina's persistence to utilize modes of discovery will be futile since the information she supposedly seeks to elicit are sufficiently contained in the pleadings and attachments submitted by the parties to aid the OGCLS-BSP in resolving the case before it.[25]

Norlina then filed a motion for reconsideration but the same was denied by the CA in its August 9, 2017 Resolution.

Hence, the instant petition.

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[23] *Id*. at 102-104.

[24] *Id*. at 62.

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

The Issue

Norlina anchors her plea for the reversal of the assailed Decision on the following grounds:[26]

I.

THERE EXISTS NO SUBSTANTIAL GROUNDS FOR THE DENIAL OF PETITIONER SIBAYAN'S REQUESTS TO ANSWER WRITTEN INTERROGATORIES.

A. REQUESTS TO ANSWER WRITTEN INTERROGATORIES MAY BE SERVED ON ANY PERSON, INCLUDING WITNESSES FOR THE PROSECUTION, SUCH AS RESPONDENT ELIZABETH, FERDINAND AND JOVELYN.

B. PETITIONER SIBAYAN'S REQUESTS FOR WRITTEN INTERROGATORIES ARE RELEVANT AND MATERIAL TO THE CASE *A QUO*.

II.

PETITIONER SIBAYAN IS ENTITLED TO THE PRODUCTION OF BANK DOCUMENTS PURSUANT TO SECTION 1, RULE 27 OF THE RULES OF COURT.

Succinctly put, the pivotal issue to be resolved is whether or not grave abuse of discretion can be attributed to the OGCLS-BSP in denying Norlina's resort to modes of discovery.

The Court's Ruling

We find no error in the ruling of the Court of Appeals.

Technical rules of procedure and evidence are not strictly adhered to in administrative investigations

Throughout the petition, Norlina persistently relies and quotes the provisions of the Rules of Court[27] on modes of discovery

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

[27] Particularly Rules 23, 25, and 27 thereof providing for the rules on Depositions Pending Action, Interrogatories to Parties, and Production or Inspection of Documents or Things.

and argues her right to utilize the same. To her eyes, the denial of her requests to answer written interrogatories and motion for production of bank documents deprived her of availing of the rightful remedies which shall bring to the fore material and relevant facts for the OGCLS-BSP's consideration.[28] Thus, Norlina postulates that the OGCLS-BSP would now be forced to resolve the case against her in an arbitrary manner.[29]

We disagree.

At the outset, it bears stressing that the proceeding involved in the present case is administrative in nature. Although trial courts are enjoined to observe strict enforcement of the rules on evidence, the same does not hold true for administrative bodies. The Court has consistently held that technical rules applicable to judicial proceedings are not exact replicas of those in administrative investigations.[30] Recourse to discovery procedures as sanctioned by the Rules of Court is then not mandatory for the OGCLS-BSP. Hence, We cannot subscribe to Norlina's tenacious insistence for the OGCLS-BSP to strictly adhere to the Rules of Court so as not to purportedly defeat her rights.

Furthermore, it is important to emphasize that the nature of the proceedings before the OGCLS-BSP is summary in nature. Section 3, Rule 1 of the BSP Rules of Procedure on Administrative Cases,[31] states:

Section 3. *Nature of Proceedings*. — The proceedings under these Rules shall be summary in nature and shall be conducted without

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[28] *Rollo*, p. 26.

[29] *Id*. at 24.

[30] *Geronimo v. Spouses Calderon*, G.R. No. 201781, December 10, 2014; *Tacloban II Neighborhood Association, Inc. v. Office of the President*, G.R. No. 168561, September 26, 2008; and *Office of the Court Administrator v. Indar*; A.M. No. RTJ-10-2232, April 10, 2012.

[31] Bangko Sentral ng Pilipinas Circular No. 477, series of 2005, otherwise known as the "Bangko Sentral ng Pilipinas (BSP) Rules of Procedure on Administrative Cases Involving Directors and Officers of Banks, Quasi-Banks and Trust Entities."

necessarily adhering to the technical rules of procedure and evidence applicable to judicial trials. Proceedings under these Rules shall be confidential and shall not be subject to disclosure to third parties, except as may be provided under existing laws.

The rationale and purpose of the summary nature of administrative proceedings is to achieve an expeditious and inexpensive determination of cases without regard to technical rules.[32] As such, in proceedings before administrative or quasi-judicial bodies, like the OGCLS-BSP, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence.[33] To require otherwise would negate the summary nature of the proceedings which could defeat its very purpose.

In this light, OGCLS-BSP did not gravely abuse its discretion in denying Norlina's request for written interrogatories as the allowance of the same would not practically hasten, as it would in fact delay, the early disposition of the instant case. We agree with the CA's discussion on this matter, to wit:

> Further to grant the written interrogatories would merely delay the resolution of the issue brought before [the OGCLS-BSP]. The fraud purportedly executed by [Elizabeth], along with her daughter, her attorney-in-fact, assuming as true, is plain and clear from the records of the case, specifically the Undertaking and Authorization allegedly executed by Ruby admitting the erroneous withdrawal of various amounts from her peso FAST CARD account, to wit:
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> x x x x x x x x x
>
> In Our minds, the defense of fraud[,] is sufficiently contained in the pleadings and attachments of the parties as to aid the Public Respondent in resolving the case before it.
>
> We note that at the time of resolution of [Norlina's] motions, Jovelyn Oriente, one of the persons requested to answer the written

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[32] *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, June 29, 2010, 622 SCRA 352.

[33] *Securities and Exchange Commission v. Interport Resources Corporation*, G.R. No. 135808, October 6, 2008.

interrogatories, was already out of the country. While her deposition may nevertheless be taken outside of the country, the same will definitely delay the resolution of an otherwise summary case.[34]

Additionally, the denial of the motion for production of bank documents pertaining to 1) UCPB Account No. 2351047157 and 2) BPI Account No. 85890237923[35] is justified as the bank accounts sought to be examined are privileged. Section 2 of Republic Act No. 1405, otherwise known as The Law on Secrecy of Bank Deposit, provides:

> Section 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Norlina contends, however, that Ruby is the legal and beneficial owner of the foregoing accounts and that the latter gave her permission to look into the said accounts as stated in the Undertaking with Authorization,[36] Special Power of Attorney,[37] and Deed of Dation in Payment[38] executed by her in BDO's favor.

We are not convinced.

Records show that the account holder or depositor of UCPB Account No. 2351047157 is Ferdinand Oriente while the account holder or depositor of BPI Account No. 85890237923 is Jovelyn

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[34] *Rollo*, pp. 57-59.

[35] *Id*. at 157.

[36] *Id*. at 182-186.

[37] *Id*. at 189-191.

[38] *Id*. at 196-200.

Oriente.[39] Perforce, the documents executed by Ruby purportedly granting BDO access to the foregoing accounts do not equate to Ferdinand and Jovelyn's permissions. Based on this alone, the denial for Norlina to gain access to these bank accounts is warranted.

Clearly then, the Requests to Answer Written Interrogatories and Motion for Production of Documents were both unnecessary and improper.

Norlina was not denied due process of law

Norlina bemoans that by suppressing her right to avail of discovery measures, the OGCLS-BSP violated her right to due process. She maintains that the administrative character of the proceedings involved is not sufficient to defeat such right.[40]

Norlina's claims are without merit.

Administrative due process cannot be fully equated with due process in its strict judicial sense. It is enough that the party is given the chance to be heard before the case against him is decided.[41] This was further expounded in the recent case of *Prudential Bank v. Rapanot*,[42] *viz*:

> "The essence of due process is to be heard." In administrative proceedings, due process entails "a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied."

As established by the facts, Norlina was afforded the opportunity to be heard and to explain her side before the

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[39] *Id*. at 199-200.

[40] *Id*. at 39.

[41] *Office of the Court Administrator v. Indar*, A.M. No. RTJ-10-2232, April 10, 2012, 669 SCRA 24.

[42] G.R. No. 191636, January 16, 2017.

OGCLS-BSP. She was allowed to submit her answer and all documents in support of her defense. In fact, her defense of fraud committed by Elizabeth and Ruby is sufficiently contained in the pleadings and attachments submitted by the parties to aid the OGCLS-BSP in resolving the case before it.

Evidently, the information sought to be elicited from the written interrogatories, as well as the bank documents, are already available in the records of the case. As correctly pointed out by the CA, the grant of Norlina's motions would merely delay the resolution of the case. In fine, the OGCLS-BSP's issuance of the assailed orders did not violate Norlina's right to due process and was in accord with the summary nature of administrative proceedings before the BSP. The opportunity accorded to Norlina was enough to comply with the requirements of due process in an administrative case. The formalities usually attendant in court hearings need not be present in an administrative investigation, as long as the parties are heard and given the opportunity to adduce their respective sets of evidence.[43]

Further, even assuming that the pleadings and attachments on record are not sufficient for the just resolution of the case against Norlina, the facts, arguments, and defenses put forward in the pleadings of the parties, as well as the information Norlina seeks to obtain from Elizabeth, Ruby and other witnesses, may be brought to light in a clarificatory hearing under Section 7 of the BSP Rules of Procedure on Administrative Cases,[44] to wit:

> Section 7. Hearing. — After the submission by the parties of their position papers, the Hearing Panel or Hearing Officer shall determine whether or not there is a need for a hearing for the purpose of cross-examination of the affiant(s).

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[43] *Barcelona v. Lim*, G.R. No. 189171, June 3, 2014, 724 SCRA 433.

[44] Bangko Sentral ng Pilipinas Circular No. 477, series of 2005, otherwise known as the "Bangko Sentral ng Pilipinas (BSP) Rules of Procedure on Administrative Cases Involving Directors and Officers of Banks, Quasi-Banks and Trust Entities."

If the Hearing Panel or Hearing Officer finds no necessity for conducting a hearing, he shall issue an Order to that effect.

In cases where the Hearing Panel or Hearing Officer deems it necessary to allow the parties to conduct cross-examination, the case shall be set for hearing. The affidavits of the parties and their witnesses shall take the place of their direct testimony.

All told, the denial of Norlina's motions to resort to modes of discovery did not, and will definitely not, equate to a denial of her right to due process. It must be stressed that Norlina's fear of being deprived of such right and to put up a proper defense is more imagined than real. Norlina was properly notified of the charges against her and she was given a reasonable opportunity to answer the accusations against her. As correctly ruled by the lower tribunals, Norlina's attempt to resort to modes of discovery is frivolous and would merely cause unnecessary delay in the speedy disposition of the case.

Thus, no error or grave abuse of discretion can be ascribed to the OGCLS-BSP in not granting Norlina's plea for written interrogatories and production of bank documents. Absent any showing that the OGCLS-BSP had acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction, as in the present case, its orders dispensing with the need to resort to modes of discovery may not be corrected by *certiorari*.

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED**. The Decision dated October 25, 2016 and the Resolution dated August 9, 2017 of the Court of Appeals in CA-G.R. SP No. 137921 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

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affect the disposition of the case. (Mactan Rock Industries, Inc. *vs*. Germo, G.R. No. 228799, Jan. 10, 2018) p. 506

Issues raised for the first time –– Will not be entertained because to do so would be anathema to the rudiments of fairness and due process; though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage; the said court may also consider an issue not properly raised during trial when there is plain error; likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy; further, the matters raised in the present petition warrant the relaxation of the rules concerning issues raised for the first time on appeal especially considering the jurisprudential developments since the RTC decision and the needs for substantial justice. (Punongbayan-Visitacion *vs*. People, G.R. No. 194214, Jan. 10, 2018) p. 212

Petition for review on certiorari to the Supreme Court under Rule 45 –– A Rule 45 review is generally limited to questions of law; this limitation exists because we are not a trier of facts who undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. (Cacho *vs*. Manahan, G.R. No. 203081, Jan. 17, 2018) p. 1011

–– As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal; points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. (Mactan Rock Industries, Inc. *vs*. Germo, G.R. No. 228799, Jan. 10, 2018) p. 506

–– As a rule, only questions of law may be raised under a petition for review under Rule 45 because the Court is not a trier of facts and the factual findings of lower

—— The CES eligibility examination process has four stages, namely: (1) written examination; (2) assessment center; (3) performance validation; and (4) board interview; after completing and passing the examination process, said employee is entitled to conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles; such conferment of eligibility is done by the CESB through a formal Board Resolution after an evaluation is done of the employee's performance in the four stages of the CES eligibility examinations. (*Id.*)

—— The Civil Service Law classifies the positions in the civil service into career and non-career, to wit: The career service is characterized by: (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure; while a non-career position is characterized by: (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or limited to the duration of a particular project for which purpose employment was extended. (*Id.*)

—— There are also three levels of positions in the career service, namely: (a) the first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies; (b) the second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and (c) the third level shall cover positions in the Career Executive Service; under the third level, such positions in the Career Executive Service are further classified into Undersecretary, Assistant Secretary, Bureau

—— In cases involving dangerous drugs, the drugs presented as the *corpus delicti* of the offense must be established with moral certainty to be the same illicit substance taken from the accused; absent such conclusive identification, there can be no finding of guilt on the part of the accused. (People *vs.* Alvaro *y* De Leon, G.R. No. 225596, Jan. 10, 2018) p. 444

—— The apprehending team shall, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same; also, the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination; 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; however, for this saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. (*Id.*)

—— The unaccounted gap in the chain of custody and the multiple unrecognized and unjustified departures of the police officers from the established procedure set under Sec. 21, Art. II of R.A. No. 9165 and its Implementing Rules and Regulations, the integrity and evidentiary value of the subject drugs had been compromised. (*Id.*)

—— To obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same; it must be able to account for each link in the chain of custody over the dangerous

Section 21 (A) — In seizures covered by search warrants, the physical inventory and photograph must be conducted at the place where the search warrant was served; on the other hand, in case of warrantless seizures such as a buy-bust operation, the physical inventory and photography shall be done at the nearest police station or office of the apprehending officer/team, whichever is practicable. (People *vs*. Ramirez, G.R. No. 225690, Jan. 17, 2018) p. 1215

— R.A. No. 9165 is silent on when and where marking should be done; marking is the first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence. (*Id*.)

— To properly guide law enforcement agents as to the proper handling of confiscated drugs, Sec. 21(a), Art. II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed. (*Id*.)

CONSPIRACY

Existence of — Exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; the essence of conspiracy is the unity of action and purpose; conspiracy requires the same degree of proof required to establish the crime which is proof beyond reasonable doubt. (People *vs*. Gimpaya, G.R. No. 227395, Jan. 10, 2018) p. 485

— Need not be proven by direct evidence, for conspiracy may be inferred from the acts of the accused in accomplishment of a common unlawful design. (People *vs*. Golidan *y* Coto-Ong, G.R. No. 205307, Jan. 11, 2018) p. 548

CONSTRUCTION INDUSTRY ARBITRATION LAW (E.O. NO. 1008)

Construction Industry Arbitration Commission — Appeals from CIAC may only raise questions of law; CIAC's factual findings on construction disputes are final, conclusive, and not reviewable by this Court on appeal; the only exceptions are when: (1) The award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of R.A. No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. (Metro Rail Transit Dev't. Corp. *vs*. Gammon Phils., Inc., G.R. No. 200401, Jan. 17, 2018) p. 917

— CIAC exercises quasi-judicial powers over arbitration disputes concerning construction contracts; its findings are accorded respect because it comes with the presumption that CIAC is technically proficient in efficiently and speedily resolving conflicts in the construction industry. (*Id*.)

— CIAC was created under Executive Order No. 1008 to establish an arbitral machinery that will settle expeditiously problems arising from, or connected with, contracts in the construction industry; its jurisdiction includes construction disputes between or among parties to an arbitration agreement, or those who are otherwise bound by the latter, directly or by reference; any project owner, contractor, subcontractor, fabricator, or project manager of a construction project who is bound by an

arbitration agreement in a construction contract is under CIAC's jurisdiction in case of any dispute. (*Id.*)

CONTRACTS

Requisites of –– The requisites of a valid contract are provided for in Art. 1318 of the Civil Code: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established; A contract is perfected when both parties have consented to the object and cause of the contract. (Metro Rail Transit Dev't. Corp. *vs*. Gammon Phils., Inc., G.R. No. 200401, Jan. 17, 2018) p. 917

Stages of ––There are three (3) stages in a contract: negotiation, perfection, and consummation; negotiation refers to the time the parties signify interest in the contract up until the time the parties agree on its terms and conditions; the perfection of the contract occurs when there is a meeting of the minds of the parties such that there is a concurrence of offer and acceptance, and all the essential elements of the contract; consent, object and cause are present; the consummation of the contract covers the period when the parties perform their obligations in the contract until it is finished or extinguished. (Metro Rail Transit Dev't. Corp. *vs*. Gammon Phils., Inc., G.R. No. 200401, Jan. 17, 2018) p. 917

CORPORATIONS

Corporate liquidation –– A corporation whose charter is annulled, or whose corporate existence is otherwise terminated, may continue as a body corporate for a limited period of three years, but only for certain specific purposes enumerated by law; these include the prosecution and defense of suits by or against the corporation, and other objectives relating to the settlement and closure of corporate affairs. (Reyes *vs*. Bancom Dev't. Corp., G.R. No. 190286, Jan. 11, 2018) p. 518

–– An appointed receiver, an assignee, or a trustee may institute suits or continue pending actions on behalf of the corporation, even after the winding-up period; the

report for work or must have been absent without valid or justifiable reason; and second, that there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act; abandonment is essentially a matter of intent; it cannot be presumed from the occurrence of certain equivocal acts. (Hubilla *vs*. HSY Marketing Ltd., Co., G.R. No. 207354, Jan. 10, 2018) pp. 358-359

Backwages and separation pay — Considering that there were valid and substantive grounds to terminate respondent's employment, the award of backwages and separation pay is deleted. (Allied Banking Corp. *vs*. Calumpang, G.R. No. 219435, Jan. 17, 2018) p. 1143

Illegal dismissal — An employee who is found to have been illegally dismissed is entitled to reinstatement without loss of seniority rights and other privileges; if reinstatement proves to be impossible due to the strained relations between the parties, the illegally dismissed employee is entitled instead to separation pay. (Hubilla *vs*. HSY Marketing Ltd., Co., G.R. No. 207354, Jan. 10, 2018) pp. 358-359

— An employer shall be liable for illegal dismissal where it dismissed an employee pursuant to the retirement provision that the latter had not knowingly and voluntarily agreed into. (Laya, Jr. *vs*. Phil. Veterans Bank, G.R. No. 205813, Jan. 10, 2018) p. 302

— Backwages sought by an illegally dismissed employee may be considered, by reason of its practical effect, as a money claim; however, it is not the principal cause of action in an illegal dismissal case but the unlawful deprivation of one's employment committed by the employer in violation of the right of an employee. (American Power Conversion Corp. *vs*. Yu Lim, G.R. No. 214291, Jan. 11, 2018) p. 635

— Freedom and social justice afford them these rights and it is the courts' duty to uphold and protect their free exercise; dismissing employees merely on the basis that

party; and (3) void judgments. (People *vs*. Alapan, G.R. No. 199527, Jan. 10, 2018) p. 272

JUDICIAL DEPARTMENT

Judicial review –– A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist; court may assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present: (1) grave constitutional violations; (2) exceptional character of the case; (3) paramount public interest; (4) the case presents an opportunity to guide the bench, the bar, and the public; or (5) the case is capable of repetition yet evading review. (Lim Bio Han *vs*. Lim Eng Tian, G.R. No. 195472, Jan. 8, 2018) p. 12

–– The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication; an actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. (*Id*.)

–– Where a decision on the merits of a case is rendered and the same has become final and executory, the action on procedural matters or issues is thereby rendered moot and academic. (*Id*.)

JURISDICTION

Jurisdiction over the person of the defendant –– A special appearance operates as an exception to the general rule on voluntary appearance; such special appearance, however, requires that the defendant must explicitly and unequivocably pose objections to the jurisdiction of the court over his person; otherwise, such failure would constitute voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution; a party who makes a special appearance in court challenging the jurisdiction of said

— Considering that self-defense totally exonerates the accused from criminal responsibility, it is incumbent upon him who invokes the same to prove by clear, satisfactory and convincing evidence that he indeed acted in defense of his life or personal safety; when successful, an otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused. (People *vs*. PFC Reyes, G.R. No. 224498, Jan. 11, 2018) p. 695

— The accused must establish the essential requisites of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means used to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself; the accused has the burden to prove these requisites by clear and convincing evidence. (People *vs*. Panerio, G.R. No. 205440, Jan. 15, 2018) p. 738

Unlawful aggression — An actual physical assault, or at least a threat to inflict real imminent injury, upon a person; the test for the presence of unlawful aggression is whether the victim's aggression placed in real peril the life or personal safety of the person defending himself; the danger must not be an imagined or imaginary threat. (People *vs*. PFC Reyes, G.R. No. 224498, Jan. 11, 2018) p. 695

— The indispensable element of self-defense, for if no unlawful aggression attributed to the victim is established, self-defense is unavailing for there is nothing to repel; there can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person invoking it as a justifying circumstance. (*Id*.)

— Unlawful aggression must be established by the accused, to wit: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or at least imminent; and (c) the attack or assault must be unlawful; as the second element of unlawful aggression will show, it is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression; actual

—— The employers and employees may agree to fix the retirement age for the latter and to embody their agreement in either their collective bargaining agreements (CBAs) or their employment contracts; retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure, provided that the retirement benefits are not lower than those prescribed by law. (*Id.*)

—— The pertinent rule on retirement plans does not presume consent or acquiescence from the high educational attainment or legal knowledge of the employee; the rule provides that the acquiescence by the employee cannot be lightly inferred from his acceptance of employment. (*Id.*)

LABOR RELATIONS

Job contracting and labor-only contracting —— As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like. (Allied Banking Corp. *vs.* Calumpang, G.R. No. 219435, Jan. 17, 2018) p. 1143

—— Permissible job contracting or subcontracting has been distinguished from labor-only contracting such that permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal, while labor-only contracting, on the other hand, pertains to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. (*Id.*)

Management prerogatives —— The discipline, dismissal, and recall of employees are management prerogatives, limited

party to assume the essential obligations of marriage; (6) the essential marital obligations must be those embraced by Arts. 68 up to 71 of the Family Code as regards the husband and wife as well as Arts. 220, 221 and 225 of the same Code in regard to parents and their children; (7) interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts; (8) the trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. (Rep. of the Phils. *vs*. Tobora-Tionglico, G.R. No. 218630, Jan. 11, 2018) p. 672

–– Intended by law to be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. (*Id*.)

–– Must be characterized by: (a) gravity, *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (b) juridical antecedence, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (c) incurability, *i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved. (*Id*.)

MITIGATING CIRCUMSTANCES

Voluntary surrender –– To be considered a mitigating circumstance, voluntary surrender must be spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or wishes to save them the trouble and expense that will be incurred in his search and capture. (People *vs*. PFC Reyes, G.R. No. 224498, Jan. 11, 2018) p. 695

—— Sole proprietorships, unlike corporations, have no separate legal personality from their proprietors; they cannot claim the inability to do physical acts as a justifiable circumstance to authorize their counsel to sign on their behalf; since there was no other reason given for authorizing their counsel to sign on their behalf, respondents' certification against forum shopping is invalid. (*Id.*)

—— The certification of non-forum shopping must be signed by the litigant, not his or her counsel; the litigant may, for justifiable reasons, execute a special power of attorney to authorize his or her counsel to sign on his or her behalf. (*Id.*)

—— While courts may simply order the resubmission of the verification or its subsequent correction, a defect in the certification of non-forum shopping is not curable unless there are substantial merits to the case; however, respondents' Petition for Certiorari before the Court of Appeals was unmeritorious; its defective verification and certification of non-forum shopping should have merited its outright dismissal. (*Id.*)

NOTARY PUBLIC

2004 Rules on Notarial Practice —— A document should not be notarized unless the person/s who is/are executing it is/are personally or physically present before the notary public; the personal and physical presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature/s of the affiant/s therein and the due execution of the document. (Almario *vs.* Atty. Llera-Agno, A.C. No. 10689[Formerly CBD Case No. 11-3171], Jan. 8, 2018) p. 1

—— An acknowledgment refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an integrally complete instrument or document; (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by the Rules. (*Id.*)

has sufficient justification to extend the period; and 4. if the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. (*Id*.)

— The company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days; that should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled. (*Id*.)

— The declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade. (*Id*.)

— The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment. (*Id*.)

— Transpires when the inability to work continues beyond 120 days, regardless of whether or not he loses the use of any part of his body; on the other hand, total disability means the incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do. (*Id*.)

PLEADINGS

Filing and service of — Filing is the act of presenting the pleading or other paper to the clerk of court; whereas, service is the act of providing a party with a copy of the pleading or paper concerned; although they pertain to different acts, filing and service go hand-in-hand and must be considered together when determining whether the pleading, motion, or any other paper was filed within the applicable reglementary period. (Phil. Savings Bank *vs*. Papa, G.R. No. 200469, Jan. 15, 2018) p. 725

period for the acquisition of property of the public dominion begin to run; the classification of the land as alienable and disposable land of the public domain does not change its status as property of the public dominion under Art. 420(2) of the Civil Code. (*Id*.)

— To prove that the land sought to be registered is alienable and disposable, the present rule is that the application for original registration must be accompanied by (1) a CENRO or PENRO Certification; and (2) a copy of the original classification approved by the DENR Secretary, and certified as true copy by the legal custodian of the official records. (*Id*.)

— Under Sec. 14(1), applicants for registration of title must sufficiently establish the following requisites: *first*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and *third*, that the possession is under a *bona fide* claim of ownership since 12 June 1945, or earlier. (*Id*.)

PUBLIC LAND ACT

Application of — A private corporation can acquire land provided it sufficiently established that the land is alienable and disposable land of public domain, and that the nature and duration of the possession of its predecessors-in-interest converted the subject land to private land by operation of law. (Rep. of the Phils. *vs*. Rovency Realty and Dev't. Corp., G.R. No. 190817, Jan. 10, 2018) p. 177

QUALIFYING CIRCUMSTANCES

Evident premeditation — Elements of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act. (People *vs*. PFC Reyes, G.R. No. 224498, Jan. 11, 2018) p. 695

actor in the situation before him; the law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that. (*Id.*)

–– The test by which to determine the existence of negligence in a particular case may be stated as follows: did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? if not, then he is guilty of negligence; the law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. (*Id.*)

RAPE

Commission of –– For a charge of rape under Art. 266-A (1) of Republic Act 8353 to prosper, it must be proved that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. (People *vs*. Empuesto *y* Socatre, G.R. No. 218245, Jan. 17, 2018) p. 1125

–– Three principles that had consistently guided it in reviewing rape cases, *viz*: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and arrived at the unyielding conclusion that the prosecution was able to efficaciously discharge its burden of proving the guilt of accused-appellant beyond reasonable doubt. (*Id.*)

RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES (A.M. NO. 02-11-10-SC)

proceedings should have been held without the investigation report. (*Id*.)

–– Under Sec. 8(1) of A.M. No. 02-11-10-SC, the respondent is required to submit an Answer within 15 days from receipt of the summons; if no answer is filed, the court shall order the public prosecutor to investigate whether collusion exists between the parties; within one month from receipt of the order of the court, the public prosecutor shall submit a report to the court stating whether the parties are indeed in collusion. (*Id*.)

Rule on venue of petitions –– Took effect on 15 March 2003, provides that petitions shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing; in the case of non-resident respondents, it shall be filed where they may be found in the Philippines, at the election of the petitioner. (Office of the Court Administrator *vs*. Judge Cabrera-Faller, A.M. No. RTJ-11-2301 [Formerly A.M. No. 11-3-55-RTC], Jan. 16, 2018) p. 762

RULE ON THE EXAMINATION OF A CHILD WITNESS (A.M. NO. 004-07-SC, DECEMBER 15, 2000)

Application of –– Every child is now presumed qualified to be a witness; to rebut this presumption, the burden of proof lies on the party challenging the child's competency; only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child. (People *vs*. Golidan *y* Coto-Ong, G.R. No. 205307, Jan. 11, 2018) p. 548

–– Under Sec. 20, the court may allow leading questions in all stages of examination of a child if the same will further the interests of justice; the Supreme Court reiterated that the rule was formulated to allow children to give reliable and complete evidence, minimize trauma to

neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Sec. 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua.* (People *vs*. Villacampa *y* Cadiente, G.R. No. 216057, Jan. 8, 2018) p. 70

Sexual abuse — Moral ascendancy takes the place of the force and intimidation that is required in rape cases. (People *vs*. Villacampa *y* Cadiente, G.R. No. 216057, Jan. 8, 2018) p. 70

— The following elements of sexual abuse under Sec. 5, Art. III of RA 7610 must be established: 1. the accused commits the act of sexual intercourse or lascivious conduct. 2. the said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. the child, whether male or female, is below 18 years of age. (*Id*.)

— The sexual abuse can happen only once, and still the victim would be considered a child subjected to other sexual abuse, because what the law punishes is the maltreatment of the child, without regard to whether or not this maltreatment is habitual. (*Id*.)

Sexual intercourse or lascivious conduct — Lascivious conduct is defined in Section 2(h) of the Implementing Rules and Regulations of R.A. No. 7610 as the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (People *vs*. Villacampa *y* Cadiente, G.R. No. 216057, Jan. 8, 2018) p. 70

— The fact that a child is under the coercion and influence of an adult is sufficient to satisfy this second element

procedure, especially those prescribing the time within which certain acts must be done, are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business; while procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. (*Id.*)

–– The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity; liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances; while litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. (*Id.*)

Rules of procedure –– A rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration. (Career Exec. Service Board *vs.* Civil Service Commission, G.R. No. 196890, Jan. 11, 2018) p. 534

SUCCESSION

Preterition –– Preterition consists in the omission in the testator's will of a compulsory heir in the direct line or anyone of them either because they are not mentioned therein or although mentioned they are neither instituted as heir nor expressly disinherited; the act of totally depriving a compulsory heir of his legitime can take place either expressly or tacitly; the express deprivation of the legitime constitutes disinheritance; the tacit deprivation of the same is called preterition; in order that there be preterition, it is essential that the heir must be totally omitted. (Mayuga *vs.* Atienza, G.R. No. 208197, Jan. 10, 2018) p. 389

—— Before a sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service; to establish such impossibility, there must be at least three (3) attempts, preferably on at least two different dates, to personally serve the summons within a reasonable period of one (1) month or eventually result in failure; the sheriff must further cite why such efforts are unsuccessful. (*Id*.)

—— The exertion of efforts to personally serve the summons on respondent, and the failure of those efforts, would prove the impossibility of prompt personal service; while substituted service of summons is permitted, it is extraordinary in character and a departure from the usual method of service. (Office of the Court Administrator *vs*. Judge Cabrera-Faller, A.M. No. RTJ-11-2301 [Formerly A.M. No. 11-3-55-RTC], Jan. 16, 2018) p. 762

—— The purpose of a summons is twofold: to acquire jurisdiction over the person of respondents and to notify them that an action has been commenced, so that they may be given an opportunity to be heard on the claim being made against them. (*Id*.)

—— The return for a substituted service should state, with more particularity and detail, the facts and circumstances such as the number of attempts at personal service, dates and times of the attempts, inquiries made to locate the respondent, names of occupants of the alleged residence, and reasons for failure in order to satisfactorily show the efforts undertaken. (*Id*.)

TAXATION

Final withholding tax —— Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income; the liability for payment of the tax rests primarily on the payor as a withholding agent; in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/

intent to gain. (People *vs*. Mejares *y* Valencia, G.R. No. 225735, Jan. 10, 2018) p. 459

–– The following elements must concur: 1) taking of personal property; 2) that the said property belongs to another; 3) that the said taking be done with intent to gain; 4) that it be done without the owner's consent; 5) that it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and 6) that it be done with grave abuse of confidence. (*Id*.)

–– While grave abuse of trust and confidence *per se* does not produce the felony as an effect, it is a circumstance which aggravates and qualifies the commission of the crime of theft; the imposition of a higher penalty is necessary. (*Id*.)

UNJUST ENRICHMENT

Principle of –– The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. (American Power Conversion Corp. *vs*. Yu Lim, G.R. No. 214291, Jan. 11, 2018) p. 635

–– There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience; the principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. (*Id*.)

VERIFICATION

Requirement of –– A pleading may be verified by attesting that the allegations are based either on personal knowledge *and* on authentic records, or on personal knowledge *or* on authentic records; the use of *either*, however, is not subject to the affiant's whim but rather on the nature of the allegations being attested to; circumstances may require that the affiant attest that the allegations are based only

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