PHILIPPINE REPORTS

VOL. 824

JANUARY 19, 2018 TO JANUARY 31, 2018

VOLUME 824

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 19, 2018 TO JANUARY 31, 2018

SUPREME COURT
MANILA
2019

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2019

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PHILIPPINE REPORTS
CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 1071

IV. CITATIONS 1129

PHILIPPINE REPORTS

Page

Abelarde, Bobby S. – People of the Philippines *vs.* 122
Agleron, Atty. Arnulfo M. – Iluminada D. Yuzon *vs.* 321
Aninang, Ramon T. – Manila Shipmanagement
& Manning, Inc., and/or Hellespont Hammonia
GMBH & Co. KG and/or Azucena C. Detera *vs.* 916
Apolinar-Petilo, Marjorie A. *vs.*
Atty. Aristedes A. Maramot 811
Arbilon, Demosthenes R. *vs.* Sofronio Manlangit 73
Asayas, Wilfredo P. *vs.* Sea Power Shipping
Enterprises, Inc., and/or Avin International S.A.,
and/or Antoniette Guerrero 399
Asentista, Marilyn B. *vs.* Jupp & Company, Inc.,
and/or Mr. Joseph V. Ascutia 639
Asiga Mining Corporation *vs.* Manila
Mining Corporation, et al. 381
Bacena, Adrian Oscar Z. – Jose V. Gambito *vs.* 542
Balloguing, Presiding Judge, Regional
Trial Court, Branch 20, Vigan City,
Ilocos Sur, Marita B. *vs.* Cresente B. Dagan,
Utility Worker I, Regional Trial Court,
Branch 20, Vigan City, Ilocos Sur 788
Bankwise, Inc. *vs.* Perfecto M. Pascua, et al. 846
Bankwise, Inc., et al. – Perfecto M. Pascua *vs.* 846
Bartolome, Atty. Benigno *vs.*
Atty. Christopher A. Basilio 833
Bases Conversion and Development Authority –
The Manila Banking Corporation *vs.* 193
Basilio, Atty. Christopher A. –
Atty. Benigno Bartolome *vs.* 833
Bautista, in his capacity as the Chief of Staff
of the Armed Forces of the Philippines (AFP),
Gen. Emmanuel *vs.* Atty. Maria Catherine
Dannug-Salucon 293
Bejim *y* Romero, Noel – People of the Philippines *vs.* 10
Bongos, Hernando – People of the Philippines *vs.* 1004
BPI Family Savings Bank, Inc. – Spouses Francisco
Ong and Betty Lim Ong, et al. *vs.* 439
Bringcula *y* Fernandez, Joselito –
People of the Philippines *vs.* 585

Page

Busilak, et al., Amelita – Heirs of Alfonso Yusingco, represented by their Attorney-in-Fact, Teodoro K. Yusingco *vs.* 454
Castilla, Judge Dennis B. *vs.* Maria Luz A. Duncano, Clerk of Court IV, Office of the Clerk of Court, Municipal Trial Court in Cities, Butuan, Agusan Del Sur 329
Chevron Geothermal Phils. Holdings, Inc. – Philippine Geothermal, Inc. Employees Union (PGIEU) *vs.* 426
Commissioner of Internal Revenue *vs.* Covanta Energy Philippine Holdings, Inc. 411
Covanta Energy Philippine Holdings, Inc. – Commissioner of Internal Revenue *vs.* 411
Dabon, *a.k.a.* George Debone @ George, Jorge *vs.* People of the Philippines 108
Dagan, Utility Worker I, Regional Trial Court, Branch 20, Vigan City, Ilocos Sur, Cresente B. – Marita B. Balloguing, Presiding Judge, Regional Trial Court, Branch 20, Vigan City, Ilocos Sur *vs.* 788
Dagsa *y* Bantas @ "Wing Wing", Edwin – People of the Philippines *vs.* 704
Dannug-Salucon, Atty. Maria Catherine – Gen. Emmanuel Bautista, in his capacity as the Chief of the Armed Forces of the Philippines (AFP) *vs.* 293
De Chavez, Emiliano – People of the Philippines *vs.* 930
De Mesa, Maria Eva *vs.* Atty. Oliver O. Olaybal 825
Dejolde, Jr. *y* Salino, Moises – People of the Philippines *vs.* 939
Dela Cruz, et al., Hon. Jonathan A. *vs.* Hon. Paquito N. Ochoa, Jr., in his capacity as the Executive Secretary, et al. 269
Dela Peña, Maximo – People of the Philippines *vs.* 949
Delicana, Legal Researcher, Branch 3, Municipal Trial Court in Cities (MTCC), General Santos City, South Cotabato, Ruel V. – Atty. Ma. Jasmine P. Lood, et al. *vs.* 64
Dizon, Angel Fuellas *vs.* People of the Philippines 599

Page

Domingo, Gene M. *vs*. Atty. Anastacio E. Revilla, Jr. 217
Duncano, Clerk of Court IV, Office of the
Clerk of Court, Municipal Trial Court in Cities,
Butuan, Agusan Del Sur, Maria Luz A. –
Judge Dennis B. Castilla *vs*. 329
East Oceanic Leasing and Finance Corporation -
Armando Go *vs*. 1
Egipto, Jr., Clerk of Court IV, Municipal Trial
Court in Cities, Pagadian City, Mr. Crispin C. –
The Office of the Court Administrator *vs*. 757-758
Flor *y* Mora, Niño – People of the Philippines *vs*. 46
Flores, et al., Cesar – Esmeraldo Gatchalian,
duly represented by Samuel Gatchalian *vs*. 57
Gajo *y* Buenafe, et al., Lawrence –
People of the Philippines *vs*. 140
Galang, Ma. Victoria M. *vs*. Peakhold Finance
Corporation, et al. 674
Gambito, Jose V. *vs*. Adrian Oscar Z. Bacena 542
Gatchalian, duly represented by Samuel
Gatchalian, Esmeraldo *vs*. Cesar Flores, et al. 57
Go, Armando *vs*. East Oceanic Leasing
and Finance Corporation 1
Gotengco, Heirs of Cirilo – Republic of the
Philippines, represented by the Department
of Public Works and Highways (DPWH) *vs*. 568
H. Villarica Pawnshop, Inc., et al. *vs*.
Social Security Commission, et al. 613
Hernandez, Generato M. *vs*. Magsaysay
Maritime Corporation, et al. 552
Javier, Spouses Germil and Rebecca –
Victoria N. Racelis, in her capacity
as administrator *vs*. 684
Jugo *y* Villanueva, Alvin –
People of the Philippines *vs*. 743
Jupp & Company, Inc., and/or Mr. Joseph V.
Ascutia – Marilyn B. Asentista *vs*. 639
Kalipayan *y* Aniano, Arnel –
People of the Philippines *vs*. 173

Page

Land Bank of the Philippines –
Lucila Yared, et al. *vs.* ... 487
Land Bank of the Philippines *vs.*
Raul T. Manzano, et al. ... 339
Lara's Gift and Decors, Inc. *vs.* PNB General
Insurers Co., Inc., et al. ... 652
Lood, et al., Atty. Ma. Jasmine P. *vs.*
Ruel V. Delicana, Legal Researcher,
Branch 3, Municipal Trial Court in Cities
(MTCC), General Santos City, South Cotabato ... 64
Madrid, Regional Trial Court, Branch 21,
Santiago City, Isabela, Judge Fe A. –
Angelina C. Rillorta *vs.* ... 761
Mago, et al., Leo V. *vs.* Sun Power
Manufacturing Limited ... 464
Magsaysay Maritime Corporation, et al. –
Generato M. Hernandez *vs.* ... 552
Mamangon *y* Espiritu, Philip –
People of the Philippines *vs.* ... 728
Mancol, et al., Anna Liza L. –
St. Paul College, Pasig, et al. *vs.* ... 520
Manila Mining Corporation, et al. –
Asiga Mining Corporation *vs.* ... 381
Manila Shipmanagement & Manning, Inc.,
and/or Hellespont Hammonia GMBH & Co.
KG and/or Azucena C. Detera *vs.*
Ramon T. Aninang ... 916
Manlangit, Sofronio – Demosthenes R. Arbilon *vs.* ... 73
Manzano, et al., Raul T. – Land Bank
of the Philippines *vs.* ... 339
Maramot, Atty. Aristedes A. –
Marjorie A. Apolinar-Petilo *vs.* ... 811
Minsola, Reyman G. *vs.* New City
Builders, Inc., et al. ... 864
Miranda *y* Tigas, Jovencio –
People of the Philippines *vs.* ... 1042
N. Dela Merced & Sons, Inc. – Republic of the
Philippines, represented by the Pollution
Adjudication Board *vs.* ... 87

Page

N. Dela Merced & Sons, Inc. *vs.*
Republic of the Philippines, represented
by the Pollution Adjudication Board 87
New City Builders, Inc., et al. –
Reyman G. Minsola *vs.* 864
Ochoa, Jr., in his capacity as the Executive
Secretary, et al., Hon. Paquito N. –
Hon. Jonathan A. Dela Cruz, et al. *vs.* 269
Office of the Court Administrator *vs.*
Judge Hector B. Salise, Presiding Judge,
Branch 7, Regional Trial Court, Bayugan City,
Agusan del Sur 797
Office of the Court Administrator *vs.*
Rolando C. Tomas, former Officer-in-Charge,
Regional Trial Court, Santiago City, Isabela, et al. 761
Olaybal, Atty. Oliver O. – Maria Eva De Mesa *vs.* 825
Ong, et al., Spouses Francisco and Betty Lim *vs.*
BPI Family Savings Bank, Inc. 439
Pascua, et al., Perfecto M. – Bankwise, Inc. *vs.* 846
Pascua, Perfecto M. *vs.* Bankwise, Inc., et al. 846
Paz *y* Dionisio @ "Jeff", Ronaldo –
People of the Philippines *vs.* 1025
Peakhold Finance Corporation, et al. –
Ma. Victoria M. Galang *vs.* 674
People of the Philippines – Jeorge Dabon,
a.k.a. George Debone @ George *vs.* 108
– Angel Fuellas Dizon *vs.* 599
– Cecilia Rivac *vs.* 156
People of the Philippines *vs.* Bobby S. Abelarde 122
Noel Bejim *y* Romero 10
Hernando Bongos 1004
Joselito Bringcula *y* Fernandez 585
Edwin Dagsa *y* Bantas @ "Wing Wing" 704
Emiliano De Chavez 930
Moises Dejolde, Jr. *y* Salino 939
Maximo Dela Peña 949
Niño Flor *y* Mora 46
Lawrence Gajo *y* Buenafe, et al. 140
Alvin Jugo *y* Villanueva 743

Page

Arnel Kalipayan *y* Aniano 173
Philip Mamangon *y* Espiritu 728
Jovencio Miranda *y* Tigas 1042
Ronaldo Paz *y* Dionisio @ "Jeff" 1025
Joshua Que *y* Utuanis 882
Brian Villahermoso 499
Philippine Airlines, Inc. – Armando M. Tolentino (deceased), herein represented by his surviving spouse Merla F. Tolentino, et al. *vs.* 505
Philippine Geothermal, Inc. Employees Union (PGIEU) *vs.* Chevron Geothermal Phils. Holdings, Inc. 426
PNB General Insurers Co., Inc., et al. – Lara's Gift and Decors, Inc. *vs.* 652
Que *y* Utuanis, Joshua – People of the Philippines *vs.* 882
Racelis, in his capacity as administrator, Victoria N. *vs.* Spouses Germil Javier and Rebecca Javier 684
Ramoga, Jr., Roberto M. – Teekay Shipping Philippines, Inc., and/or Teekay Shipping Ltd., and/or Alex Verchez *vs.* 35
Re: Dropping from the Rolls of Lemuel H. Vendiola, Sheriff IV, Office of the Clerk of Court (OCC), Regional Trail Court of Biñan City, Laguna (RTC) 842
Rebadulla, et al. Paz E. *vs.* Republic of the Philippines, et al. 982
Rebadulla, et al., Paz E. – Republic of the Philippines, et al. *vs.* 982
Republic of the Philippines, et al. – Paz E. Rebadulla, et al. *vs.* 982
Republic of the Philippines, et al. *vs.* Paz E. Rebadulla, et al. 982
Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) *vs.* Heirs of Cirilo Gotengco 568

Page

Republic of the Philippines, represented by the Pollution Adjudication Board *vs.* N. Dela Merced & Sons, Inc. 87
Republic of the Philippines, represented by the Pollution Adjudication Board – N. Dela Merced & Sons, Inc. *vs.* 87
Revilla, Jr., Anastacio E. – Gene M. Domingo *vs.* 217
Rillorta, Angelina C. *vs.* Judge Fe A. Madrid, Regional Trial Court, Branch 21, Santiago City, Isabela 761
Rivac, Cecilia *vs.* People of the Philippines 156
Rivera, et al., Hannival V. – San Miguel Foods, Inc. *vs.* 961
Rodriguez, et al., Rolando C. – In the Matter of the Intestate Estate of Reynaldo Guzman Rodriguez; Anita Ong Tan *vs.* 1061
Roxas, Ma. Cecilia Fermina T. *vs.* Allen Francisco S. Sicat, Sheriff III, Office of the Clerk of Court, Municipal Trial Court in Cities, Angeles City, Pampanga 239
Salise, Presiding Judge, Branch 7, Regional Trial Court, Bayugan City, Agusan del Sur, Judge Hector B. – Office of the Court Administrator *vs.* 797
San Miguel Foods, Inc. *vs.* Hannival V. Rivera, et al. 961
Sea Power Shipping Enterprises, Inc., and/or Avin International S.A., and/or Antoniette Guerrero – Wilfredo P. Asayas *vs.* 399
Sicat, Sheriff III, Office of the Clerk of Court, Municipal Trial Court in Cities, Angeles City, Pampanga, Allen Francisco S. – Ma. Cecilia Fermina T. Roxas *vs.* 239
Social Security Commission, et al. – H. Villarica Pawnshop, Inc., et al. *vs.* 613
St. Paul College, Pasig, et al. *vs.* Anna Liza L. Mancol, et al. 520
Sun Power Manufacturing Limited – Leo V. Mago, et al. *vs.* 464

Page

Tan, In the Matter of the Intestate Estate
of Reynaldo Guzman Rodriguez;
Anita Ong *vs.* Rolando C. Rodriguez, et al. 1061
Teekay Shipping Philippines, Inc., and/or
Teekay Shipping Ltd., and/or Alex Verchez *vs.*
Roberto M. Ramoga, Jr. 35
The Manila Banking Corporation *vs.*
Bases Conversion and Development Authority 193
The Office of the Court Administrator *vs.*
Mr. Crispin C. Egipto, Jr., Clerk of Court IV,
Municipal Trial Court in Cities, Pagadian City 757-758
Tolentino (deceased), herein represented
by his surviving spouse Merla F. Tolentino,
et al., Armando M. *vs.* Philippine Airlines, Inc. 505
Tomas, former Officer-in-Charge-,
Regional Trial Court, Santiago City,
Isabela, et al., Rolando C. – Office of the
Court Administrator *vs.* 761
Villahermoso, Brian –
People of the Philippines *vs.* 499
Yared, et al., Lucila *vs.*
Land Bank of the Philippines 487
Yusingco, represented by their Attorney-in-Fact,
Teodor K. Yusingco, Heirs of Alfonso *vs.*
Amelita Busilak, et al. 454
Yuzon, Iluminada D. *vs.*
Atty. Arnulfo M. Agleron 321

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. Nos. 206841-42. January 19, 2018]

ARMANDO GO, *petitioner, vs.* **EAST OCEANIC LEASING and FINANCE CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; RENDITION OF JUDGMENT; A DECISION WHICH FAILED TO EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED IS VOID; IT DEPRIVED PETITIONER OF HIS RIGHT TO DUE PROCESS.— x x x [A] review of the records shows that the RTC had failed to *clearly and distinctly* state the facts and the law on which it based its ruling insofar as Go's civil liability to East Oceanic is concerned. There is absolutely no discussion at all in the assailed Decision as to the RTC's ruling in the collection case, particularly, on how it arrived at its conclusion finding Go liable to pay East Oceanic "the sum of ₱2,814,054.86 plus 6% interest to be computed from the time of the filing of the complaint." x x x Given these circumstances, we find that **the assailed Decision is void insofar as the collection case is concerned**, as it contained neither an analysis of the evidence of East Oceanic and Go as regards the outstanding balance of the latter's loan obligation, nor a reference to any legal basis in reaching its conclusion as to Go's civil liability to East Oceanic. Clearly, the RTC failed to meet the standard set forth in Section 14, Article VIII of the Constitution, and in so doing, deprived

Go of his right to due process "since he was not accorded a fair opportunity to be heard by a fair and responsible magistrate."

APPEARANCES OF COUNSEL

Alabado and Partners Law Offices for petitioner.
Law Office of Ma. Victoria P. Lim-Florido & K.P. Lim II (Lim & Associates) for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

We resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the July 16, 2012 Decision[1]and the April 8, 2013 Order[2] of the Regional Trial Court (RTC), Branch 23, Cebu City in Civil Case Nos. CEB-18366 and CEB-21918.

The Antecedent Facts

On March 22, 1995, petitioner Armando Go (Go) obtained a loan from respondent East Oceanic Leasing and Finance Corporation (East Oceanic) in the amount of ₱14,062,888.00,[3] payable in monthly installments of ₱169,287.00 until fully paid, as evidenced by a Promissory Note[4] that Go executed on the same day.

Notably, Go's loan application was approved on the basis of the report and recommendation of Theodore Sy (Sy), then East Oceanic's Managing Director, which specified that the purpose of the loan was for the upgrading of the bus fleet and replacement of old units of Oriental Bus Lines, a bus company owned by Go.[5]

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[1] *Rollo*, pp. 30-71; penned by Presiding Judge Generosa G. Labra.

[2] *Id*. at 29.

[3] *Id*. at 30.

[4] *Id*. at 88.

[5] *Id*. at 33.

Go subsequently issued six post-dated checks in favor of East Oceanic, all drawn from his account at the Development Bank of the Philippines — Ormoc Branch (DBP):[6]

Check No.	Date	Amount
1273408[7]	06/22/95	₱169,287.00
1273409[8]	07/22/95	₱169,287.00
1273410[9]	08/22/95	P169,287.00
1273412[10]	10/22/95	₱169,287.00
005794[11]	10/02/95	₱922,614.15
1273413[12]	11/22/95	₱169,287.00

Unfortunately, the checks were all dishonored by the DBP upon presentment for payment with the reason "Account Under Garnished" stamped at the back of the checks and as shown by the check return slips.[13] East Oceanic duly informed Go of the dishonor of said checks and demanded that he make good or pay the same, but the latter failed to do so.[14]

By reason of the dishonored checks, Go's loan became due and demandable with an outstanding balance of ₱2,814,054.84, excluding interest and other charges, based on a Statement of Account[15] dated January 24, 1996.[16]

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

[7] *Id*. at 89.

[8] *Id*.

[9] *Id*. at 90.

[10] *Id*. at 91.

[11] *Id.* at 92.

[12] *Id*.

[13] *Id*. at 31.

[14] *Id*.

[15] Folder of Exhibits, p. 28.

[16] *Rollo*, p. 31.

Thus, on February 7, 1996, East Oceanic filed a Complaint[17] against Go before the RTC for collection of a sum of money with prayer for preliminary attachment. The case was docketed as Civil Case No. CEB-18366 (collection case).

In his Answer with Counterclaim,[18] Go argued that the Promissory Note is void, given that it had "failed to comply with the mandatory requirements set up by the *Bangko Sentral ng Pilipinas* and the decisions of the Supreme Court applying and interpreting the same. Hence, the interests and charges contained therein are null and void."[19] He thus requested for a proper accounting of his loan in order to determine the amount that he actually owed from East Oceanic.[20]

While the collection case was pending, East Oceanic filed a Complaint for Damages[21] dated April 14, 1998 with the RTC against Sy, alleging that the corporation suffered a loss in the amount of ₱3,000,000.00 due to the latter's false report and recommendation pertaining to the real purpose of Go's loan application, *i.e.*, to pay off an existing loan to Sto. Niño de Cebu Finance Corporation, as well as his financial status.[22] The case was docketed as Civil Case No. CEB-21918 (damages case).[23]

Upon East Oceanic's motion,[24] and finding the evidence adduced in the collection case to be likewise pertinent to the damages case, the RTC ordered the cases to be consolidated.[25]

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[17] *Id*. at 82-87.

[18] *Id*. at 101-107.

[19] *Id*. at 102.

[20] *Id*.

[21] *Id*. at 93-96.

[22] *Id*. at 94-95.

[23] *Id*. at 93.

[24] Records, pp. 70-71.

[25] See Order dated August 2, 1999, *id*. at 91; penned by Presiding Judge Benigno G. Gaviola.

The Regional Trial Court Ruling

In its Decision dated July 16, 2012, the RTC rendered judgment as follows:

1) Ordering defendant Theodore Sy to pay plaintiff the following:

a) ₱3,000,000.00 as actual damages with 6% interest computed from the time of the filing of the case;
b) ₱300,000.00 as attorney's fees; and,
c) ₱30,000.00 as x x x litigation expenses.

2) Ordering defendant Armando Go to pay plaintiff the sum of ₱2,814,054.84 plus 6% interest to be computed from the time of the filing of the complaint.

So Ordered.[26]

Go moved for reconsideration,[27] arguing that the RTC Decision is contrary to law because it failed to cite any factual and/or legal basis as to his civil liability to East Oceanic.[28] The RTC, however, denied the motion in its Order dated April 8, 2013.

As a consequence, Go filed the present Petition for Review on *Certiorari* before the Court, assailing the RTC's July 16, 2012 Decision and April 8, 2013 Order.

Issue

Go raises the sole issue of *whether the assailed RTC Decision is void for having no basis in fact and in law as regards his civil liability to East Oceanic.*

The Court's Ruling

The Petition is impressed with merit.

The Constitution expressly provides that "'[n]o decision shall be rendered by any court without expressing therein *clearly and distinctly* **the facts and the law on which it is based**. No

[26] *Rollo*, pp. 70-71.

[27] *Id*. at 76-81.

[28] *Id*. at 77.

petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the basis therefor."[29]

This constitutional mandate is reflected in Section 1, Rule 36 of the Rules of Court which states that:

> Sec 1. Rendition of judgments and final orders. — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, **stating dearly and distinctly the facts and the law on which it is based**, signed by him, and filed with the clerk of court.[30]

The Court, too, issued Administrative Circular No. 1 dated January 28, 1988 which required all judges to make "complete findings of facts in their decisions, scrutinize closely the legal aspects of the case in the light of the evidence presented, and avoid the tendency to generalize and to form conclusions without detailing the facts from which such conclusions are deduced."[31]

In *Yao v. Court of Appeals*,[32] the Court emphasized that "[t]he parties to a litigation should be informed of how it was decided, with an explanation of the **factual and legal reasons** that led to the conclusions of the court,"[33] *viz.*:

> Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. **The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever**

---

[29] CONSTITUTION, Article VIII, Section 14. Emphasis and italics supplied.

[30] Emphasis supplied.

[31] See *Tan vs. Ramirez*, 640 Phil. 370, 383 (2010).

[32] 398 Phil. 86 (2000).

[33] *Id*. at 105. Emphasis supplied.

for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely *prejudicial* to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. x x x[34]

In this case, a review of the records shows that the RTC had failed to *clearly and distinctly* state the facts and the law on which it based its ruling insofar as Go's civil liability to East Oceanic is concerned. There is absolutely no discussion at all in the assailed Decision as to the RTC's ruling in the collection case, particularly, on how it arrived at its conclusion finding Go liable to pay East Oceanic "the sum of ₱2,814,054.86 plus 6% interest to be computed from the time of the filing of the complaint."[35]

The RTC listed the issues to be resolved in the assailed Decision as follows:

As agreed by the parties in the pre-trial hearing, the issues to be resolved are:

1. Whether or not defendant Theodore Sy is liable to plaintiff for damages as contained in the complaint;
2. Whether or not plaintiff is liable to defendant for damages as contained in his counterclaim;
3. Whether or not plaintiff is guilty of forum shopping because it filed a separate case against defendant Armando Go seeking to recover the same amount that it is seeking to recover from defendant Theodore Sy; and,
4. Whether or not plaintiff is liable to defendant Theodore Sy for the payment of the amount of ₱600,000.00 representing the cash dividend of defendant Theodore Sy as a stockholder of plaintiff.[36]

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[34] *Id*. at 105-106. Emphasis and italics supplied.

[35] *Rollo,* p. 71.

[36] *Id*. at 50.

In its lengthy 42-page Decision, the RTC concluded that Sy "did not observe honesty and good faith and was therefore dishonest and in bad faith in the performance of his duties and is thus liable to plaintiff for damages."[37] It also ruled that: a) East Oceanic is not liable to Sy for damages as stated in his counterclaim;[38] b) East Oceanic is not guilty of forum shopping;[39] and c) East Oceanic is not liable to Sy for the payment of ₱600,000.00 representing the latter's cash dividend as a stockholder.[40]

To be sure, the RTC resolved all the issues that it had enumerated in the assailed Decision. The only problem is that the issues it resolved pertain *exclusively* to the damages case, when it was tasked to decide all the issues in *both* the damages case and the collection case. Simply put, the RTC failed to include in its listing (and to resolve) the issues relating to the collection case which are expressly provided in the Pre-Trial Order,[41] *viz.*:

At the pre-trial conference, the parties agreed on the following:

ISSUES:

x x x x x x x x x

2. Whether or not plaintiff is entitled to its claim against the defendant Armando Go as contained in the complaint in Civil Case No. CEB-18366;

Defendant Armando Go in CEB-18366:

1. Whether or not defendant Armando Go is liable to plaintiff for damages as contained in the complaint;

2. Whether or not plaintiff is entitled to the writ of attachment prayed for;

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[37] *Id*. at 67.

[38] *Id*.

[39] *Id*. at 68.

[40] *Id*. at 69.

[41] Records, pp. 97-100; penned by Presiding Judge Benigno G. Gaviola.

3. Whether or not plaintiff is liable to defendant Armando Go for damages as contained in his counterclaim;[42]

Given these circumstances, we find that **the assailed Decision is void insofar as the collection case is concerned**, as it contained neither an analysis of the evidence of East Oceanic and Go as regards the outstanding balance of the latter's loan obligation, nor a reference to any legal basis in reaching its conclusion as to Go's civil liability to East Oceanic.[43] Clearly, the RTC failed to meet the standard set forth in Section 14, Article VIII of the Constitution, and in so doing, deprived Go of his right to due process "since he was not accorded a fair opportunity to be heard by a fair and responsible magistrate."[44]

It is significant to note that the present case involves an appeal by *certiorari* from the RTC (which rendered the assailed Decision and Order in the exercise of its original jurisdiction) directly to the Supreme Court under Section 1,[45] Rule 45 of the Rules of Court. Since the Court's jurisdiction in this case is *limited* to resolving only *questions of law*, or in particular, the issue on the validity of the assailed RTC Decision and Order insofar as the collection case is concerned, we cannot rule on the amount of Go's liability to East Oceanic.

We thus deem it appropriate to remand the case to the RTC for further proceedings to allow said court to come up with a decision in Civil Case No. CEB-18366 that fully complies with Section 14, Article VIII of the Constitution, taking into

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[42] *Id*. at 97-98.

[43] See *Yao vs. Court of Appeals*, *supra* note 32 at 106.

[44] *Id*. at 105.

[45] SECTION 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the **Regional Trial Court** or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law,** which must be distinctly set forth. x x x (Emphasis supplied)

consideration the evidence on record and its ruling in Civil Case No. CEB-21918.

WHEREFORE, we **GRANT** the Petition for Review on *Certiorari*. The Decision dated July 16, 2012 and the Order dated April 8, 2013 of the Regional Trial Court, Branch 23, Cebu City, insofar as Civil Case No. CEB- 18366 is concerned, are **REVERSED** and **SET ASIDE**. The records are hereby **REMANDED** to said Regional Trial Court for further proceedings and for the rendition of judgment in accordance with the mandate of Section 14, Article VIII of the Constitution.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 208835. January 19, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL BEJIM *y* ROMERO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCY ON INCONSEQUENTIAL MATTER DOES NOT AFFECT THE CREDIBILITY OF THE WITNESS' DECLARATION; TESTIMONY OF THE VICTIM MUST BE CONSIDERED IN ITS ENTIRETY.—** The inconsistency pointed out by appellant as to whether "AAA" was alone or with "BBB" during the alleged incident on the first week of October 2001 refers merely to inconsequential matter that will not affect the determination of whether appellant

is innocent of the crime charged or not. "[D]iscrepancies referring only to minor details and not to the central fact of the crime do not affect the veracity or detract from the credibility of a witness' declaration x x x." Respecting the alleged inconsistency on whether appellant's penis touched "AAA's" vagina or not, the same has been clarified by "AAA" herself. "AAA" stated that appellant's penis indeed brushed her vagina. As held in *Dizon v. People*, "[i]n rape cases, the testimony of [the] complainant must be considered and calibrated in its entirety, and not in its truncated portion or isolated passages thereof. The true meaning of answers to questions propounded to a witness is to be ascertained with due consideration of all the questions and answers given thereto. The whole impression or effect of what has been said or done must be considered, and not individual words or phrases alone. Facts imperfectly stated in answer to a question may be supplied or clarified by one's answer to other questions."

2. **ID.; ID.; ID.; NEITHER THE FAILURE OF THE VICTIM TO SHOUT FOR HELP NOR THE DELAY IN REPORTING THE INCIDENT TAINTED THE VICTIM'S CREDIBILITY.—** The failure of the victims to shout for help or escape during the incidents does not undermine their credibility. It is not also fatal to the prosecution's case. "[N]o standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress, and rape victims are no different from them." Neither the delay in reporting the incidents to the proper authorities tainted the victims' credibility. For sure, there was no prompt revelation of what befell the victims. But "long silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation." "A rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained." In the present case, appellant threatened the victims that he would kill them and their families if they would tell anyone of what he did to them. To our mind, this is a reasonable explanation for the delay.

3. **CRIMINAL LAW; RAPE; HOW COMMITTED; TO PRODUCE A CONVICTION, THERE MUST BE PROOF THAT THE PENIS TOUCHED THE *LABIAS* OF THE**

VICTIM OR SLID INTO HER ORGAN.— Rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation or when she is under 12 years of age or is demented. Where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Carnal knowledge is "the act of a man having sexual intercourse or sexual bodily connections with a woman." There must be proof that his penis touched the *labias* of the victims or slid into their female organs and not merely stroked the external surface thereof, to produce a conviction of rape by sexual intercourse.

4. **ID.; ID.; REVISED PENAL CODE (RPC) IN RELATION TO REPUBLIC ACT (RA) NO. 7610; WHEN THERE WAS NEITHER CLEAR SHOWING NOR DIRECT PROOF OF PENILE PENETRATION OR THAT ACCUSED'S PENIS MADE CONTACT WITH THE *LABIAS* OF THE VICTIMS, THE COURT CANNOT SUSTAIN ACCUSED'S CONVICTION FOR THE CRIME OF RAPE; BUT HE CAN BE CONVICTED OF ACTS OF LASCIVIOUSNESS APPLYING THE VARIANCE DOCTRINE.—** x x x The prosecution's evidence lacks definite details regarding penile penetration. On the contrary, "AAA" and "BBB" stated that appellant merely "brushed or rubbed" his penis on their respective private organs. While "BBB" testified that appellant tried to insert his penis into her vagina, she nevertheless failed to state for the record that there was the slightest penetration into it. What is clear on record is that appellant merely brushed it. x x x Given the foregoing and since there is neither clear showing nor direct proof of penile penetration or that appellant's penis made contact with the *labias* of the victims, which is an essential element of the crime of rape, we cannot sustain appellant's conviction for the crime of rape in Criminal Case Nos. 07-CR-6765; 07-CR-6766; 07-CR-6768; 07-CR-6769 and 07-CR-6770. However, appellant can be convicted of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5 of Republic Act (RA) No. 7610, which was the offense proved though he was charged with rape through sexual intercourse in relation to RA 7610, applying the variance doctrine under Section 4 in relation to Section 5 of Rule 120 of the Revised Rules of Criminal Procedure. The crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section

5 of RA 7610, which was the offense proved is included in rape, the offense charged.

5. **ID.; ID.; ID.; ELEMENTS OF SEXUAL ABUSE UNDER RA 7610 AND ACTS OF LASCIVIOUSNESS UNDER THE RPC, SUFFICIENTLY ESTABLISHED IN CASE AT BAR.—** The essential elements of sexual abuse under Section 5(b) of RA 7610 are as follows: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (3) The child, whether male or female, is below 18 years of age. On the other hand, the elements of Acts of Lasciviousness under Article 336 of the RPC are as follows: (1) That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a) Through force, threat or intimidation; b) Where the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (3) That the offended party is another person of either sex. All the elements of acts of lasciviousness under Article 336 of the RPC and sexual abuse under Section 5(b) of RA 7610 were sufficiently established in the afore-numbered cases. x x x

6. **ID.; ID.; ID.; PENALTY FOR ACTS OF LASCIVIOUSNESS UNDER THE RPC IN RELATION TO RA 7610; CIVIL LIABILITY.—** x x x Appellant Noel Bejim *y* Romero is found **GUILTY** of: 1. Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 of Republic Act No. 7610 in Criminal Case Nos. 07-CR-6765, 07-CR-6766, 07-CR-6767, 07-CR-6769 and 07-CR-6770 and sentenced in each case to an indeterminate prison term of thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal* minimum, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* medium, as maximum. In addition, appellant is ordered to pay the victims the amounts of Php20,000.00 as civil indemnity, Php15,000.00 as moral damages, Php15,000.00 as exemplary damages, and Php15,000.00 as fine, for each count of acts of lasciviousness.

7. **ID.; STATUTORY RAPE; PROOF THAT THERE WAS PARTIAL PENETRATION OF THE PENIS IS SUFFICIENT FOR CONVICTION.—** x x x [T]he Court is convinced that in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, there was a slight penetration on "CCC's" genitalia. "CCC" positively testified that appellant's penis indeed touched her vagina. That appellant's penis was not inserted enough only indicates that he was able to penetrate her even partially. Anyway, complete penetration is not required to consummate the crime of rape. "Full penile penetration is not a consummating ingredient in the crime of rape." Thus, from the testimonial account of "CCC," the Court could reasonably conclude that there was indeed carnal knowledge by appellant of the victim "CCC." We therefore sustain the CA in finding appellant guilty of statutory rape in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, the only elements of which are "(1) that the offender had carnal knowledge of a woman; and (2) that such woman is under 12 years of age or is demented."

8. **ID.; ID.; PENALTY FOR STATUTORY RAPE UNDER THE RPC IN RELATION TO RA 7610; CIVIL LIABILITY.—** In Criminal Case Nos. 07-CR-6768 and 07-CR-6771, the sentence of *reclusion perpetua* imposed upon appellant by the CA for the crime of statutory rape is in accordance with Article 266-B of the RPC, as amended, in relation to Section 5(b), Article III of RA 7610. Likewise proper are the awards of civil indemnity in the amount of Php75,000.00 and moral damages in the amount of Php75,000.00 for each count of rape. The award of exemplary damages in the amount of Php30,000.00 is increased to Php75,000.00 for each case.

APPEARANCES OF COUNSEL

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

DECISION

DEL CASTILLO, *J.*:

This is an appeal from the September 25, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05010 affirming with modification the December 9, 2010 Consolidated Judgment[2] of the Regional Trial Court (RTC), Branch 9, La Trinidad, Benguet, finding appellant Noel Bejim *y* Romero guilty of seven counts of rape.

Factual Antecedents

On February 19, 2007, appellant was charged before the RTC of La Trinidad, Benguet, with seven counts of statutory rape under seven separate Informations, *viz.*:

Criminal Case No. 07-CR-6765

That sometime in the first week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "AAA,"[3] a minor being six (6) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

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[1] CA *rollo*, pp. 148-185; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Edwin D. Sorongon.

[2] Records (Criminal Case No. 07-CR-6765), pp. 205-221; penned by Judge Francis A. Buliyat, Sr.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 538-539.

CONTRARY TO LAW.[4]

Criminal Case No. 07-CR-6766

That sometime in the second week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "AAA," a minor being six (6) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.[5]

Criminal Case No. 07-CR-6767

That sometime in the month of September, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "BBB," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.[6]

Criminal Case No. 07-CR-6768

That sometime in the month of September, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and ten (10) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.[7]

Criminal Case No. 07-CR-6769

That sometime in the second week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable

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[4] Records (Criminal Case No. 07-CR-6765), p. 1.

[5] Records (Criminal Case No. 07-CR-6766), p. 1.

[6] Records (Criminal Case No. 07-CR-6767), p. 1.

[7] Records (Criminal Case No. 07-CR-6768), p. 1.

Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.[8]

Criminal Case No. 07-CR-6770

That sometime in the last week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.[9]

Criminal Case No. 07-CR-6771

That sometime in the first week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.[10]

On May 8, 2007, appellant was arraigned in all the seven Informations and pleaded not guilty. The cases were consolidated and tried jointly.

Criminal Case No. 07-CR-6765

"AAA" first met appellant who was the helper of her cousin "CCC's" father at "CCC's" house when she went there to play. In the first week of October 2001 while at "CCC's" house, appellant made "AAA" lie on a sofa. He undressed her, applied

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[8] Records (Criminal Case No. 07-CR-6769), p. 1.

[9] Records (Criminal Case No. 07-CR-6770), p. 1.

[10] Records (Criminal Case No. 07-CR-6771), p. 1.

cooking oil on her vagina and on his penis, and then rubbed his penis against her vagina for some time. He then pulled "CCC" to the sofa and again placed cooking oil on his penis and on "CCC's" vagina. "AAA" saw this because she was just a meter away from them. Appellant warned "AAA" and "CCC" not to tell anyone of what transpired otherwise he would kill them and their families.

<u>Criminal Case No. 07-CR-6766</u>

Sometime in the second or third week of October 2001, while "AAA" and "CCC" were playing at the latter's house, appellant again pulled them to a sofa. When appellant went to the kitchen, "AAA" and "CCC" tried to run away but appellant caught them at the living room. He forced "AAA" to lie on the sofa, pulled down her pants and panties to her ankle, and applied cooking oil on his penis and her vagina. Appellant rubbed his penis on "AAA's vagina. She felt pain. Thereafter, appellant likewise pulled "CCC" to the sofa, brought down the latter's pants, and rubbed his penis against her vagina. After threatening them, appellant wore his pants and went out of the house.

<u>Criminal Case No. 07-CR-6767</u>

"BBB" is also a cousin of "CCC" and "AAA". In the first week of September 2001, while she and "CCC" were inside the latter's house, appellant suddenly pulled them to the sofa in the living room. Appellant laid "CCC" on the sofa, applied cooking oil on her vagina and his penis, and tried to insert his penis into "CCC's" vagina. Thereafter, appellant turned to "BBB." He made her lie on the sofa, lifted her skirt, pulled down her panties, his pants and brief, and tried to insert his penis into her vagina. Unsuccessful, he just brushed or rubbed his penis against her vagina. "BBB" felt pain in her vagina. Appellant immediately stood up, fixed his clothes and ran away upon seeing the arrival of "BBB's" cousins, "DDD" and "EEE." "BBB" told her cousins that they were sexually molested by appellant but warned them not to tell anybody because if they do appellant would kill them.

Criminal Case No. 07-CR-6768

"CCC" knew appellant because he was the helper of her father and lived with them in their house. In the first week of September 2001, while she and her cousin "BBB" were playing inside their house, appellant closed all the windows and doors, made her lie on the sofa, lowered her pants and underwear down to her ankle, and put cooking oil on his penis and on her vagina. "BBB" saw appellant's penis penetrating "CCC's" vagina. When appellant saw "CCC's" two sisters "DDD" and "EEE" arrive, he went out of the house.

Criminal Case No. 07-CR-6769

In the second week of October 2001, appellant laid "CCC" on the kitchen table, removed her pants, put cooking oil on his penis and her vagina and tried to penetrate it but was unsuccessful.

Criminal Case No. 07-CR-6770

In the last week of October 2001, while "CCC" was sleeping in her sister's bedroom, appellant came and removed her clothes, mounted her and tried to insert his penis but he failed, albeit she felt his big penis. "CCC" did not tell her father of what happened because of appellant's threat.

Criminal Case No. 07-CR-6771

Sometime in the first week of October 2001 and while inside "CCC's" house, appellant laid "CCC" on the sofa, put cooking oil on her vagina and his penis. He tried to insert his penis into her vagina but failed. Thereafter, appellant went outside. "CCC" did not tell anyone about the incident because of appellant's threat to kill her and her family.

"AAA," "BBB" and "CCC" were physically examined by Dra. Bernadette Valdez (Dra. Valdez). The result of her examination which was reduced into writing[11] shows no evident injury at the time of her examination though her medical evaluation does not exclude possible sexual abuse.

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[11] Exhibit "A", records (Criminal Case No. 07-CR-6765), p. 5.

Appellant denied the accusations against him claiming that he was not in the house of "CCC" when the alleged incidents happened in 2001.

Ruling of the Regional Trial Court

After trial, the RTC rendered on December 9, 2010 its Consolidated Judgment finding appellant guilty beyond reasonable doubt of seven counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count. He was also ordered to pay the amount of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages for each crime.

Ruling of the Court of Appeals

The CA, in its Decision dated September 25, 2012, affirmed with modifications the RTC Consolidated Judgment in this wise:

> ACCORDINGLY, the Consolidated Judgment dated December 9, 2010 is AFFIRMED with MODIFICATION, as follows:
>
> 1. pronouncing appellant Noel Bejim y Romero guilty of qualified rape in Criminal Case Nos. 07-CR-67-65 and 07-CR-67-66 and liable for Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages for each count;
>
> 2. pronouncing appellant Noel Bejim y Romero guilty of statutory rape in Criminal Case No. 07-CR-67-67 and liable for Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages; and,
>
> 3. pronouncing appellant Noel Bejim y Romero guilty of statutory rape in Criminal Case Nos. 07-[CR]-67-68, 07-[CR]-67-69, 07-[CR]-67-70, and 07-[CR]-67-71 and liable for Php75,000.00 as civil indemnity, Php75,000.00 as moral [damages] and Php30,000.00 as exemplary damages for each count.
>
> In Criminal Case Nos. 07-CR-67-65 and 07-CR-67-66 appellant shall not be qualified for parole.

SO ORDERED.[12]

Appellant interposed before this Court the present recourse adopting the same argument he raised in his brief before the CA, *viz.*:

The court a quo gravely erred in finding the accused-appellant guilty of the crime of rape despite the prosecution's failure to prove his guilt beyond reasonable doubt.[13]

In support of his argument, appellant impugns the victims' credibilities by capitalizing on the alleged inconsistencies in their open court testimonies; their failure to shout for help during the alleged incidents; the belated filing of their complaints; and, the medical finding of no evident injury during their examination.

Our Ruling

The appeal lacks merit.

The inconsistency pointed out by appellant as to whether "AAA" was alone or with "BBB" during the alleged incident on the first week of October 2001 refers merely to inconsequential matter that will not affect the determination of whether appellant is innocent of the crime charged or not. "[D]iscrepancies referring only to minor details and not to the central fact of the crime do not affect the veracity or detract from the credibility of a witness' declaration x x x."[14] Respecting the alleged inconsistency on whether appellant's penis touched "AAA's" vagina or not, the same has been clarified by "AAA" herself.[15] "AAA" stated that appellant's penis indeed brushed her vagina. As held in *Dizon v. People*,[16] "[i]n rape cases, the testimony of [the]

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[12] CA *rollo*, pp. 184-185.

[13] *Id.* at 86.

[14] *People v. Soriano, Sr.*, 570 Phil. 115, 120 (2008).

[15] See TSN, September 10, 2007, p. 9.

[16] 616 Phil. 498, 513 (2009).

complainant must be considered and calibrated in its entirety, and not in its truncated portion or isolated passages thereof. The true meaning of answers to questions propounded to a witness is to be ascertained with due consideration of all the questions and answers given thereto. The whole impression or effect of what has been said or done must be considered, and not individual words or phrases alone. Facts imperfectly stated in answer to a question may be supplied or clarified by one's answer to other questions."

The failure of the victims to shout for help or escape during the incidents does not undermine their credibility. It is not also fatal to the prosecution's case. "[N]o standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress, and rape victims are no different from them."[17]

Neither the delay in reporting the incidents to the proper authorities tainted the victims' credibility. For sure, there was no prompt revelation of what befell the victims. But "long silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation."[18] "A rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained."[19] In the present case, appellant threatened the victims that he would kill them and their families if they would tell anyone of what he did to them. To our mind, this is a reasonable explanation for the delay.

Regarding the findings of Dra. Valdez that her physical examination on the victims shows no evident injury, this Court had already ruled that "a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the

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[17] *People v. Crespo*, 586 Phil. 542, 566 (2008).

[18] *People v. Ortoa*, 599 Phil. 232, 245 (2009).

[19] *People v. Domingo*, 579 Phil. 254, 264 (2008).

victim's testimony alone, if credible, is sufficient to convict the [accused] of the crime."[20]

Appellant denies being at the house of "CCC" during the incidents. However, he failed to provide an account of his whereabouts such that it was physically impossible for him to have committed the crimes. Appellant's unsubstantiated denial must fail in light of the categorical testimonies of the victims that it was he who molested them.

Notably, appellant's belabored attempt to reverse his conviction is essentially anchored on credibility. The general rule is that "this Court will not disturb the findings of the trial court as to the credibility of witnesses, considering that it is in a better position to observe their candor and behavior on the witness stand."[21] However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court.[22] Consistent with the principle that an appeal in a criminal action opens the whole case for review, we shall now determine whether the evidence of the prosecution is sufficient to sustain the conviction of the appellant for qualified rape and statutory rape.

Rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation or when she is under 12 years of age or is demented. Where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Carnal knowledge is "the act of a man having sexual intercourse or sexual bodily connections with a woman."[23] There must be proof that his penis touched the *labias* of the victims or slid into their female organs and not merely

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[20] *People v. Banig*, 693 Phil. 303, 317 (2012).

[21] *People v. Tormis*, 595 Phil. 589, 602 (2008).

[22] *Dacles v. People*, 572 Phil. 412, 422 (2008).

[23] See *People v. Bon*, 444 Phil. 571, 579 (2003).

stroked the external surface thereof, to produce a conviction of rape by sexual intercourse.[24]

"AAA" recounted the details on how the alleged rape was committed as follows:

The alleged rape committed on the first week of October 2001 (Criminal Case No. 07-CR-6765) –

x x x x x x x x x

Q: And what did he do after he made you lie down on the sofa?
A: He went to get cooking oil and poured it on his penis and he undressed me and he also poured cooking oil on my vagina.

Q: After he placed oil [on] his penis and placed oil [on] your vagina, what did he do next?
A: He rubbed his penis on my vagina.[25]

The rape on the second week of October 2001 (Criminal Case No. 07-CR-6766) –

x x x x x x x x x

Q: And after pulling down your pants and panty, what did he do next?
A: Sir, he again placed cooking oil on his penis and [on] my vagina and he again rubbed his penis into my vagina.

x x x x x x x x x

Q: And did you feel anything when he rubbed his penis [on] your vagina?
A: Yes, sir, it was quite painful.[26]

Regarding the rape allegedly committed during the first week of September 2001 (Criminal Case No. 07-CR-6767) "BBB" narrated her horrifying experience as follows:

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[24] *People v. Brioso*, 600 Phil. 530, 541 (2009).

[25] TSN, September 24, 2007, p. 6.

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

Q: So after Noel Bejim sat beside you, did Noel Bejim do anything else?
A: Yes, sir.

Q: What did he do?
A: He pulled me and let me lie down on the sofa.

Q: Was he able to make you lie down on the sofa?
A: Yes, sir.

Q: And when he was able to lay you down on the sofa, what did he do next, if any?
A: He lifted my skirt and . . .

Q: After he lifted your skirt, what did he do next, if any?
A: He brought down my panty and he pulled down his clothes.

Q: What clothes did he bring down?
A: Sir, his pants sir and his brief.

Q: And after he brought down his pants and his brief, what did Noel Bejim do next?
A: He tried to insert his penis [into] my vagina.

Q: Did you feel his penis [inside] your vagina?
A: Yes, sir.

Q: And was he able to insert his penis into your vagina?
A: Sir, he just brushed it.

x x x x x x x x x

Q: And what did you feel, if any, when he was brushing his penis [on] your vagina?
A: It was painful, sir.

x x x x x x x x x

Q: So after rubbing his penis into your vagina, what did he do next?
A: When he saw my cousins, he immediately got up, stood up.

x x x x x x x x x

Q: And when he stood up, what did he do next?
A: He fixed his pants and his brief and he ran away.[27]

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[27] TSN, September 17, 2007, pp. 18-19.

The foregoing revelations of "AAA" and "BBB" show that the evidence adduced by the prosecution did not conclusively establish the element of carnal knowledge. In the aforementioned cases, there is no categorical proof of entrance or introduction of appellant's male organ into the *labia* of the *pudendum* of "AAA." Neither is there evidence to show that appellant made an attempt to penetrate "AAA's" vagina. The prosecution's evidence lacks definite details regarding penile penetration. On the contrary, "AAA" and "BBB" stated that appellant merely "brushed or rubbed" his penis on their respective private organs. While "BBB" testified that appellant tried to insert his penis into her vagina, she nevertheless failed to state for the record that there was the slightest penetration into it. What is clear on record is that appellant merely brushed it.

The Court held in *People v. Butiong*[28] that "the *labia majora* must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the *mons pubis* of the *pudendum* is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either the *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness." While "the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge,"[29] "the act of touching should be understood here as inherently part of the entry of the penis into the *labias* of the female organ and not mere touching alone of the *mons pubis* or the *pudendum*."[30] Indeed, the grazing of the victims' private organ caused pain, but it cannot be presumed that carnal knowledge indeed took place by reason

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[28] 675 Phil. 621, 630-631 (2011), citing *People v. Campuhan*, 385 Phil. 912, 921-922 (2000).

[29] *People v. Campuhan*, *supra* at 920.

[30] *People v. Trayco*, 612 Phil. 1140, 1158-1159 (2009) citing *People v. Bali-Balita*, 394 Phil. 790, 809 (2000).

thereof. As the Court held in *People v. Brioso*,[31] "the Court is loath to convict an accused for rape solely on the basis of the pain experienced by the victim as a result of efforts to insert the penis into the vagina." Significantly, from their own declaration following the public prosecutor's questioning, they suffered pains not because of appellant's attempt to insert his penis but because of the grazing of their vagina.

Given the foregoing and since there is neither clear showing nor direct proof of penile penetration or that appellant's penis made contact with the *labias* of the victims, which is an essential element of the crime of rape, we cannot sustain appellant's conviction for the crime of rape in Criminal Case Nos. 07-CR-6765; 07-CR-6766; 07-CR-6768; 07-CR-6769 and 07-CR-6770.

However, appellant can be convicted of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5 of Republic Act (RA) No. 7610,[32] which was the offense proved though he was charged with rape through sexual intercourse in relation to RA 7610, applying the variance doctrine under Section 4 in relation to Section 5 of Rule 120 of the Revised Rules of Criminal Procedure.[33] The crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section

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[31] *Supra* note 24.

[32] See *People v. Caoili*, G.R. Nos. 196342 & 196848, August 8, 2017.

[33] REVISED RULES OF CRIMINAL PROCEDURE, Rule 120, Sections 4 and 5.

Section 4. *Judgment in case of variance between allegation and proof*. — When there is variance between the offense charge in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Section 5. *When an offense includes or is included in another*. – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

5 of RA 7610, which was the offense proved is included in rape, the offense charged.[34]

The essential elements of sexual abuse under Section 5(b) of RA 7610 are as follows:

(1) The accused commits the act of sexual intercourse or lascivious conduct;

(2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and,

(3) The child, whether male or female, is below 18 years of age[35]

On the other hand, the elements of Acts of Lasciviousness under Article 336 of the RPC are as follows:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

a) Through force, threat or intimidation;

b) Where the offended party is deprived of reason or otherwise unconscious;

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

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and

(3) That the offended party is another person of either sex.[36]

All the elements of acts of lasciviousness under Article 336 of the RPC and sexual abuse under Section 5(b) of RA 7610 were sufficiently established in the afore-numbered cases. Specifically, appellant committed lasciviousness when he poured

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

[35] *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

[36] *Id.*

cooking oil on the victims' private organ and rubbed them with his penis. The victims were under 12 years of age as established by their respective birth certificate and therefore way below 18 years of age. They were subjected to "other sexual abuse" as required under Section 5(b) of RA 7610. "A child is deemed subjected to 'other sexual abuse' when he or she indulges in lascivious conduct under the coercion or influence of any adult."[37] There is coercion or influence when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.[38] In the present cases, the victims were sexually abused as they were coerced, influenced, threatened and intimidated by appellant who was the helper of "CCC's" father.

Based on the evidence established, appellant can thus be held criminally liable of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610.[39]

On the alleged rape committed during the second week of October 2001 (Criminal Case No. 07-CR-6769) "CCC declared:

Q: And after your pants were removed, what did Noel Bejim do next?
A: He again raped me, sir.

Q: What did he do?
A: He again tried to put his penis into my vagina.

Q: Did you feel his penis into your vagina?
A: Yes, your Honor.

Q: And what happened when he was trying to insert his penis into your vagina?
A: Sir, it failed.

Q: What do you mean it failed?
A: It did not enter, it cannot enter. He was hard up inserting his penis.

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[37] *Navarrete v. People*, 542 Phil. 496, 511 (2007).

[38] *Caballo v. People*, 710 Phil. 792, 805 (2013).

[39] See *People v. Caoili*, *supra* note 32.

Q: Why?
A: Because his penis is big.[40]

As to the rape allegedly committed in the last week of October 2001 (Criminal Case No. 07-CR-6770) "CCC's" pertinent testimony is as follows:

Q: And after he removed your clothes, what did he do next?
A: He again tried to insert it [into] my vagina, sir.

x x x x x x x x x

Q: Did you feel his penis in your vagina?
A: Yes, your Honor.

Q: What did you feel?
A: He was trying to insert his penis into my vagina, your Honor and I felt pain.

Q: What caused that pain?
A: His penis is big.[41]

We find no compelling reason why we should not apply our earlier ratiocination in Criminal Case Nos. 07-CR-6765, 07-CR-6766 and 07-CR-6767 to the incidents committed on "CCC" sometime in October 2001. In Criminal Case No. 07-CR-6769, "CCC" categorically testified that appellant failed to insert his penis into her vagina because it is big. Similarly, in Criminal Case No. 07-CR-6770, "CCC" revealed that she felt pain when appellant was trying to insert his penis into her vagina because it is big. Significantly, however, we could not discern from her testimony that there was penile penetration even only in the slightest degree. To conclude that there was penile penetration simply because they felt pain when appellant tried to insert his penis into her vagina is engaging in the realm of speculation. However, the medical examination on "CCC," though not indispensable in a prosecution for rape, shows no evident injury. At this juncture, it must be stressed that in a criminal prosecution, each and every element of the crime must be proved beyond

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[40] TSN, September 10, 2007, pp. 14-15.

[41] *Id.* at 16.

reasonable doubt. Judgment must never rest on speculation or suspicion, no matter how strong it is. "Courts cannot function to supply missing links in the prosecution evidence which otherwise insufficiently proves carnal knowledge."[42]

Relative to the rape which allegedly occurred in the first week of September 2001 (Criminal Case No. 07-CR-6768) "CCC" related her ordeal as follows:

Q: In the year 2001 while you were in Grade Two, do you recall if Noel Bejim did anything to you?
A: Yes, your Honor.

Q: What did he do to you?
A: He raped me, sir.

x x x x x x x x x

Q: So you said you were raped by Noel Bejim, how did he rape you, what did he do to you that you claim that he raped you?

x x x x x x x x x

A: Sir, he [got] cooking oil, your Honor.

Q: After he got cooking oil, what did he do with the cooking oil, if you noticed?
A: He placed the cooking oil [on] my vagina and [on] his penis.

x x x x x x x x x

Q: So after he removed x x x your pants and panty [and] while you were lying down on the sofa, what did Noel Bejim do next?
A: He tried to put his penis [into] my vagina.

Q: How did he try?
A: He held his penis.

Q: And what did he do with his penis?
A: He inserted it [into] my vagina.

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[42] *People v. Egan,* 432 Phil. 74, 90 (2002) citing *People v. Tayag*, 385 Phil. 1150 (2000).

Q: Did his penis touch your vagina?
A: No, your Honor.

Q: It did not touch your vagina?
A: His penis touched my vagina.

Q: Now, you said he was trying to insert his penis into your vagina, what motion did he do, if any?
A: He was hard up.

Q: Did you feel his penis?
A: Yes, your Honor.

Q: You felt it in your vagina?
A: Yes, your Honor.[43]

"CCC" continued further in narrating the incident of rape allegedly committed in the first week of October 2001 (Criminal Case No. 07-CR-6771) as follows:

Q: And after putting cooking oil [on] your vagina and [on] his penis, what did he do next?
A: He tried again to put his penis [into] my vagina but he failed again.

Q: Did you feel his penis into your vagina?
A: Yes, sir.

Q: Now, why did you say he failed?
A: It was not inserted enough.

Q: Do you know of any reason why it was not inserted enough into your vagina?
A: Because his penis is big.[44]

Based on the foregoing narration, the Court is convinced that in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, there was a slight penetration on "CCC's" genitalia. "CCC" positively testified that appellant's penis indeed touched her vagina. That appellant's penis was not inserted enough only indicates that he was able to penetrate her even partially. Anyway, complete

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[43] TSN, September 10, 2007, pp. 7-9.

[44] *Id.* at 13.

penetration is not required to consummate the crime of rape. "Full penile penetration is not a consummating ingredient in the crime of rape."[45] Thus, from the testimonial account of "CCC," the Court could reasonably conclude that there was indeed carnal knowledge by appellant of the victim "CCC." We therefore sustain the CA in finding appellant guilty of statutory rape in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, the only elements of which are "(1) that the offender had carnal knowledge of a woman; and (2) that such woman is under 12 years of age or is demented."[46]

With the guilt beyond reasonable doubt of appellant of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610 in Criminal Case Nos. 07-CR-6765, 07-CR-6766, 07-CR-6767, 07-CR-6769 and 07-CR-6770 and statutory rape in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, having been proven, we shall now determine the appropriate penalties imposable for each offense.

Under Article 336 of the RPC, in relation to Section 5(b), Article III of RA 7610,[47] the penalty for acts of lasciviousness when the victim is under 12 years of age is *reclusion temporal* in its medium period which has a range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree *i.e., reclusion temporal* in its minimum period or from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum of the indeterminate penalty shall be taken from the proper penalty that could be imposed under the RPC for acts of lasciviousness which, there being no aggravating or mitigating circumstance in these cases, is the medium period of *reclusion temporal* medium which ranges from fifteen (15) years, six (6)

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[45] *People v. Barberos*, 623 Phil. 1008, 1025 (2009).

[46] *People v. Pamintuan*, 710 Phil. 414, 422 (2013).

[47] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes.

months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.

In Criminal Case Nos. 07-CR-6768 and 07-CR-6771, the sentence of *reclusion perpetua* imposed upon appellant by the CA for the crime of statutory rape is in accordance with Article 266-B of the RPC, as amended, in relation to Section 5(b), Article III of RA 7610. Likewise proper are the awards of civil indemnity in the amount of Php75,000.00 and moral damages in the amount of Php75,000.00 for each count of rape. The award of exemplary damages in the amount of Php30,000.00 is increased to Php75,000.00 for each case.

WHEREFORE, the appealed September 25, 2012 Decision of the Court of Appeals is **AFFIRMED with MODIFICATIONS**. Appellant Noel Bejim *y* Romero is found **GUILTY** of:

1. Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 of Republic Act No. 7610 in Criminal Case Nos. 07-CR-6765, 07-CR-6766, 07-CR-6767, 07-CR-6769 and 07-CR-6770 and sentenced in each case to an indeterminate prison term of thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal* minimum, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* medium, as maximum. In addition, appellant is ordered to pay the victims the amounts of Php20,000.00 as civil indemnity, Php15,000.00 as moral damages, Php15,000.00 as exemplary damages, and Php15,000.00 as fine, for each count of acts of lasciviousness.

2. Statutory Rape in Criminal Case Nos. 07-CR-6768 and 07-CR-6771 and sentenced to suffer the penalty of *reclusion perpetua* for each count and ordered to pay the offended party the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php75,000.00 as exemplary damages for each count of rape.

Appellant is **ORDERED** to pay the offended parties interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 209582. January 19, 2018]

TEEKAY SHIPPING PHILIPPINES, INC., and/or TEEKAY SHIPPING LTD., and/or ALEX VERCHEZ, *petitioners, vs.* **ROBERTO M. RAMOGA, JR.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; SEAFARER; PERMANENT TOTAL DISABILITY BENEFITS; GUIDELINES THAT SHALL GOVERN THE SEAFARER'S CLAIMS FOR PERMANENT TOTAL DISABILITY BENEFITS, REITERATED.—** [T]he following guidelines shall govern the seafarer's claims for permanent total disability benefits: 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

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* Per Raffle dated October 18, 2017 voce Justice Francis H. Jardeleza who recused due to prior particiption as Solicitor General.

the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

2. **ID.; ID.; ID.; WHEN THERE IS SUFFICIENT JUSTIFICATION TO EXTEND THE 120-DAY PERIOD, IT WAS PREMATURE FOR THE RESPONDENT TO FILE A CASE FOR PERMANENT TOTAL DISABILITY BENEFITS BEFORE THE LAPSE OF THE EXTENDED PERIOD OF 240 DAYS.—** Examination of the records lead Us to conclude that there is a sufficient justification for extending the period. In a Report dated January 11, 2011, the company-designated physician advised respondent to continue his rehabilitation and medications and to come back on February 1, 2011 for his repeat x-ray of the left foot and for re-evaluation. The company-designated physician has determined that respondent's condition needed further medical treatment and evaluation. Thus, it was premature for the respondent to file a case for permanent total disability benefits on March 4, 2011 because at that time, respondent is not yet entitled to such benefits. The company-designated physician has until June 1, 2011 or the 240th day from his repatriation to make a declaration as to respondent's fitness to work.

3. **ID.; ID.; ID.; ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN PREVAILS OVER THAT OF THE SEAFARER'S OWN DOCTOR.—** Neither is the declaration of respondent's own doctor that respondent is unfit to return to sea duties conclusive as to respondent's condition. It is well-settled that the assessment of the company-designated physician prevails over that of the seafarer's own doctor. "[T]he assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records." With the declaration of the company-designated physician that respondent is already fit to return to work, the latter is not entitled to his permanent total disability benefits.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Tolentino & Bautista Law Offices for respondent.

DECISION

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Teekay Shipping Philippines, Inc., and/or Teekay Shipping Ltd., and/or Alex Verchez (petitioners), assailing the Decision[2] dated May 30, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 125706, which affirmed the Decision[3] dated March 30, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 10-000915-11, finding petitioners liable to pay Roberto M. Ramoga, Jr. (respondent), his permanent total disability benefits.

The pertinent facts of the case as found by the CA are as follows:

On February 18, 2010, [respondent] entered into a contract of overseas employment with [petitioner] Teekay Shipping Ltd. represented by its local manning agency, Teekay Shipping Philippines Inc., to work on board the vessel M/T "SEBAROK SPIRIT" under the following terms and conditions approved by the Philippine Overseas Employment Administration (POEA):

Duration of Contract:	EIGHT (8) MONTHS
Position:	Deck Trainee
Basic Monthly Salary:	$264.21
Hours of Work:	44 Hours/Week
Overtime:	$79.26 excess of 85 hours $2.00

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[1] *Rollo*, pp. 3-30.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio concurring; *id*. at 34-48.

[3] Penned by Presiding Commissioner Joseph Gerard E. Mabilog, with Commissioner Isabel G. Panganiban-Ortiguerra, concurring and Commissioner Nieves E. Vivar-De Castro dissenting; *id.* at 80-86.

Vacation Leave with Pay:	15 days/months
Point of Hire:	Makati, Philippines

After the mandatory pre-employment medical examination (PEME), [respondent] was declared fit for sea duty. He joined the vessel on April 9, 2010. Barely six (6) months after, he slipped and twisted his left ankle while climbing the stairs on board the said vessel. He underwent an x-ray examination at the Bangkok Hospital in Pattaya City, Chonburi, Thailand. He was diagnosed to be suffering from a non-displaced fracture base of 2nd and mild displaced fracture base of 3rd metatarsal bone. A surgery was recommended for open reduction and internal fixation of the injured ankle to prevent its further displacement.

[Respondent] was repatriated to the Philippines on October 4, 2010. The following day, he was immediately referred for further evaluation and treatment at the Metropolitan Medical Center. He underwent a rehabilitation program under the supervision of Dr. Esther G. Go. On October 9, 2010, he was operated for open reduction with internal fixation with intramedullary pinning of his left 3rd metatarsal bone by the company designated physician, Dr. William Chuasuan, Jr. He was advised to continue using crutches to aid ambulation and was given medications. On April 8, 2011, Dr. Chuasuan, Jr. issued a certification stating that [respondent] was fit to return to work.

Unsatisfied with the company doctor's assessment, [respondent] sought the help of his own doctor, Dr. Rogelio P. Catapang who is an orthopedic and traumatology flight surgeon at Sta. Teresita General Hospital. The said doctor issued a medical report declaring that [respondent] still continues to have pain and discomfort on his left foot and ankle even after his continuous physiotherapy. He likewise cannot ambulate for long distances, unable to tolerate prolonged walking and squat especially if the weight is borne on the left foot. Since the time of his injury, he is unable to work at his previous occupation. Thus, he was declared to be permanently unfit in any capacity to resume his sea duties.

Consequently, [respondent] lodged a complaint for permanent total disability benefits, sickness allowance, medical expenses, damages and attorney's fees in accordance with the terms and conditions of

the Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-going Vessels.[4]

Ruling of the Labor Arbiter

On September 14, 2011, the Labor Arbiter (LA) rendered a Decision[5] in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding [herein petitioners] jointly and solidarily liable to pay [herein respondent] the amount of US$60,000.00 or its peso equivalent at the time of payment, illness allowance in the amount of US$648.27 and ten percent (10%) of the total award as attorney's fees.
>
> SO ORDERED.[6]

Ruling of the NLRC

Upon appeal to the NLRC, the latter in its Decision[7] dated March 30, 2012, affirmed with modification the decision of the LA by deleting the award of sickness allowance, thus:

> WHEREFORE, premises considered, judgment is hereby rendered finding [respondent] not entitled to the award of sickness allowance. The award of sickness allowance in the amount of US$648.27 is hereby ordered DELETED. Accordingly, the decision of the [LA] dated September 14, 2011 is hereby MODIFIED. All other dispositions not herein otherwise modified, STANDS undisturbed.
>
> SO ORDERED.[8]

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[4] *Id*. at 35-36.

[5] Penned by Labor Arbiter Madjayran H. Ajan; *id*. at 257-265.

[6] *Id.* at 265.

[7] *Id*. at 80-86.

[8] *Id*. at 85.

Ruling of the CA

Petitioner then filed a petition for *certiorari* before the CA. The CA however affirmed the ruling of the NLRC in its Decision[9] dated May 30, 2013, thus:

> **IN VIEW OF ALL THE FOREGOING**, the challenged Decision and Resolution of the NLRC are hereby **AFFIRMED**.
>
> **SO ORDERED**.[10]

The motion for reconsideration filed by the petitioners having been denied by the CA in its Resolution[11] dated October 18, 2013, the petitioners filed the instant petition alleging that the CA erred in affirming the findings of the NLRC and the LA that respondent is entitled to his permanent total disability benefits because the latter was unable to resume his work for more than 120 days from his repatriation. Petitioners further alleged that the company-designated physician declared respondent fit to return to work on April 8, 2011 or only 186 days from his repatriation, well within the period allowed by law to make a declaration as to respondent's fitness to return to work.

Ruling of the Court

The petition is granted.

At the outset, it is settled that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court because this Court is not a trier of facts. However, there are exceptions, which are present in this case, when this Court can pass upon and review the factual findings of the CA, such as the following instances:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x;

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[9] *Id*. at 34-48.

[10] *Id.* at 48.

[11] *Id.* at 50-51.

(2) When the inference made is manifestly mistaken, absurd or impossible x x x;
(3) **Where there is a grave abuse of discretion x x x**;
(4) **When the judgment is based on a misapprehension of facts x x x**;
(5) When the findings of fact are conflicting x x x;
(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 x x x;
(7) The findings of the Court of Appeals are contrary to those of the trial court x x x;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x;
(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 x x x; 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 x x x.[12] (Citation omitted and emphasis ours)

The CA in finding that respondent is entitled to permanent total disability benefits held that:

Dr. Chuasuan Jr's medical certification merely stated that private respondent is fit to return to work. WE find that this declaration was not categorical that [respondent] was already fit to work as of the time he issued the same on April 8, 2011. In the absence of such definitive pronouncement, WE rule that [respondent] is permanently disabled since he was not able to resume work for more than 120 days from his repatriation on October 4, 2010. His disability is likewise total for he remains unemployed as a Deck Trainee or in the same kind of work or work of similar nature that he was trained for or accustomed to perform. Permanent disability is 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.[13]

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[12] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 505 (2015).

[13] *Rollo*, p. 45.

Article 198(c)(1) of the Labor Code states that disability which lasts for more than 120 days is deemed total and permanent. While Section 2, Rule X of the Amended Rules on Employees' Compensation provides that:

Sec. 2. Period of Entitlement – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness **it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid**. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Emphasis ours)

In the case of *Elburg Shipmanagement Phils. Inc., et al. v. Quiogue*,[14] this Court harmonized the periods when a disability is deemed permanent and total, thus:

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 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

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[14] 765 Phil. 341 (2015).

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*, 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.[15] (Emphasis ours)

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[15] *Id*. at 361-362.

As it now stands, the mere lapse of 120 days from the seafarer's repatriation without the company-designated physician's declaration of the fitness to work of the seafarer does not entitle the latter to his permanent total disability benefits.[16] As laid down by this Court in *Elburg Shipmanagement Phils. Inc., et al.*,[17] and in *Jebsens Maritime, Inc., Sea Chefs Ltd., and Enrique M. Aboitiz v. Florvin G. Rapiz*,[18] the following guidelines shall govern the seafarer's claims for permanent total disability benefits:

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.

Here, the records reveal that respondent was medically repatriated on October 4, 2010. It is undisputed that the company-designated physician issued a declaration as to respondent's fitness to work on April 8, 2011 or 186 days from his repatriation. Thus, to determine whether respondent is entitled to his permanent total disability benefits it is necessary to examine

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[16] *Tagalog v. Crossworld Marine Services, Inc., et al.*, 761 Phil. 270, 279 (2015).

[17] *Supra* note 14.

[18] G.R. No. 218871, January 11, 2017.

whether the company-designated physician has a sufficient justification to extend the period.

Examination of the records lead Us to conclude that there is a sufficient justification for extending the period. In a Report[19] dated January 11, 2011, the company-designated physician advised respondent to continue his rehabilitation and medications and to come back on February 1, 2011 for his repeat x-ray of the left foot and for re-evaluation. The company-designated physician has determined that respondent's condition needed further medical treatment and evaluation. Thus, it was premature for the respondent to file a case for permanent total disability benefits on March 4, 2011[20] because at that time, respondent is not yet entitled to such benefits. The company-designated physician has until June 1, 2011 or the 240th day from his repatriation to make a declaration as to respondent's fitness to work.

Neither is the declaration of respondent's own doctor that respondent is unfit to return to sea duties conclusive as to respondent's condition. It is well-settled that the assessment of the company-designated physician prevails over that of the seafarer's own doctor. "[T]he assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records."[21]

With the declaration of the company-designated physician that respondent is already fit to return to work, the latter is not entitled to his permanent total disability benefits.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated May 30, 2013 and Resolution

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[19] *Rollo,* p. 129.

[20] *Id.* at 258.

[21] *INC Navigation Co. Philippines, Inc., et al. v. Rosales,* 744 Phil. 774, 789 (2014).

dated October 18, 2013 of the Court of Appeals in CA-G.R. SP No. 125706 are hereby **REVERSED and SET ASIDE**. Accordingly, the complaint filed by respondent Roberto M. Ramoga, Jr. is **DISMISSED** for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 216017. January 19, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NIÑO FLOR *y* MORA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, ESTABLISHED IN CASE AT BAR.—** For an accused to be convicted of illegal sale of dangerous drugs, the prosecution must establish the following elements: "the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment." Time and again the Court has stressed that, "[w]hat is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*." In this case, the prosecution was able to show that the appellant was positively identified by PO1 Coldas as the seller of a sachet containing 0.1 gram of *shabu* and the person who received the ₱400.00 marked money from the police asset who acted as the buyer. PO1 Coldas testified that the asset bought *shabu* from

the appellant during a buy-bust operation. x x x It is clear from the testimony of PO1 Coldas that he had witnessed first-hand the drug transaction between the police asset and the appellant. He was able to positively identify the appellant as the seller of the *shabu* due to the fact that the transaction happened right in front of him at a distance of about one meter. PO1 Coldas was also able to see the object of the transaction, which was 0.1 gram of *shabu*, as well as its consideration. He witnessed the delivery made by the appellant and the payment of the asset for the *shabu*.

2. **ID.; ID.; ID.; FAILURE OF THE POLICE OFFICERS TO TAKE AN INVENTORY OF THE SEIZED *SHABU* IS NOT FATAL AS LONG AS THE UNBROKEN CHAIN OF CUSTODY THEREOF WAS ESTABLISHED AND THE INTEGRITY AND EVIDENTIARY VALUE WAS DULY PRESERVED.—** With regard to the alleged failure of the police officers to comply with the procedure required in seizure of drugs, the records show that the prosecution was able to establish an unbroken chain of custody over the seized drugs – from the seizure and confiscation of the *shabu* up to the delivery of the same to the crime laboratory and presentation in Court. x x x The failure of the police officers to immediately take an inventory of the seized *shabu* is not fatal to the prosecution of the case. It did not render the arrest of the appellant who was caught in *flagrante delicto* illegal nor did the omission render the seized drugs inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, despite the circumstances that prevented the police officers from immediately taking an inventory of the seized drugs, we agree and uphold the findings of the CA that the *shabu* presented in court was duly preserved with its integrity and evidentiary value uncompromised.

APPEARANCES OF COUNSEL

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

DECISION

DEL CASTILLO, *J.*:

This resolves the appeal filed by Niño Flor *y* Mora (appellant) assailing the June 9, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. C.R. H.C. No. 04806 which affirmed the November 9, 2010 Judgment[2] of the Regional Trial Court (RTC) of Iriga City, Branch 34, in Criminal Case No. IR-8282, finding appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On May 24, 2008, an Information was filed charging appellant with illegal sale of dangerous drugs in violation of Sec. 5, Article II of RA 9165, allegedly committed as follows:

> That on or about 10:30 o'clock in the morning of May 23, 2008 in Zone 4, San Francisco, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully[,] and feloniously sell one (1) piece of heat[-]sealed, transparent plastic sachet containing Methamphetamine Hydrochloride, a dangerous drug, weighing more or less 0.1 [gram] including its plastic wrapper to PO1 Sherwin Coldas who acted as the poseur buyer in a buy bust operation using four pieces of One Hundred Peso Bill bearing the following serial numbers, AL288461, V524917, A357657[,] and AF595611.
>
> CONTRARY TO LAW.[3]

During arraignment, appellant pleaded not guilty to the offense charged. Trial on the merits followed.

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[1] CA *rollo,* pp. 102-115; penned by then Court of Appeals Associate Justice Noel G. Tijam (now a member of this Court) and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio.

[2] Records, pp. 223-229; penned by Presiding Judge Manuel M. Rosales.

[3] *Id.* at 1.

The prosecution presented the testimonies of the following witnesses: PO1 Sherwin Coldas (PO1 Coldas); Forensic Chemist Josephine M. Clemen (Clemen); and SPO4 Andrew P. Belleza (SPO4 Belleza). The defense presented the appellant and his brother-in-law Joey Nacario (Nacario).

Version of the Prosecution

The evidence of the prosecution established that on May 23, 2008, a team of police officers of the Anti-Illegal Drug Special Operation Task Force of the Philippine National Police (PNP), Iriga City, conducted a buy-bust operation against appellant after a police asset reported that appellant was engaged in selling *shabu* in San Francisco, Iriga City, Camarines Sur, specifically at the Philippine National Railway site (PNR site) located at Zone 4.

A briefing was held at the police headquarters where SPO4 Belleza was designated as the team leader, PO1 Coldas as the poseur-buyer, and PO3 Abdunajir Asari as the back-up officer. SPO4 Belleza gave PO1 Coldas four marked ₱100.00 bills who, in turn, gave the marked money to the police asset.

The buy-bust team proceeded to the PNR site. Upon locating the appellant, PO1 Coldas positioned himself about a meter away from the asset and appellant and was able to witness the entire exchange of money and a plastic sachet of *shabu* between the asset and appellant. After the transaction, the asset turned over the sachet to PO1 Coldas, who discreetly made a call to SPO4 Belleza to signal the consummation of the transaction.

Soon, the back-up team arrived. Recognizing SPO4 Belleza as a police officer and sensing that he was a target of a buy-bust operation, appellant immediately ran away. After a brief chase, the police officers were able to apprehend him. SPO4 Belleza informed appellant of his constitutional rights and the reason for his arrest. While at the scene of the arrest, PO1 Coldas handed over the sachet to SPO4 Belleza who marked it with his initials, "APB," in the presence of the appellant.

While appellant was being arrested, SPO4 Belleza chanced upon Iluminado Acosta (Acosta), who was previously arrested

for illegal possession of *shabu.* SPO4 Belleza then directed PO1 Coldas to apprehend Acosta in order to investigate his involvement in the drug transaction. However, Acosta resisted and a shoot-out transpired. Acosta was shot and was brought by the police officers to the hospital for immediate medical attention. Thereafter, the police officers returned to the police station and conducted a body search on appellant which yielded four marked ₱100.00 bills used in the drug transaction. The incident and the seized items were then duly recorded in a police blotter and spot report. The inventory and photographs were taken at the police station due to the shooting incident. Thereafter, SPO4 Belleza prepared the letter request for the examination of the contents of the sachet seized from the appellant. PO1 Coldas personally brought the sachet to the crime laboratory in Legazpi City for examination.

Clemen examined the seized item at the crime laboratory. Her findings revealed that the seized item tested positive for methamphetamine hydrochloride or *shabu*.

Version of the Defense

For his defense, appellant claimed that on May 23, 2008, at around 10:30 a.m., he was with Nacario at the PNR site at San Francisco, Iriga City when SPO4 Belleza suddenly approached him, poked a gun at him, and frisked him. Appellant resisted and asked SPO4 Belleza why he was being frisked. However, SPO4 Belleza told him not to create a scene. SPO4 Belleza then handcuffed appellant's wrists. Nacario asked what was going on, but SPO4 Belleza told him not to interfere. Appellant further alleged that SPO4 Belleza ordered him to ride a motorcycle and thereafter brought him to the police station where he was ordered to remove his clothes and was frisked.

Ruling of the Regional Trial Court

On November 9, 2010, the RTC of Iriga City, Branch 34 rendered judgment finding appellant guilty as charged. The RTC was convinced that the prosecution, through the testimonies of the police officers who conducted the buy-bust operation, was able to establish the guilt of appellant beyond reasonable

doubt. The RTC held that the prosecution positively identified the appellant as the seller of *shabu*.

The dispositive part of the RTC's Judgment reads:

> FOR ALL THE FOREGOING, the court finds the accused Niño Flor *y* Mora, guilty beyond reasonable doubt of Violation of Sec. 5, Art. II of Republic Act No. 9165 and there being no mitigating or aggravating circumstances attending the commission thereof, the accused is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.
>
> The item consisting of 0.1 gram of Methamphetamine Hydrochloride or shabu is ordered confiscated in favor of the government and to be turned over to the Dangerous Drugs Board for proper disposition, without unnecessary delay.
>
> SO ORDERED.[4]

Aggrieved by the RTC's Judgment, appellant appealed to the CA.

Ruling of the Court of Appeals

On June 9, 2014, the CA affirmed the RTC's Judgment and held as follows:

> WHEREFORE, the appeal is DENED. The *Judgment* of RTC of Iriga City, Branch 34, in Criminal Case No. IR-8282, finding Niño Flor *y* Mora ("Accused-Appellant") guilty of violation of Sec. 5, Art. II of Republic Act No. 9165 or the "*Comprehensive Dangerous Drugs Act of 2002"* is hereby AFFIRMED.
>
> SO ORDERED.[5]

Dissatisfied with the CA's Decision, appellant filed a Notice of Appeal.[6]

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[4] Records, p. 229.

[5] CA *rollo,* p. 114.

[6] *Rollo,* p. 16.

In a Resolution[7] dated April 22, 2015, this Court directed the parties to submit their respective supplemental briefs, if they so desired.

In its Manifestation and Motion[8] dated June 26, 2015, the Office of the Solicitor General informed this Court that it was adopting all arguments adduced in its Appellee's Brief dated December 8, 2011 in lieu of filing a Supplemental Brief.

Likewise, appellant filed a Manifestation[9] dated July 14, 2015, stating that he would no longer file a Supplemental Brief since he had already argued all the relevant issues in his Appellant's Brief dated August 5, 2011.

Issue

The issue in this case is whether appellant is guilty beyond reasonable doubt of illegal sale of *shabu*. According to appellant, the RTC erroneously convicted him considering that the prosecution: (1) failed to establish all the essential elements of the offense charged; (2) failed to establish the chain of custody over the seized sachet of *shabu*; and (3) failed to prove the identity of the *corpus delicti* with moral certainty.

Our Ruling

The appeal lacks merit.

Appellant was charged with selling *shabu* in violation of Section 5, Article II of RA 9165, which provides:

> Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another,

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[7] *Id.* at 21.

[8] *Id.* at 22-24.

[9] *Id*. at 25-29.

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

For an accused to be convicted of illegal sale of dangerous drugs, the prosecution must establish the following elements: "the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment."[10] Time and again the Court has stressed that, "[w]hat is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or th*e corpus delicti*."[11]

In this case, the prosecution was able to show that the appellant was positively identified by PO1 Coldas as the seller of a sachet containing 0.1 gram of *shabu* and the person who received the ₱400.00 marked money from the police asset who acted as the buyer. PO1 Coldas testified that the asset bought *shabu* from the appellant during a buy-bust operation. His testimony established the elements of the crime, to wit:

PROS. JOCOM:

Q: Okay after you gave the money to the asset, what did the asset do after that?
A: The asset b[ought] the suspected drug and after buying the suspected drug, it was given to me, that was [the] time I [called] Sir Belleza.

COURT:

Q: How did the x x x buying [take place]?
A: The accused and the asset talked with each other, x x x I was just about one meter away from them. I saw the buying, but they were the [ones] who transacted.

Q: So you are not the one who transacted?
A: Yes, your Honor.

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[10] *People v. Ameril,* G.R. No. 203293, November 14, 2016.

[11] *Id*.

Q: But you were one meter away from them?
A: Yes, your Honor.

Q: And then there was exchange of the item and the money?
A: Yes, your Honor.

Q: And that was the time that you gave the pre-arranged signal?
A: After the asset handed to me the suspected drug, that was the time I gave the signal to Police Officer Belleza.[12]

It is clear from the testimony of PO1 Coldas that he had witnessed first-hand the drug transaction between the police asset and the appellant. He was able to positively identify the appellant as the seller of the *shabu* due to the fact that the transaction happened right in front of him at a distance of about one meter. PO1 Coldas was also able to see the object of the transaction, which was 0.1 gram of *shabu*, as well as its consideration. He witnessed the delivery made by the appellant and the payment of the asset for the *shabu*.

In the absence of any evidence of imputed malice or ill-will against PO1 Coldas to falsely testify against the appellant, the Court finds no reason to doubt the credibility of PO1 Coldas whose testimony the RTC found to be "categorical and straightforward."[13] In *People v. Perondo*,[14] this Court held that:

x x x findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals. x x x

With regard to the alleged failure of the police officers to comply with the procedure required in seizure of drugs, the

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[12] TSN, September 29, 2008, pp. 9-10.

[13] Records, p. 228.

[14] 754 Phil. 205, 217 (2015).

records show that the prosecution was able to establish an unbroken chain of custody over the seized drugs – from the seizure and confiscation of the *shabu* up to the delivery of the same to the crime laboratory and presentation in Court. As correctly held by the CA, the apprehending officer properly preserved the integrity and evidentiary value of the seized item despite the fact that the inventory of the same was done at the police station:

> Thus while the ideal scenario in the prosecution of Dangerous Drugs Act violations is that the chain of custody must be unbroken, the law likewise admits of substantial compliance thereto. The Court has consistently upheld the procedure adopted by the police in handling seized illegal drugs as long as it is shown that the integrity and the evidentiary value of the seized items was preserved.
>
> Contrary to the allegation of Accused-[Appellant], the police were able to explain the failure to conduct an inventory and take photographs of the seized items. This is because of the intervening fact that one Illuminado Acosta was shot at the time of the buy-bust operation. This event was contained in a Spot Report prepared by one SPO4 Domingo Dorosan and was not controverted by the evidence presented by the Accused-Appellant x x x.[15]

The arresting officers were not able to take an inventory immediately after the arrest because of two intervening events: 1) appellant ran away from the police officers upon seeing SPO4 Belleza; and 2) a shooting incident transpired where Acosta was shot and had to be taken to the hospital. The appellant did not dispute the fact of the shooting at the time of the arrest. In fact, he testified as follows:

ATTY. FENIS:

Q: Mr. Witness, when Police Officer Belleza testified before this court, he referred to a certain Illuminado Acosta that was being arrested on May 23, 2008 x x x do you know of this incident?

A: Yes, ma'am, I saw him. He was also arrested by Police Officer Coldas.

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[15] CA *rollo,* pp. 110-111.

Q: On that same day, Mr. Witness?
A: Yes, ma'am, in fact, he was shot.[16]

The failure of the police officers to immediately take an inventory of the seized *shabu* is not fatal to the prosecution of the case. It did not render the arrest of the appellant who was caught in *flagrante delicto* illegal nor did the omission render the seized drugs inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, despite the circumstances that prevented the police officers from immediately taking an inventory of the seized drugs, we agree and uphold the findings of the CA that the *shabu* presented in court was duly preserved with its integrity and evidentiary value uncompromised.

Based on the evidence on record, the Court finds no reason to disturb the findings of the CA.

WHEREFORE, the appeal is **DISMISSED**. The June 9, 2014 Decision of the Court of Appeals in CA-G.R. C.R. H.C. No. 04806 finding appellant Niño Flor *y* Mora **GUILTY** beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 is **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Peralta, JJ.,* concur.

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[16] TSN, April 6, 2010, p. 7.

FIRST DIVISION

[G.R. No. 225176. January 19, 2018]

ESMERALDO GATCHALIAN, duly represented by SAMUEL GATCHALIAN, *petitioner, vs.* **CESAR FLORES, JOSE LUIS ARANETA, CORAZON QUING, and CYNTHIA FLORES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; THE ONLY ISSUE FOR THE COURT'S RESOLUTION IS, WHO IS ENTITLED TO PHYSICAL OR MATERIAL POSSESSION OF THE SUBJECT PROPERTY.—** [P]etitioner filed before the MeTC an action for ejectment against the respondents. It is settled that in ejectment proceedings, the only issue for the Court's resolution is, who between the parties is entitled to the physical or material possession of the subject property. Issues as to ownership are not involved, except only for the purpose of determining the issue of possession.

2. **ID.; ID.; ID.; THE SUBJECT PROPERTY REMAINS PRIVATE IN THE ABSENCE OF ANY EXPROPRIATION PROCEEDINGS AND WITHOUT ANY EVIDENCE THAT PETITIONER DONATED OR SOLD THE SAME TO THE MUNICIPAL GOVERNMENT.—** It is undisputed that the road lot is registered under the name of petitioner's parents. Even the respondents did not dispute this fact. It is also undisputed that the municipal government has not undertaken any expropriation proceedings to acquire the subject property neither did the petitioner donate or sell the same to the municipal government. Therefore, absent any expropriation proceedings and without any evidence that the petitioner donated or sold the subject property to the municipal government, the same is still private property. x x x Since the local government of Parañaque has not purchased nor undertaken any expropriation proceedings, neither did the petitioner and his siblings donate the subject property, the latter is still a private property and Ordinance No. 88-04 did not convert the same to public property.

3. ID.; ID.; ID.; REGISTERED OWNER DOES NOT LOSE HIS RIGHT OVER A PROPERTY ON THE GROUND OF LACHES AS LONG AS HE MERELY TOLERATED CLAIMANT'S POSSESSION; A PERSON WHO HAS A TORRENS TITLE OVER A LAND IS ENTITLED TO POSSESSION THEREOF.— As to the CA's finding that by virtue of laches the subject property has been converted into public property, We do not agree. It is well-settled that an "owner of [a] registered land does not lose his rights over a property on the ground of laches as long as the opposing claimant's possession was merely tolerated by the owner." A torrens title is irrevocable and its validity can only be challenged in a direct proceeding. A torrens title is an indefeasible and imprescriptible title to a property in favor of the person in whose name the title appears. The owner is entitled to all the attributes of ownership of the property, including possession. The person who has a torrens title over a land is entitled to possession thereof. As such, petitioner can file an ejectment case against herein respondents who encroached upon a portion of petitioner's property.

APPEARANCES OF COUNSEL

Mendoza Arzaga-Mendoza Law Firm for petitioner.
Romeo R. Robiso for respondents.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Esmeraldo Gatchalian, represented herein by Samuel C. Gatchalian (petitioner) assailing the Amended Decision[1] dated October 23, 2015 and Resolution[2] dated June 15, 2016 of the Court of Appeals (CA) in CA-G.R.

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[1] Penned by Associate Justice Edwin D. Sorongon and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court) and Associate Justice Ricardo R. Rosario. *Rollo*, pp. 39-45.

[2] *Id.* at. pp. 47-49.

SP No. 126530, which affirmed the Decision[3] dated June 8, 2012 of the Regional Trial Court (RTC), Branch 196 of Parañaque City in Civil Case No. 12-0050, dismissing the complaint for ejectment filed by petitioners against Cesar Flores, Jose Paolo[4] Araneta, Corazon Quing and Cynthia Flores (collectively as respondents), which was originally filed in the Metropolitan Trial Court (MeTC), Branch 77 of Parañaque City, in Civil Case No. 2011-49.

The pertinent facts as found by the CA are as follows:

Petitioner is one of the co-owners of a parcel of land (Road Lot 23) covered by Transfer Certificate of Title No. 79180 located at Brgy. Vitalez, Parañaque City. Road Lot 23 is registered under the name of petitioner's parents, spouses Sixto Gatchalian and Liceria Gatchalian. On June 2, 2011, petitioner filed a Complaint for Ejectment with Damages against respondents Cesar Flores, Jose Paolo Araneta (sic), Corazon Quing and Cynthia Flores (respondents) with the Metropolitan Trial Court (MeTC) of Parañaque City, Branch 77 and docketed as Civil Case No. 2011-49.

The survey conducted on the property established that the lot of Segundo Mendoza encroached a portion of Road Lot 23 which the Gatchalian's had tolerated. But after several years, the lot of Segundo Mendoza was sold and subdivided among the new owners including herein respondents. When the latter demonstrated acts of gross ingratitude to the Gatchalian family, petitioner and his family were constrained to withdraw their tolerated possession, use and occupation of the portion of Road Lot 23. Verbal and written demands to vacate were then served upon them but remained unheeded. Their dispute reached the Lupong Tagapamayapa but all in vain. Hence, the filing of the ejectment case against the respondents.

For their part, respondents denied that they usurped the property of petitioner. In fact, it was the Gatchalians who have encroached on Road Lot 23 when they put up a fence in their (respondents) property. They insisted that Road Lot 23 is a public road and is now

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[3] Promulgated by Presiding Judge Brigido Artemon M. Luna II, *id*. at 192-206.

[4] The caption reads "Jose Luis Araneta" but the records states "Jose Paolo Araneta."

known as "*Don Juan Street Gat-Mendoza*". In the subdivision plan of the GAT Mendoza Housing area, Road Lot 23 is constituted as a right of way. Respondents believed that petitioner has no cause of action against them and has no authority to file the instant case because it is the City Government of Parañaque which has the right to do so.[5]

On December 9, 2011, the MeTC rendered a Decision[6] ordering respondents to vacate Road Lot 23, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows ordering the defendants CESAR FLORES, JOSE PAOLO ARANETA, CORAZON QUING AND CYNTHIA FLORES and all persons claiming rights under them, to wit:

1) to vacate the 140.50 square meter portion of the Road (Lot 23) encroached by them which is covered by TCT No. 79180 and located at Don Juan St., Barangay Vitalez, Parañaque City;

2) to pay reasonable amount of rental in the amount of ₱20,000.00 a month plus legal rate of interest reckoned from June 2, 2011 until the defendants shall have fully vacated the encroached portion of the Road (Lot 23);

3) ₱20,000.00 as and (sic) for Attorney's fees;

4) Cost of suit.

SO ORDERED.[7]

Respondents appealed the same to the RTC, which reversed the ruling of the MeTC in its Decision[8] dated June 8, 2012, to wit:

WHEREFORE, premises considered, the appealed Decision dated December 9, 2011 by Branch 78 of the Metropolitan Trial Court of Parañaque docketed under Civil Case No. 2011-49 is REVERSED

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

[6] *Id*. at 109-112.

[7] *Id*. at 111-112.

[8] *Id*. at 192-206.

and the Complaint dated June 2, 2011 is herewith DISMISSED for lack of merit.

SO ORDERED.[9]

Aggrieved, petitioner appealed to the CA. The latter in its Decision[10] dated March 13, 2015, reversed the RTC and reinstated the ruling of the MeTC. However, upon reconsideration, the CA reversed itself and affirmed the RTC, thus:

WHEREFORE, respondent's Motion for Reconsideration is hereby GRANTED. Accordingly, we REVERSE and SET ASIDE our findings in our Decision dated March 13, 2015. The instant petition fore review is hereby DISMISSED and the Decision dated June 8, 2012 of the Regional Trial Court of Parañaque City, Branch 196 in Civil Case No. 12-0050 is UPHELD.

SO ORDERED.[11]

Hence, this petition.

Petitioner claimed that the CA committed grave error in ruling that the private character of Road Lot 23 has been stripped by Municipal Ordinance No. 88-04, series of 1988 constituting the said road lot as a public right-of-way. Petitioner also claimed that the CA erred in stating that by virtue of laches, the road lot has been converted to public property of the municipality.

Petitioner further alleged that the road lot is still private property it being covered by TCT No. 79180 under the name of Spouses Sixto Gatchalian and Liceria Gatchalian. The mere usage by the public of the road lot does not make it public property. To convert the same to public property, it must be expropriated by the government or the registered owner must donate or sell the same to the government.

The petition is granted.

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[9] *Id*. at 206.

[10] *Id*. at 273-282.

[11] *Id*. at 44.

At the outset, petitioner filed before the MeTC an action for ejectment against the respondents. It is settled that in ejectment proceedings, the only issue for the Court's resolution is, who between the parties is entitled to the physical or material possession of the subject property. Issues as to ownership are not involved, except only for the purpose of determining the issue of possession.[12]

In the instant case, petitioner asserts that he is entitled to the possession of the road lot being one of the co-owners of the same since it is registered under the name of petitioner's parents. While respondents do not claim ownership of the subject lot, they argued that the road lot is now public property because of Ordinance No. 88-04, series of 1988 constituting it as "Don Juan St. Gat-Mendoza." As such, petitioner cannot evict respondents.

It is undisputed that the road lot is registered under the name of petitioner's parents. Even the respondents did not dispute this fact. It is also undisputed that the municipal government has not undertaken any expropriation proceedings to acquire the subject property neither did the petitioner donate or sell the same to the municipal government. Therefore, absent any expropriation proceedings and without any evidence that the petitioner donated or sold the subject property to the municipal government, the same is still private property.

In the case of *Woodridge School, Inc. v. ARB Construction Co., Inc.*,[13] this Court held that:

> In the case of *Abellana, Sr. v. Court of Appeals*, the Court held that "the road lots in a private subdivision are private property, hence, the local government should first acquire them by donation, purchase or expropriation, if they are to be utilized as a public road." Otherwise, they remain to be private properties of the owner-developer.
>
> Contrary to the position of petitioners, the use of the subdivision roads by the general public does not strip it of its private character.

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[12] *Mangaser v. Ugay*, 749 Phil. 372 (2014).

[13] 545 Phil. 83 (2007).

The road is not converted into public property by mere tolerance of the subdivision owner of the public's passage through it. To repeat, "the local government should first acquire them by donation, purchase or expropriation, if they are to be utilized as a public road."[14]

As reiterated in the recent case of *Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) v. Sps. Llamas,*[15] this Court held that:

> As there is no such thing as an automatic cessation to [the] government of subdivision road lots, an actual transfer must first be effected by the subdivision owner: "subdivision streets belonged to the owner until donated to the government or until expropriated upon payment of just compensation."[16]

Since the local government of Parañaque has not purchased nor undertaken any expropriation proceedings, neither did the petitioner and his siblings donate the subject property, the latter is still a private property and Ordinance No. 88-04 did not convert the same to public property.

As to the CA's finding that by virtue of laches the subject property has been converted into public property, We do not agree.

It is well-settled that an "owner of [a] registered land does not lose his rights over a property on the ground of laches as long as the opposing claimant's possession was merely tolerated by the owner."[17]

A torrens title is irrevocable and its validity can only be challenged in a direct proceeding.[18] A torrens title is an indefeasible and imprescriptible title to a property in favor of the person in whose name the title appears. The owner is entitled

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[14] *Id*. at 88-89.

[15] G.R. No. 194190, January 25, 2017.

[16] *Id*.

[17] *Malonesio v. Jizmundo*, G.R. No. 199239, August 24, 2016, 801 SCRA 339, 347.

[18] *Cagatao v. Almonte, et al.*, 719 Phil. 241, 253 (2013).

to all the attributes of ownership of the property, including possession. The person who has a torrens title over a land is entitled to possession thereof. As such, petitioner can file an ejectment case against herein respondents who encroached upon a portion of petitioner's property.

WHEREFORE, premises considered, the petition is **GRANTED**. The Amended Decision dated October 23, 2015 and Resolution dated June 15, 2016 of the Court of Appeals in CA-G.R. SP No. 126530 are hereby **REVERSED and SET ASIDE**. The Decision dated December 9, 2011 of the Metropolitan Trial Court in Civil Case No. 2011-49 is **REINSTATED.**

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-18-3796. January 22, 2018]
(Formerly OCA IPI No.16-4545-P)

ATTY. MA. JASMINE P. LOOD, MARY JANE G. CORPUZ, and MA. HAZEL P. SEBIAL, *complainants, vs.* **RUEL V. DELICANA, LEGAL RESEARCHER, BRANCH 3, MUNICIPAL TRIAL COURT IN CITIES [MTCC], GENERAL SANTOS CITY, SOUTH COTABATO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; THE WITHDRAWAL OF COMPLAINTS

CANNOT DIVEST THE COURT OF ITS JURISDICTION NOR STRIP IT OF ITS POWER TO DETERMINE THE VERACITY OF THE CHARGES MADE AND TO DISCIPLINE, SUCH AS THE RESULTS OF ITS INVESTIGATION MAY WARRANT, AN ERRING RESPONDENT, AS ADMINISTRATIVE ACTIONS CANNOT DEPEND ON THE WILL OR PLEASURE OF THE COMPLAINANT; RATIONALE.— [T]he Court finds that the filing of the Motion to Withdraw by Ganer-Corpuz did not operate to divest the Court with jurisdiction to determine the truth behind the matter stated in the complaint. The ruling in *Bayaca v. Judge Ramos* is instructive in the matter, *viz.*: We have repeatedly ruled in a number of cases that mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member of the bench. The withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Courts interest in the affairs of the judiciary is of paramount concern. For sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary, inasmuch as the various programs and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties as in the instant case.

2. **ID.; ID.; COURT PERSONNEL; ALL COURT PERSONNEL MUST CONDUCT THEMSELVES IN A MANNER EXEMPLIFYING INTEGRITY, HONESTY AND UPRIGHTNESS; RESPONDENT FOUND GUILTY OF SIMPLE MISCONDUCT.—** Time and again, the Court have repeatedly stressed that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women therein, from the judges to the most junior clerks. Thus, "their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. Needless to say,

all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness." Here, in disseminating the letter, minutes of the meeting and administrative case of complainants, Delicana contributed to the erosion of the public's confidence in the judiciary. Indeed, the Court frowns upon any display of animosity by any court employee. Colleagues in the judiciary, including those occupying the lowliest positions, are entitled to basic courtesy and respect. x x x. As correctly observed by the OCA, Delicana failed to observe the proper decorum expected of members of the judiciary x x x. Verily, the Court cannot countenance any act which falls short of the exacting standards for public office which diminishes the faith of the people in the judiciary. Delicana's impropriety subjected the image of the court to public distrust. Thus, Delicana is guilty of simple misconduct.

3. ID.; ID.; ID.; SIMPLE MISCONDUCT IS CLASSIFIED AS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE AND DISMISSAL FROM THE SERVICE FOR THE SECOND OFFENSE; PENALTY OF SUSPENSION IMPOSED UPON THE RESPONDENT FOR SIMPLE MISCONDUCT.— Under Section 46 D (2) of the Revised Rules on Administrative Cases in the Civil Service, simple misconduct is classified as a less grave offense. It is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. In the present case, considering that Delicana was already previously reprimanded and fined in the amount ₱1,000.00 for conduct unbecoming a court employee and conduct prejudicial to the best interest of the service with a stern warning that a repetition of the same or similar act shall be dealt with more severely, the imposable penalty for this second offense against Delicana is dismissal from service. The Court, however, in several administrative cases, has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Here, the Court takes into consideration Delicana's long years of service in the judiciary of more than 17 years as well as his reconciliation with complainant Ganer-Corpuz. As such, the Court finds the penalty of suspension for a period of one year, as recommended by the OCA, proper under the circumstances.

RESOLUTION

TIJAM, *J.*:

The instant administrative case stemmed from the Letter[1] dated July 7, 2015 of respondent Ruel V. Delicana (Delicana); Legal Researcher, Municipal Trial Court in Cities (MTCC) of General Santos City, South Cotabato; Branch 3, to Judge Alejandro Ramon C. Alano (Judge Alano), Executive and Presiding Judge of MTCC of General Santos City, Branch 3, wherein he protested the designation of Mary Jane Ganer-Corpuz (Ganer-Corpuz), Sheriff III, Office of the Clerk of Court, MTCC of General Santos City as Acting Clerk of Court of MTCC-Branch 3.

Antecedent Facts

In his letter, Delicana averred that Ganer-Corpuz's designation was improper considering that during the office's meeting on February 3, 2014, it was agreed that the acting Clerk of Court will be chosen from among the staff within the same branch.[2]

Moreover, Delicana asseverated that Ganer-Corpuz cannot be fair, just, and unbiased toward him in view of the administrative complaint he filed against the former when she assumed as acting Clerk of Court in lieu of Atty. Ma. Jasmine P. Lood, (Atty. Lood) Clerk of Court VI, Regional Trial Court of Abel, Sarangani Province, Branch 38, without authority from Judge Alano and this Court. Also, Delicana mentioned that he likewise filed a separate administrative complaint against Atty. Lood and Ganer-Corpuz.[3]

Consequently, Ganer-Corpuz, together with Atty. Lood and Ma. Hazel P. Sebial (Sebial), Clerk IV, MTCC of General Santos City, Branch 3, filed their Affidavit of Complaint[4] against

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[1] *Rollo*, pp. 9-13.

[2] *Id.* at 10.

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

[4] *Id.* at 4-8.

Delicana wherein they charged him for Conduct Prejudicial to the Best Interest of the Service. Specifically, they averred that, despite the same being an internal matter and affecting only the employees of MTCC of General Santos, Branch 3, Delicana disseminated copies of his letter, administrative complaint filed against herein complainants, as well as the minutes of the office meeting, to the following: (i) Office of the Court Administrator (OCA); (ii) Hon. Emilio S. Quianzon, Presiding Judge; Branch 2, MTCC of General Santos City; (iii) Hon. Oscar P. Noel, Jr., Executive Judge, Regional Trial Court (RTC) of General Santos City; (iv). Atty. Marion Gay C. Mirabueno, COC, RTC-OCC of General Santos City; (v) Hon. Jose C. Blanza, Jr., Chief City Prosecutor, City Prosecutor's Office of General Santos City; (vi) Hon. Lorna B. Santiago, Acting Judge (Judge Santiago), Municipal Circuit Trial Court (MCTC), Alabel-Malungon, Sarangani Province; (vii) Atty. Caroline Z. Tajon, Chief, Public Attorney's Office of General Santos City; (viii) Atty. Mary Anne L. Lagare-Academia, President of the Integrated Bar of the Philippines, General Santos City; (ix) Hon. Ronnel C. Rivera, Mayor of General Santos City; (x) Hon. Shirlyn Bañas-Nograles, Vice-Mayor of General Santos City; (xi) Atty. Arnel A. Zapatos, City Administrator of General Santos City; (xii) Atty. Andres S. Mission (Atty. Mission), President of the Philippine Association of Court Employees (PACE) of General Santos City; and (xiii) Atty. Maria Fe Maloloy-on (Atty. Maloloy-on), National President of PACE.[5]

Complainants claimed that the sending of the said confidential documents to offices that do not have anything to do with the resolution of the present case is libelous, scandalous, and deleterious.

In its 1st Indorsement[6] dated February 23, 2016, the OCA directed Delicana to file his Comment within 10 days from receipt thereof.

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

[6] *Id*. at 37.

In his Comment,[7] Delicana countered that her letter to Judge Alano was a legitimate, legal, and valid objection to the designation of Ganer-Corpuz, who is an "outsider" of MTCC of General Santos City, Branch 3.

Delicana further alleged that only the cover letter of the complaint against herein complainants were attached in his letter. Also, he claimed that only excerpts of the minutes of the meeting were included which he honestly presumed to be not malicious.[8]

Moreover, Delicana explained that copies of the letter were sent to Judge Santiago considering that she was their acting judge when Judge Alano was on leave due to sickness. Also, he mentioned that Atty. Mission and Maloloy-on were the Regional and National officers of PACE who would succor lowly employees who were oppressed and abused.[9]

As to the other recipients, Delicana averred that he merely followed Judge Alano when the latter furnished them with a copy of his Inter-Office Memorandum No. 070115 dated July 1, 2015, designating Ganer-Corpuz as the acting Clerk of Court.[10]

In sum, he claimed that complainants failed to substantiate his alleged infraction. According to Delicana, there was no intention on his part to defame, malign, or destroy complainants' reputation.

OCA Recommendation

In a memorandum[11] dated January 23, 2017, the OCA recommended that Delicana be suspended from office for one year for conduct prejudicial to the best interest of the service.

Notwithstanding the Motion to Withdraw Complaint filed by Ganer-Corpuz, the OCA held that Delicana's avowed purpose

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[7] *Id*. at 53-65.

[8] *Id*. at 54.

[9] *Id*. at 97.

[10] *Id*. See also *rollo*, pp. 109-110.

[11] *Id*. at 190-197.

to have the appointment recalled becomes suspect and creates the impression that he intended to harass and humiliate complainants.

Court's Ruling

At the outset, the Court finds that the filing of the Motion to Withdraw by Ganer-Corpuz did not operate to divest the Court with jurisdiction to determine the truth behind the matter stated in the complaint. The ruling in *Bayaca v. Judge Ramos*[12] is instructive in the matter, *viz.*:

> We have repeatedly ruled in a number of cases that mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member of the bench. The withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, condone what may be detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. The Courts interest in the affairs of the judiciary is of paramount concern. For sure, public interest is at stake in the conduct and actuations of officials and employees of the judiciary, inasmuch as the various programs and efforts of this Court in improving the delivery of justice to the people should not be frustrated and put to naught by private arrangements between the parties as in the instant case.[13]

The Court now resolves the substantive issues of the case

Time and again, the Court have repeatedly stressed that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women therein, from the judges to the most junior clerks.[14] Thus, "their conduct must be guided by strict propriety and decorum at all times in order

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[12] 597 Phil. 86 (2009).

[13] *Id*. at 96.

[14] *Dela Cruz v. Zapico, et al.*, 587 Phil. 435, 445 (2008).

to merit and maintain the public's respect for and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness."[15]

Here, in disseminating the letter, minutes of the meeting and administrative case of complainants, Delicana contributed to the erosion of the public's confidence in the judiciary. Indeed, the Court frowns upon any display of animosity by any court employee. Colleagues in the judiciary, including those occupying the lowliest positions, are entitled to basic courtesy and respect.[16]

As correctly observed by the OCA, Delicana failed to observe the proper decorum expected of members of the judiciary, to wit:

> Notably, when respondent maliciously disseminated the minutes of the meeting and administrative case of complainants with the intent to embarrass them, the investigation has yet to commence. In indiscriminately providing a copy of the administrative case to those who are not even privy to the case, even if it consists of the covering letter only of the complaint, it was enough to inform whoever should read it that an administrative complaint has been filed against complainants which would unnecessarily harm their reputation.[17]

Verily, the Court cannot countenance any act which falls short of the exacting standards for public office which diminishes the faith of the people in the judiciary.[18] Delicana's impropriety subjected the image of the court to public distrust. Thus, Delicana is guilty of simple misconduct.

Under Section 46 D (2) of the Revised Rules on Administrative Cases in the Civil Service, simple misconduct is classified as a less grave offense. It is punishable by suspension of one (1)

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[15] *In Re: Improper Solicitation of Court Employees — Rolando H. Hernandez, EAI, Legal Office, OCAD*, 604 Phil. 237, 245 (2009).

[16] *Bondoc v. Bulosan*, 552 Phil. 526, 536-537 (2007).

[17] OCA memorandum, *supra* note 11 at 194.

[18] *Spouses Pan v. Salamat*, 525 Phil. 540, 547 (2006).

month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.

In the present case, considering that Delicana was already previously reprimanded and fined in the amount ₱1,000.00 for conduct unbecoming a court employee and conduct prejudicial to the best interest of the service with a stern warning that a repetition of the same or similar act shall be dealt with more severely, the imposable penalty for this second offense against Delicana is dismissal from service.

The Court, however, in several administrative cases, has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors.[19] Here, the Court takes into consideration Delicana's long years of service in the judiciary of more than 17 years as well as his reconciliation with complainant Ganer-Corpuz. As such, the Court finds the penalty of suspension for a period of one year, as recommended by the OCA, proper under the circumstances.

WHEREFORE, the Court finds respondent Ruel V. Delicana, Legal Researcher, Municipal Trial Court in Cities of General Santos City, South Cotabato, Branch 3, **GUILTY** of simple misconduct. He is meted the penalty of **SUSPENSION** of one (1) year without pay, with a **STERN WARNING** that a repetition of similar or analogous infractions in the future shall be dealt with more severely.

SO ORDERED.

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

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[19] *Re: Illegal and Unauthorized Digging and Excavation Activities Inside the Supreme Court Compound, Baguio City*, A.M. No. 2016-03-SC, February 21, 2017.

FIRST DIVISION

[G.R. No. 197920. January 22, 2018]

DEMOSTHENES R. ARBILON, *petitioner, vs.* **SOFRONIO MANLANGIT,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; RECOVERY OF POSSESSION; THE SUPREME COURT MAY PASS UPON THE ISSUE OF OWNERSHIP WHEN RAISED BY THE PARTIES, BUT THE SAME IS LIMITED TO THE DETERMINATION OF WHO BETWEEN THE PARTIES HAS A BETTER RIGHT TO POSSESS THE PROPERTY, AND THE ADJUDICATION IS NOT A FINAL AND BINDING DETERMINATION ON THE ISSUE OF OWNERSHIP.—** While the case filed by respondent before the RTC was only for recovery of possession of the compressor, the parties however raised the issue of ownership during the trial in the RTC. Thus, when they raised the issue of ownership, while this Court may pass upon the issue of ownership, the same is limited to the determination of who between the parties has a better right to possess the property. This adjudication, however, is not a final and binding determination on the issue of ownership. Since the determination of ownership is merely provisional, the same is not a bar to an action between the same parties involving title to the property. To determine who has the better right to possession of the compressor, examination of the contract between respondent and Davao Diamond is in order.
2. **CIVIL LAW; SPECIAL CONTRACTS; SALES; IN A CONTRACT TO SELL, TITLE TO THE PROPERTY IS RETAINED BY THE SELLER UNTIL THE BUYER FULLY PAID THE PRICE OF THE THING SOLD; THE AGREEMENT BETWEEN THE PARTIES IN CASE AT BAR IS A CONTRACT TO SELL.—** In a contract to sell, the seller explicitly reserves the transfer of title to the buyer until the fulfillment of a condition, that is, the full payment of the purchase price. Title to the property is retained by the seller

until the buyer fully paid the price of the thing sold. As found by the CA and undisputed by the respondent, the Sales Invoice No. 82911 covering the disputed compressor contained the following stipulation: Note: It is hereby agreed that the goods listed to this invoice shall remain the property of the seller until fully paid by the buyer. Failure of the buyer to pay the goods as agreed upon, the seller may extra-judicially take possession of the goods and dispose them accordingly. While the sales invoice is not a formal contract to sell, the sales invoice is nevertheless the best evidence of the transaction between the respondent and Davao Diamond. Sales invoices are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired. Thus, the moment respondent affixed his signature thereon, he is bound by all the terms stipulated therein. The sales invoice contains the earmarks of a contract to sell since the seller reserved the ownership of the thing sold until the buyer fully paid the purchase price. We therefore agree with the CA that the agreement between respondent and Davao Diamond is a contract to sell. As such, the mere delivery of the compressor to respondent does not make him the owner of the same.

3. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN CIVIL CASES, HE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT AND A MERE ALLEGATION IS NOT EVIDENCE.—** Leanillo claimed that she paid for the installments on the compressor. However, she claimed that Davao Diamond entered into an independent contract of sale with her while respondent claimed that the money used by Leanillo to pay the compressor came from his partnership share. It is a settled doctrine in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. It is incumbent upon Leanillo to prove that Davao Diamond sold the compressor to her independent of the contract to sell with respondent.

4. **CIVIL LAW; SPECIAL CONTRACTS; SALES; A CONTRACT TO SELL IS A BILATERAL CONTRACT WHEREBY THE PROSPECTIVE SELLER, WHILE EXPRESSLY RESERVING THE OWNERSHIP OVER THE THING SOLD DESPITE THE DELIVERY THEREOF TO**

THE PROSPECTIVE BUYER, BINDS HIMSELF TO SELL THE PROPERTY EXCLUSIVELY TO THE PROSPECTIVE BUYER UPON FULL PAYMENT OF THE PURCHASE PRICE.— [I]t must be considered that in view of the existing contract to sell between respondent and Davao Diamond, the latter cannot simply sell the property to petitioner. A contract to sell is a bilateral contract whereby the prospective seller, while expressly reserving the ownership over the thing sold despite the delivery thereof to the prospective buyer, binds himself to sell the property exclusively to the prospective buyer upon full payment of the purchase price. Thus, in the absence of any revocation or cancellation of the contract to sell with respondent, Davao Diamond cannot legally sell the compressor to petitioner.

5. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; THE PARTIES MUST DISCLOSE DURING PRE-TRIAL ALL ISSUES THEY INTEND TO RAISE DURING THE TRIAL, EXCEPT THOSE INVOLVING PRIVILEGED OR IMPEACHING MATTERS; ISSUES NOT INCLUDED IN THE PRE-TRIAL ORDER MAY BE CONSIDERED ONLY IF THEY ARE IMPLIEDLY INCLUDED IN THE ISSUES RAISED OR INFERABLE FROM THE ISSUES RAISED BY NECESSARY IMPLICATION.—** Respondent claimed that there is nothing to be reimbursed since the money used by Leanillo to pay the compressor came from his partnership share. We do not agree. A perusal of the records of the case reveal that respondent failed to raise this as an issue during the trial. In fact, it was not one of the issues contained in the pre-trial order. Therefore, the same cannot be considered in the resolution of the case. As We held in the case of *LICOMCEN, Inc. v. Engr. Abainza*, all issues that the parties intend to raise during the trial must be raised during the pre-trial, thus: Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case. The parties must disclose during pretrial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. x x x. Hence, the issue of whether

there is a partnership that is existing between petitioner, Leanillo and respondent and whether the partnership share of respondent was used to pay the compressor are not impliedly included or is inferable from the issues raised in the pre-trial order. As such, the same cannot be considered during the trial.

6. **ID.; EVIDENCE; MERE ALLEGATION WITHOUT SUFFICIENT PROOF IS NOT EVIDENCE OF THE EXISTENCE OF A FACT OR OF THE TRUTHFULNESS OF AN ALLEGATION.—** Even if We rule that the said issues were included or inferable by necessary implication from the issues raised in the pre-trial order, respondent still failed to present an iota of evidence to prove that the partnership exist or that his partnership shares were used to pay off the compressor. Mere allegation without sufficient proof is not evidence of the existence of a fact or of the truthfulness of an allegation.

7. **ID.; CIVIL PROCEDURE; JUDGMENTS; COURTS CANNOT GRANT A RELIEF NOT PRAYED FOR IN THE PLEADINGS OR IN EXCESS OF WHAT IS BEING SOUGHT BY A PARTY TO A CASE.—** Since respondent failed to prove that the money used to pay the compressor was respondent's partnership share nor the existence of a partnership among them, the payment of Leanillo can be considered as payment by a third party. Under Article 1236 of the Civil Code, it is provided that: **Article 1236.** x x x. **Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.** Under the above-cited provision, Leanillo has the right to demand reimbursement from respondent since it is undisputed that Leanillo was the one who paid for the compressor in behalf of respondent. Nevertheless, since Leanillo was never impleaded as a party in this case, this Court has not acquired any jurisdiction over her person, and as such, We cannot grant any relief in her favor. "It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case." This however is without prejudice to any action that may be brought by Leanillo to claim reimbursement from respondent.

APPEARANCES OF COUNSEL

The Mindanao-Davao Law Firm of Avisado & Maypa, Co. for petitioner.
Cesar M. Dureza for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Demosthenes R. Arbilon (petitioner) assailing the Decision[2] dated January 14, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 00038, which reversed and set aside the Decision[3] dated May 5, 2003 of the Regional Trial Court (RTC) of Davao City, Branch 33 in Civil Case No. 27,498-99 dismissing the case filed by Sofronio Manlangit (respondent) and ordering the return of the possession of the Atlas Copco Compressor (compressor) to petitioner.

This case stemmed from a Complaint[4] for recovery of possession of personal properties with writ of replevin and/or sum of money, with damages and attorney's fees filed by respondent against petitioner.

In his complaint, respondent alleged that he purchased on credit one (1) compressor and one (1) unit of Stainless Pump, 3 horsepower, single phase for ₱200,000.00 and ₱65,000.00, respectively, from Davao Diamond Industrial Supply (Davao Diamond). Respondent claimed that the compressor had been in the possession of petitioner from November 1997 up to the time of the filing of the complaint, that despite demand, petitioner failed to return the same to respondent.[5]

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[1] *Rollo*, pp. 12-45.

[2] Penned by Associate Justice Romulo V. Borja, concurred in by Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando; *id*. at 47-65.

[3] Penned by Judge Wenceslao E. Ibabao; *id*. at 112-119.

[4] *Id*. at 84-85.

[5] *Id*. at 84.

In his Answer with Counterclaim,[6] petitioner argued that the respondent is not the owner of the compressor. Petitioner alleged that the ownership of the compressor was never vested to respondent since the latter failed to pay the purchase price of ₱200,000.00. Petitioner alleged that he voluntarily assumed the obligation to pay the compressor to Davao Diamond in four installments as it was indispensable in the mining operations of Double A.[7]

The RTC, upon posting of the bond, granted the writ of replevin and the compressor was delivered to respondent.

During the trial, respondent alleged that he was once a financier and operator of a gold mine in Davao del Norte but when he ran out of funds, petitioner and Major Efren Alcuizar (Alcuizar) took over the mining operations. When petitioner and Alcuizar also ran out of funds, Lucia Sanchez Leanillo (Leanillo) became the financier of the mining operations.[8] It appears that Leanillo paid for the installments of the compressor on account of a separate contract of sale entered into by Davao Diamond with her.

Ruling of the RTC

After trial on the merits, the RTC in its Decision[9] dated May 5, 2003, ruled in favor of the petitioner, thus:

> WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against [respondent]:
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> 1. dismissing the complaint for lack of cause of action;
> 2. dissolving the writ of seizure and declaring [respondent] to be not entitled to the possession of the [compressor];
> 3. ordering the return of the possession of the [compressor] with its accessories, if any, to [petitioner] and [Leanillo],

[6] *Id*. at 88-93.

[7] *Id.* at 89-90.

[8] *Id*. at 115.

[9] *Id*. at 112-119.

and if this is no longer possible for [respondent] and/or the surety company, the Capital Insurance & Surety Company, Inc., to pay the value of said [compressor], with interest at the legal rate from the time [petitioner] was dispossessed of said compressor;

4. to pay [petitioner] the sum of ₱15,000.00 for and as attorney's fees, plus ₱5,000.00 as litigation expenses; and

5. all other claims for damages are denied.

Costs of suit against [respondent].

SO ORDERED.[10]

The RTC in finding for the petitioner held that:

From all the foregoing, the following facts appears duly established:

1. [Respondent] purchased on installment from [Davao Diamond] on July 17, 1996, one (1) unit [compressor] and one (1) SS Pump 3HP, among others;

2. He failed to pay the purchase price of these items;

3. He wrote [Davao Diamond] a letter on August 5, 1999, voluntarily surrendering the compressor and the pump because he could not pay for it[;]

4. Before he wrote the letter to [Davao Diamond], [Leanillo] had already paid [Davao Diamond] the purchase price for the compressor in four installments. Thus was evidenced by Cash Vouchers all dated in 1998 x x x and the corresponding receipts issued in behalf of [Davao Diamond] by Atty. George Cabebe x x x, each for ₱50,000.00.

Thus, when [respondent] wrote the [Davao Diamond], that he was voluntarily surrendering the compressor and the pump he effectively surrendered whatever rights and interest he might have on the compressor and the pump. He was aware that he is no longer the owner of the compressor. No evidence was adduced by [respondent] to prove that there was a prior existing arrangement with him and Leanillo as far as the payment of the account with [Davao Diamond] was concerned. It is very strange indeed for him to have written the

[10] *Id.* at 119.

letter despite knowing that it had been paid for by [Leanillo], unless it was intended to pave the way for [Leanillo] to acquire full ownership of the compressor and to ensure that [Davao Diamond] will be free from legal liability in selling the compressor to Leanillo. x x x.

x x x x x x x x x

Thus, it is quite clear that as of August 5, 1999, [respondent] has no more right and interest over the compressor and the pump by reason of his voluntary surrender of these items to [Davao Diamond]. x x x.[11]

Ruling of the CA

Upon appeal, the CA in its Decision[12] dated January 14, 2011 reversed the RTC ruling and held that respondent is the owner of the compressor, thus:

WHEREFORE, the assailed decision is SET ASIDE and a new one rendered:

1. Declaring [respondent] the owner of the (1) unit [compressor] with Serial No. ARP 695174 and thus entitled to its possession;

2. Ordering [petitioner] to reimburse [respondent's] litigation expenses in the amount of ₱2,250.60 and attorney's fee[s] in the amount of ₱10,000.00.

SO ORDERED.[13]

The CA held that the transaction between respondent and Davao Diamond was a contract to sell since the stipulation in the Sales Invoice[14] shows that the goods listed in the invoice shall remain the property of the seller until fully paid by the buyer. The CA further held that since Leanillo undisputedly paid the installments on the compressor, the ownership over the compressor was automatically vested on respondent. As such, the owner of the compressor is respondent. Insofar as the

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[11] *Id*. at 117-118.

[12] *Id*. at 47-65.

[13] *Id*. at 64.

[14] *Id*. at 186.

payment of Leanillo is concerned, the CA held that such payment is considered as a payment made by a third party without the knowledge of the respondent, as such, Leanillo can recover the amount paid insofar as the same has been beneficial to respondent. However, the CA ruled that there is evidence to show that the payment made by Leanillo was taken from the partnership share of respondent. Therefore, respondent is no longer obligated to reimburse Leanillo of the amount it paid for the compressor.

The Issues

Hence, petitioner filed the instant petition raising the following issues to be resolved:

1) whether or not the CA erred when it ruled that respondent is the owner of the compressor, hence entitled to its possession; and 2) whether or not the money used by Leanillo to pay the compressor came from respondent's partnership share.

While the case filed by respondent before the RTC was only for recovery of possession of the compressor, the parties however raised the issue of ownership during the trial in the RTC. Thus, when they raised the issue of ownership, while this Court may pass upon the issue of ownersip, the same is limited to the determination of who between the parties has a better right to possess the property. This adjudication, however, is not a final and binding determination on the issue of ownership. Since the determination of ownership is merely provisional, the same is not a bar to an action between the same parties involving title to the property.[15]

To determine who has the better right to possession of the compressor, examination of the contract between respondent and Davao Diamond is in order. The CA is of the opinion that the contract between respondent and Davao Diamond is merely a contract to sell, as such, mere delivery of the thing sold does not result to the transfer of ownership to the buyer.

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[15] *Gabriel, Jr., et al. v. Crisologo*, 735 Phil. 673, 683 (2014).

In a contract to sell, the seller explicitly reserves the transfer of title to the buyer until the fulfillment of a condition, that is, the full payment of the purchase price. Title to the property is retained by the seller until the buyer fully paid the price of the thing sold.

As found by the CA and undisputed by the respondent, the Sales Invoice No. 82911[16] covering the disputed compressor contained the following stipulation:

> Note: It is hereby agreed that the goods listed to this invoice shall remain the property of the seller until fully paid by the buyer. Failure of the buyer to pay the goods as agreed upon, the seller may extra-judicially take possession of the goods and dispose them accordingly.

While the sales invoice is not a formal contract to sell, the sales invoice is nevertheless the best evidence of the transaction between the respondent and Davao Diamond. Sales invoices are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired. Thus, the moment respondent affixed his signature thereon, he is bound by all the terms stipulated therein.[17]

The sales invoice contains the earmarks of a contract to sell since the seller reserved the ownership of the thing sold until the buyer fully paid the purchase price. We therefore agree with the CA that the agreement between respondent and Davao Diamond is a contract to sell. As such, the mere delivery of the compressor to respondent does not make him the owner of the same.

The next question now is whether the respondent has complied with his obligation to fully pay the purchase price?

Leanillo claimed that she paid for the installments on the compressor. However, she claimed that Davao Diamond entered

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[16] *Rollo*, p. 186.

[17] *Seaoil Petroleum Corp. v. Autocorp Group, et al.*, 590 Phil. 410, 419 (2008).

into an independent contract of sale with her while respondent claimed that the money used by Leanillo to pay the compressor came from his partnership share.

It is a settled doctrine in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[18] It is incumbent upon Leanillo to prove that Davao Diamond sold the compressor to her independent of the contract to sell with respondent.

Other than the self-serving statements of Leanillo, no other evidence was presented to support her allegation that Davao Diamond entered into a separate contract with her. In fact, at the time Leanillo paid the compressor in 1998, there is no evidence that Davao Diamond revoked, rescinded or cancelled the contract to sell with respondent.

Moreover, it must be considered that in view of the existing contract to sell between respondent and Davao Diamond, the latter cannot simply sell the property to petitioner. A contact to sell is a bilateral contract whereby the prospective seller, while expressly reserving the ownership over the thing sold despite the delivery thereof to the prospective buyer, binds himself to sell the property exclusively to the prospective buyer upon full payment of the purchase price.[19] Thus, in the absence of any revocation or cancellation of the contract to sell with respondent, Davao Diamond cannot legally sell the compressor to petitioner.

Nevertheless, the records of the case show that Leanillo paid the compressor in behalf of respondent.

The answer of petitioner to the complaint of respondent stated that the former voluntarily assumed paying the compressor since the same was beneficial to the mining operations of Double A.[20] Further, the receipts[21] issued by Davao Diamond to Leanillo

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[18] *Dantis v. Maghinang, Jr.*, 708 Phil. 575, 587 (2013).

[19] *Sps. Tumibay, et al. v. Sps. Lopez*, 710 Phil. 19, 31 (2013).

[20] *Rollo*, p. 90.

[21] *Id.* at 99-102.

state that the same is "in partial payment of the existing account incurred by respondent" and is "in partial payment of respondent's account with Davao Diamond relative to one (1) unit compressor."

The above-mentioned circumstances indubitably show that Leanillo paid the compressor not in her own right but in behalf of respondent. If indeed Davao Diamond sold the compressor to Leanillo and that the latter paid the compressor in accordance with her separate contract with Davao Diamond, such fact would have appeared in the receipts. Sadly, that is not the case. There is nothing in the records that would compel Us to declare that there is an independent contract of sale between Leanillo and Davao Diamond.

Having ruled that Leanillo paid the compressor in behalf of respondent, the latter has therefore complied with his obligation to fully pay the compressor. Ownership of the compressor can now legally pass to respondent. As such, the latter has the right to possess the compressor since possession is an attribute of ownership.

What becomes of Leanillo's payment? Is the respondent obliged to reimburse to Leanillo the price of the compressor?

Respondent claimed that there is nothing to be reimbursed since the money used by Leanillo to pay the compressor came from his partnership share. We do not agree.

A perusal of the records of the case reveal that respondent failed to raise this as an issue during the trial. In fact, it was not one of the issues[22] contained in the pre-trial order. Therefore, the same cannot be considered in the resolution of the case.

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[22] For the [respondent]:

a. who is the owner of the personal properties subject matter of the case?

b. whether or not the personal properties are wrongfully detained by the [petitioner]?

c. whether or not the [respondent] is entitled to their recovery from the possession of the [petitioner]?

As We held in the case of *LICOMCEN, Inc. v. Engr. Abainza*,[23] all issues that the parties intend to raise during the trial must be raised during the pre-trial, thus:

Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case. The parties must disclose during pretrial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. x x x.[24] (Citation omitted)

Hence, the issue of whether there is a partnership that is existing between petitioner, Leanillo and respondent and whether the partnership share of respondent was used to pay the compressor are not impliedly included or is inferable from the issues raised in the pre-trial order. As such, the same cannot be considered during the trial. Even if We rule that the said issues were included or inferable by necessary implication from the issues raised in the pre-trial order, respondent still failed to present an iota of evidence to prove that the partnership exist or that his partnership shares were used to pay off the compressor. Mere allegation without sufficient proof is not evidence of the existence of a fact or of the truthfulness of an allegation.

Since respondent failed to prove that the money used to pay the compressor was respondent's partnership share nor the existence of a partnership among them, the payment of Leanillo can be considered as payment by a third party. Under Article 1236 of the Civil Code, it is provided that:

Article 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

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d. whether or not the [petitioner] is liable for damages as prayed for in the complaint? *Id*. at 15.

[23] 704 Phil. 166 (2013).

[24] *Id*. at 174, citing *Villanueva v. CA*, 471 Phil. 394 (2004).

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (Emphasis ours)

Under the above-cited provision, Leanillo has the right to demand reimbursement from respondent since it is undisputed that Leanillo was the one who paid for the compressor in behalf of respondent. Nevertheless, since Leanillo was never impleaded as a party in this case, this Court has not acquired any jurisdiction over her person, and as such, We cannot grant any relief in her favor. "It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case."[25] This however is without prejudice to any action that may be brought by Leanillo to claim reimbursement from respondent.

WHEREFORE, the foregoing considered, the petition is **DENIED**. The Decision dated January 14, 2011 of the Court of Appeals in CA-G.R. CV No. 00038 is hereby **AFFIRMED** in that respondent Sofronio Manlangit is the lawful owner and possessor of the Atlas Copco Compressor. This, however, is without prejudice to any claim for reimbursement which may thereafter be filed against respondent.

SO ORDERED.

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

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[25] *Bucal v. Bucal*, 760 Phil. 912, 921 (2015).

FIRST DIVISION

[G. R. No. 201501. January 22, 2018]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE POLLUTION ADJUDICATION BOARD, *petitioner, vs.* **N. DELA MERCED & SONS, INC.,** *respondent.*

[G.R. No. 201658. January 22, 2018]

N. DELA MERCED & SONS, INC., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE POLLUTION ADJUDICATION BOARD,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE PROCEEDINGS, A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE SUFFICES TO MEET THE REQUIREMENTS OF DUE PROCESS; NO DENIAL OF DUE PROCESS IN CASE AT BAR.—** The specific claims of denial of due process are belied by the records of the case. x x x Dela Merced & Sons was not denied due process. In a real sense, it was able to take advantage of the available opportunities to explain its side and to question the acts and orders of the DENR-PAB. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. It is wrong for Dela Merced & Sons to insist that a trial-type proceeding is necessary. Administrative due process cannot be fully equated with due process in its strict judicial sense. In the former, a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. It is not legally objectionable for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as is the case here. In any event, whatever procedural defect there may have been in the subject proceedings was cured when Dela Merced & Sons moved for reconsideration.

2. **ID.; REPUBLIC ACT NO. 9275 (CLEAN WATER ACT OF 2004); AN ENTITY'S COMPLIANCE WITH THE ENVIRONMENTAL REQUIREMENTS THEREOF IS NOT EXCUSED BY THE ISSUANCE OF CERTIFICATE OF NON-COVERAGE IN ITS NAME.—** Dela Merced & Sons contends that it was exempt from complying with the environmental requirements of R.A. 9275 because it was issued a CNC. This argument deserves scant consideration. x x x This Court notes that the Guadalupe Commercial Complex is not included in the list of environmentally critical projects or areas under Proclamation No. 2146. As an environmentally non-critical project, it is not covered by the EIS System and, consequently, a CNC was rightly issued in its favor. Nevertheless, the CNC only exempts Dela Merced & Sons from securing an Environmental Compliance Certificate. It does not exempt it from complying with other environmental laws.

3. **ID.; ID.; SECTION 28 THEREOF OF FINES; DAMAGES AND PENALTIES CANNOT BE COLLATERALLY ATTACKED EXCEPT IN A DIRECT PROCEEDING; ISSUE OF CONSTITUTIONALITY OF SECTION 28, R.A. NO. 9275 IS NOT THE *LIS MOTA* OF THE CASE AT BAR.—** We note at the outset that Dela Merced & Sons' attempt to assail the constitutionality of Sec. 28 of R.A. 9275 constitutes a collateral attack. This is contrary to the rule that issues of constitutionality must be pleaded directly. Unless a law is annulled in a direct proceeding, the legal presumption of the law's validity remains. Nevertheless, even if the issue of constitutionality was properly presented, Dela Merced & Sons still failed to satisfy the fourth requisite for this Court to undertake a judicial review. Specifically, the issue of constitutionality of Sec. 28 of R.A. 9275 is not the *lis mota* of this case. The *lis mota* requirement means that the petitioner who questions the constitutionality of a law must show that the case cannot be resolved unless the disposition of the constitutional question is unavoidable. Consequently, if there is some other ground (*i.e.* a statute or law) upon which the court may rest its judgment, that course should be adopted and the question of constitutionality avoided. In this case, Dela Merced & Sons failed to show that the case cannot be legally resolved unless the constitutional issue it has raised is resolved. Hence, the presumption of constitutionality of Sec. 28 of R.A. 9275 stands.

4. **ID.; ID.; CONSTITUTIONAL PROHIBITION ON THE IMPOSITION OF EXCESSIVE FINES APPLIES ONLY TO CRIMINAL PROSECUTIONS, NOT IN AN ADMINISTRATIVE PROCEEDING AS IN CASE AT BAR; FINES UNDER R.A. NO. 9275 CANNOT BE CLASSIFIED AS EXCESSIVE.—** At the outset, Dela Merced & Sons' invocation of Article III, Section 9(1) of the Constitution is erroneous. The constitutional prohibition on the imposition of excessive fines applies only to criminal prosecutions. In contrast, this case involves an administrative proceeding and, contrary to the supposition of Dela Merced & Sons, the fine imposed is not a criminal penalty. Hence, the proscription under Article III, Section 19 is inapplicable to this case. Besides, even if the Bill of Rights were applicable, the fines under R.A. 9275 still cannot be classified as excessive. For a penalty to be considered obnoxious to the Constitution, it needs to be more than merely being harsh, excessive, out of proportion, or severe. To come under the prohibition, the penalty must be flagrantly and plainly oppressive or so disproportionate to the offense committed as to shock the moral sense of all reasonable persons as to what is right and proper under the circumstances. Dela Merced & Sons failed to satisfy these jurisprudential standards.

5. **ID.; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; FORMULATION OF PENALTIES PRESCRIBED BY STATUTE IS EXCLUSIVELY LEGISLATIVE WHICH THE COURTS CANNOT MODIFY.—** x x x [I]t should be noted that the basis for the amount of fine imposed by the PAB and the CA (*i.e.* ₱10,000 per day of violation) is the minimum imposable amount under the law. Since penalties are prescribed by statute, their formulation is essentially and exclusively legislative. Having no authority to modify the penalties already prescribed, the courts can only interpret and apply them. As held in *U.S. v. Borromeo*, "[t]he fixing of penalties for the violation of statutes is primarily a legislative function, and the courts hesitate to interfere, unless the fine provided for is so far excessive as to shock the sense of mankind."

6. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; WHEN THERE IS A CONFLICT BETWEEN THE FINDING OF THE COURT OF APPEALS AND THAT OF THE QUASI-JUDICIAL OR**

ADMINISTRATIVE BODY, REVIEW OF THE FACTUAL ISSUE IS PROPER; THE COURT OF APPEALS ERRONEOUSLY REDUCED THE FINE IMPOSED IN CASE AT BAR.— The DENR-PAB contests the reduction by the CA of the amount of fine the former could impose on Dela Merced & Sons, an issue that involves a question of fact. Since there is a conflict between the finding of the CA and that of PAB, we are constrained to delve into this factual issue. x x x [I]t was improper for the CA to indicate the date of issuance of the TLO as the end of the period of violation. As pointed out by the PAB, Dela Merced & Sons merely submitted documentary evidence to convince the former of the company's sincere intention to comply with the DENR standards. Hence, the grant of the request for the issuance of a TLO cannot be equated with compliance or proof that the company's effluent has already passed the standards. Any delay in conducting the influent and effluent sampling of the Water Treatment Facility cannot be characterized as unreasonable, especially since the period of sampling was well within the 150-day period provided in the TLO. Consequently, the amount of fine imposed by DENR-PAB must be upheld.

APPEARANCES OF COUNSEL

The Solicitor General for Republic of the Philippines.
Timbol & Associates Law Firm for N. Dela Merced & Sons, Inc.

D E C I S I O N

SERENO,[*] *C.J.*:

Before us are consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] dated 30 June 2011 and Resolution[2] dated 18 April 2012 in CA-G.R. SP No. 107626.

[*] Chairperson.

[1] *Rollo* (G.R. No. 201658), pp. 28-52; penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Noel G. Tijam (Chairperson; now a member of this Court) and Marlene Gonzales-Sison concurring.

[2] *Id*. at 53-55.

The CA upheld the Order of the Department of Environment and Natural Resources—Pollution Adjudication Board (DENR-PAB) in DENR-PAB Case No. NCR-00760-06 to fine N. Dela Merced & Sons, Inc. (Dela Merced & Sons), for violation of Section 28 of Republic Act No. (R.A.) 9275 (*The Clean Water Act of 2004*). The appellate court, however, reduced the fine from ₱3.98 million to ₱2.63 million.

THE FACTS

The Guadalupe Commercial Complex is a commercial building owned and operated by Dela Merced & Sons.[3] Situated alongside the Pasig River, the complex operates a wet market and houses eateries or kitchenettes in the same building.[4]

On 13 July 2006, the Environmental Management Bureau-National Capital Region (EMB-NCR) of the DENR inspected the Guadalupe Commercial Complex. The inspection team found that Dela Merced & Sons had violated the following: 1) Section 1 of DENR Administrative Order No. 2004-26 for operating air pollution source installations (generator set) without a permit to operate; and 2) Section 27(i) of R.A. 9275 for operating a facility that discharged regulated water pollutants without a discharge permit.

Thus, the EMB-NCR served a notice of violation (NOV)[5] dated 28 August 2006 upon Dela Merced & Sons, stating the charges and ordering the latter to comply with the requirements.[6] Dela Merced & Sons requested and was granted an extension of time to comply with the NOV requirements.[7]

On 11 October 2006, however, the EMB-NCR conducted another inspection of the Guadalupe Commercial Complex to monitor Dela Merced & Sons' compliance with R.A. 8749 (*The*

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[3] *Id*. at 8.

[4] *Id*. at 42.

[5] *Id*. at 106. NOV-608-203.

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

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

Clean Air Act of 1999) and R.A. 9275, as well as their respective Implementing Rules and Regulations (IRRs). The inspection team collected effluent[8] sample from the facility, and the results of the laboratory tests showed that the sample collected failed to conform to the DENR Effluent Standards.[9]

Consequently, on 6 February 2007, the DENR Secretary, upon the recommendation of the EMB-NCR, issued a cease and desist order (CDO) to Dela Merced & Sons for violation of R.A. 9275 and the IRR thereof.[10] In the same Order, the company was informed that no temporary lifting order (TLO)[11] shall be issued in its favor, unless it would submit the documents required under the law.[12]

On 30 March 2007, the EMB-NCR went ahead to partially execute the CDO by sealing the kitchen sinks of the locators

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[8] R.A. 9275, Article 2, Sec. 4(m). Effluent means discharges from known source which is passed into a body of water or land, or wastewater flowing out of a manufacturing plant, industrial plant including domestic, commercial and recreational facilities.

[9] *Rollo* (G.R. No. 201658), p. 31.

[10] *Id*. at 107-109.

[11] Definition of Terms, Rule II, Sec. 1(gg), Revised Rules of the Pollution Adjudication Board (PAB) On Pleading, Practice and Procedure in Pollution Cases, PAB Resolution No. 01, Series of 2010. "Temporary Lifting Order (TLO)" shall mean an order issued by the Board, after a satisfactory showing of the respondent's compliance with specified conditions, to provisionally set aside the effect of a Cease and Desist Order and allow the limited operation of a facility or business but only for a specific purpose or for a limited period.

[12] *Rollo* (G.R. No. 201658), pp. 31-32. These documents are: 1) a comprehensive pollution control program, including the plans and specifications of the firm's anti-pollution facility, budget and Gantt Chart of the activities relative thereto, 2) a surety bond equivalent to 25% of the total cost of the pollution control program, 3) a detailed description of the interim remedial measure to be instituted to mitigate pollution pending the completion of the pollution control program, 4) proof of employment of the newly appointed Pollution Control Officer (PCO) duly accredited by the DENR, and 5) a notarized undertaking by the President of the firm to comply with the conditions set in the Order.

identified as sources of wastewater at the Guadalupe Commercial Complex. On the other hand, the wet market and the kitchenettes or *turo-turo* on the ground floor of the building were only given warnings.[13]

On 3 April 2007, Dela Merced & Sons filed a Motion for Reconsideration (MR) of the imposition of the CDO and submitted the required documents for the issuance of a TLO.[14] The DENR-PAB issued the TLO on 3 July 2007.[15]

Meanwhile, on 9 August 2007, the EMB-DENR issued a Certificate of Non-Coverage (CNC) to Dela Merced & Sons pursuant to Presidential Decree (P.D.) No. 1586 (*Philippine Environmental Impact Statement System)*.[16]

By 14 November 2007, another effluent sampling was conducted. Subsequently, the results were submitted to the EMB laboratory for analysis and verification. The findings showed that the effluent conformed to the DENR Effluent Standards.[17] Thus, the DENR-PAB issued a Notice of Technical Conference to Dela Merced & Sons for a discussion of the imposition of fines during the period of violation of R.A. 9275.[18]

Attached to the notice was an initial computation of the fine in the total amount of ₱3.98 million. The notice also directed Dela Merced & Sons to submit its position paper regarding the fine.

The fine covered the alleged 398 days that Dela Merced & Sons had violated R.A. 9275. The rate was ₱10,000 per day of violation in accordance with Sec. 28 of the law. The period covered was from **12 October 2006**—when the collected effluent from the facility failed the DENR Effluent Standards—to **13 November 2007**, which marked the end of the period when,

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[13] *Id*. at 33.

[14] *Id*. at 33 and 113-131.

[15] *Id.* at 132.

[16] *Id.* at 93.

[17] *Id*. at 34.

[18] *Id*. at 134.

by the next day, the sampling gathered by the EMB-NCR had already passed the DENR Standards.[19]

In its Position Paper,[20] Dela Merced & Sons prayed that the fine be discarded for being imposed without due process of law. It argued that the fine was violative of Sections 1 and 19(1), Article III of the Constitution. It also contended that the period from the issuance of the TLO (3 July 2007) up to the date it had complied with the requirements (13 November 2007) should not be included in the computation.[21]

Following the recommendation of the PAB Committee on Fines, the DENR-PAB issued an Order[22] dated 13 November 2008 imposing a fine of ₱3.98 million on Dela Merced & Sons. The latter moved for reconsideration, but its motion was denied in an Order dated 30 January 2009.[23]

THE RULING OF THE COURT OF APPEALS

Aggrieved, Dela Merced & Sons filed with the CA a Petition for Review under Rule 43 of the Rules of Court, with a prayer for the issuance of a Temporary Restraining Order (TRO) and/ or Writs of Preliminary and Mandatory Injunction.[24]

In its Resolution[25] dated 1 March 2010, the CA denied the prayer for the issuance of a TRO and/or Injunction when it found that Dela Merced & Sons had not been deprived of its constitutional right to due process. The CA also found that the company had failed to show any grave and irreparable damage

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[19] *Id*. at 34 and 135.

[20] *Id*. at 136-140.

[21] *Id*. at 35.

[22] *Id*. at 95-97.

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

[24] *Id*. at 72-91.

[25] *Id*. at 175-180, penned by Asociate Justice Ruben C. Ayson and concurred in by Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro.

or injury that would have been caused, had the DENR-PAB's Orders been executed.[26]

As to the main petition, Dela Merced & Sons assailed the DENR-PAB Orders imposing the fine amounting to ₱3.98 million and denying the former's MR. Dela Merced & Sons claimed that it was exempt from the requirements of R.A. 9275 by virtue of the CNC.[27] It also argued that the imposition of the fine was unconstitutional for being excessive.[28]

On 30 June 2011, the CA rendered a Decision[29] affirming the assailed Orders of the DENR-PAB, except as to the imposable fine which was reduced to ₱2.63 million. According to the appellate court, the fine should be reduced in view of the EMB-NCR's unreasonable delay in complying with the order to conduct an effluent sampling of Dela Merced & Sons' Wastewater Treatment Facility.[30]

Both parties filed their respective MRs which were both denied in a Resolution[31] dated 18 April 2012. Hence, they both came to this Court with their respective petitions.

PETITION BEFORE THIS COURT

The DENR-PAB filed a Petition for Review on Certiorari with this Court on 5 June 2012, docketed as G.R. No. 201501. The petition is contesting the downgraded fine imposed by the CA on Dela Merced & Sons.[32] In turn, the latter party filed its own Petition for Review on Certiorari on 8 June 2012, docketed as G.R. No. 201658. The petition is questioning the fine imposed

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[26] *Id.* at 177-178. Dela Merced & Sons filed a Motion for Reconsideration, which was denied (*see Id.* at 181-184 and 240-243).

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

[28] *Id*. at 88-89.

[29] *Id*. at 28-52.

[30] *Id.* at 51.

[31] *Id*. at 53-55.

[32] *Rollo* (G.R. No. 201501), pp. 8-30.

upon it and is contesting the constitutionality of the provision on the imposition of the fine.[33] The two petitions have been consolidated.[34]

ISSUES

The issues raised by both parties are summarized as follows:

1. Whether Dela Merced & Sons was denied due process.
2. Whether the issuance of a CNC means exemption from compliance with R.A. 9275.
3. Whether Sec. 28 of R.A. 9275 on the imposition of fines is unconstitutional under Section 19(1), Article III of the Constitution for being excessive.
4. Whether the amount of the fine imposed was correct, assuming that its imposition was proper.

OUR RULING

We deny Dela Merced & Sons' petition, but grant that of the DENR-PAB.

Dela Merced & Sons was Not Denied Due Process

Dela Merced & Sons argues that the fine was imposed without due process of law because the company was "never given an opportunity to present its evidence to dispute the alleged violation of the law."[35] It also claims that the DENR-PAB simply entered the former's premises and unilaterally conducted an inspection and thereafter assessed excessive fines without first conducting conferences or a trial.[36]

We are not persuaded.

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[33] *Rollo* (G.R. No. 201658), pp. 8-27.

[34] *Id*. at 262-263.

[35] *Rollo* (G.R. No. 201658), p. 20.

[36] *Id.*

As for the inspection, the EMB-NCR was only performing its mandated duty under R.A. 9275[37] and the IRR[38] thereof when it inspected the premises of the Guadalupe Commercial Complex.[39] Clearly, the EMB had legal authority when it conducted the inspection.

The specific claims of denial of due process are belied by the records of the case. We quote with approval the findings of the CA on this matter:

> [The opportunity to be heard] was made completely available to petitioner [Dela Merced & Sons] who **participated in all stages** of the administrative proceeding before the DENR-PAB. x x x, [T]he respondent [PAB] after issuing the **notice of violation and possible imposition of fines** to the petitioner, gave it time to comply with the requirements of the environmental laws. The petitioner even requested for **extension of time** to comply with the requirements which the

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[37] Section 14. *Discharge Permits*. — The Department shall require owners or operators of facilities that discharge regulated effluents pursuant to this Act to secure a permit to discharge. The discharge permit shall be the legal authorization granted by the Department to discharge wastewater: *Provided*, That the discharge permit shall specify among others, the quantity and quality of effluent that said facilities are allowed to discharge into a particular water body, compliance schedule and monitoring requirement.

x x x x x x x x x

Section 23. *Requirement of Record-keeping, Authority for Entry to Premises and Access to Documents*. — x x x **Pursuant to this Act, the Department**, through its authorized representatives, shall have the right to: (a) enter any premises or to have access to documents and relevant materials as referred to in the herein preceding paragraph; (b) **inspect any pollution or waste source, control device, monitoring equipment or method required; and (c) test any discharge**. (Emphasis supplied)

[38] DENR Administrative Order 2005-10; 4.1 ***Authorized inspection*** — means inspection, whether announced or unannounced, conducted at any time by the multi-partite monitoring teams in relation to their function, or by a Department inspector where the inspector presents a valid Department inspector's identification duly signed by the Secretary, EMB Director or EMB Regional Director to enter and inspect a pollution source. **Inspections of effluents** discharged outside the facility may be conducted at any time. (Emphasis supplied)

[39] *Rollo* (G.R. No. 201658), p. 44.

respondent granted. But a **subsequent inspection** of the facility showed that the petitioner still failed to comply with the DENR effluent standards despite the extension given by respondent. Thus, the respondent was compelled to issue a **cease and desist order.**

x x x x x x x x x

Upon full compliance of the petitioner with all the requirements, the respondent **issued a TLO** in its favor. x x x EMB-NCR conducted **another inspection** of the facility and found that the effluents x x x conformed to the DENR Effluent Standards. Thereafter, the respondent invited the petitioner to a **technical conference** wherein the latter was instructed to submit a position paper on the amount of fines to be imposed and **gave it a copy of the respondent's initial computation of fines**. The petitioner, in its **Position Paper**, pleaded that the computation be discarded x x x. After **due deliberation of petitioner's arguments**, the respondent DENR-PAB imposed x x x fines x x x. The petitioner **moved for its reconsideration** which was denied.[40] (Emphases supplied)

The above findings overwhelmingly show that Dela Merced & Sons was not denied due process. In a real sense, it was able to take advantage of the available opportunities to explain its side and to question the acts and orders of the DENR-PAB. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[41]

It is wrong for Dela Merced & Sons to insist that a trial-type proceeding is necessary. Administrative due process cannot be fully equated with due process in its strict judicial sense. In the former, a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied.[42] It is not legally objectionable for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as is the case here.[43]

[40] *Id*. at 46-48.

[41] *PEZA v. Pearl City Manufacturing Corp.,* 623 Phil. 191, 201 (2009).

[42] *Disciplinary Board, Land Transportation Office v. Gutierrez*, G.R. No. 224395, 3 July 2017, citing *Vivo v. PAGCOR*, 723 Phil. 34 (2013).

[43] See *PEZA v. Pearl City Manufacturing Corp., supra*, at 204.

In any event, whatever procedural defect there may have been in the subject proceedings was cured when Dela Merced & Sons moved for reconsideration.[44]

No Exemption from Compliance with Environmental Laws, Even if Issued a CNC

Dela Merced & Sons contends that it was exempt from complying with the environmental requirements of R.A. 9275 because it was issued a CNC.[45]

This argument deserves scant consideration.

As explained in *Special People, Inc. Foundation v. Canda,*[46] the CNC is a certification issued by the EMB certifying that a project is not covered by the Environmental Impact Statement (EIS) System and that the project proponent is not required to secure an Environmental Compliance Certificate. The EIS System was established pursuant to P.D. No. 1151, which required all entities to submit an EIS for projects that would have a significant effect on the environment.[47]

In 1981, Proclamation No. 2146 was issued, enumerating the areas and types of projects that are environmentally critical and within the scope of the EIS System. The areas and projects not included in the enumeration were considered non-critical to the environment and thus, were entitled to a CNC.[48]

This Court notes that the Guadalupe Commercial Complex is not included in the list of environmentally critical projects or areas under Proclamation No. 2146. As an environmentally non-critical project, it is not covered by the EIS System and, consequently, a CNC was rightly issued in its favor.

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[44] See *SEC v. Universal Rightfield Property Holdings, Inc.,* 764 Phil. 267 (2015).

[45] *Rollo* (G.R. No. 201658) p. 19.

[46] 701 Phil. 365 (2013).

[47] *Id.* at 380-383.

[48] *Id*.

Nevertheless, the CNC only exempts Dela Merced & Sons from securing an Environmental Compliance Certificate. It does not exempt it from complying with other environmental laws. Section 5 of P.D. 1586 is clear on this matter:

> Section 5. *Environmentally Non-Critical Projects*. — All other projects, undertakings and areas not declared by the President as environmentally critical shall be considered as **non-critical** and shall **not be required to submit an environmental impact statement**. The National Environmental Protection Council, thru the Ministry of Human Settlements **may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary**. (Emphases supplied)

Based on the law, environmentally non-critical projects such as the Guadalupe Commercial Complex are still expected to provide additional environmental safeguards as deemed necessary. Hence, Dela Merced & Sons is still bound to abide by environmental laws such as the *Clean Water Act*, even if it possesses a CNC. As held in *Leynes v. People*,[49] an entity is not exempted from compliance with applicable environmental laws, rules, and regulations despite the issuance of a CNC in its name.

The Constitutionality of Section 28 of R.A. 9275 Was Not Properly Questioned

Another main contention of Dela Merced & Sons is that Section 28[50] of R.A. 9275 violates Section 19 (1), Article III of the Constitution, because the former section provides for the imposition of excessive fines.

We note at the outset that Dela Merced & Sons' attempt to assail the constitutionality of Sec. 28 of R.A. 9275 constitutes a collateral attack. This is contrary to the rule that issues of

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[49] G.R. No. 224804, 21 September 2016.

[50] Section 28. *Fines, Damages and Penalties*. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the

constitutionality must be pleaded directly.[51] Unless a law is annulled in a direct proceeding, the legal presumption of the law's validity remains.[52]

Nevertheless, even if the issue of constitutionality was properly presented, Dela Merced & Sons still failed to satisfy the fourth requisite for this Court to undertake a judicial review.[53] Specifically, the issue of constitutionality of Sec. 28 of R.A. 9275 is not the *lis mota* of this case.

The *lis mota* requirement means that the petitioner who questions the constitutionality of a law must show that the case cannot be resolved unless the disposition of the constitutional question is unavoidable.[54] Consequently, if there is some other ground (*i.e.* a statute or law) upon which the court may rest its judgment, that course should be adopted and the question of constitutionality avoided.[55]

In this case, Dela Merced & Sons failed to show that the case cannot be legally resolved unless the constitutional issue it has raised is resolved. Hence, the presumption of constitutionality of Sec. 28 of R.A. 9275 stands.

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immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, **shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (₱10,000.00) nor more than Two hundred thousand pesos (₱200,000.00) for every day of violation.**

x x x x x x x x x (Emphasis supplied)

[51] *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132 (2013).

[52] *Id.*

[53] *Saguisag v. Ochoa*, G.R. Nos. 212426 & 212444, 12 January 2016, 779 SCRA 241. The requisites are: (a) there is an actual case or controversy; (b) the petitioner possesses *locus standi*; (c) the question of constitutionality is raised at the earliest opportunity; and (d) the issue of constitutionality is the *lis mota* of the case.

[54] *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo,* 739 Phil. 283.

[55] *Id.* See also *Garcia v. Executive Secretary*, 602 Phil. 64 (2009).

The Fine Imposed Is Not Excessive Under the Constitution

Even if We were to rule on the constitutionality of Sec. 28 of R.A. 9275 despite the procedural lapses, Dela Merced & Sons' petition would still be denied.

At the outset, Dela Merced & Sons' invocation of Article III, Section 19(1) of the Constitution is erroneous. The constitutional prohibition on the imposition of excessive fines applies only to criminal prosecutions.[56] In contrast, this case involves an administrative proceeding and, contrary to the supposition of Dela Merced & Sons,[57] the fine imposed is not a criminal penalty. Hence, the proscription under Article III, Section 19 is inapplicable to this case.

Besides, even if the Bill of Rights were applicable, the fines under R.A. 9275 still cannot be classified as excessive.

For a penalty to be considered obnoxious to the Constitution, it needs to be more than merely being harsh, excessive, out of proportion, or severe.[58] To come under the prohibition, the penalty must be flagrantly and plainly oppressive[59] or so disproportionate to the offense committed as to shock the moral sense of all reasonable persons as to what is right and proper under the circumstances.[60] Dela Merced & Sons failed to satisfy these jurisprudential standards.

In questioning the constitutionality of the fine, Dela Merced & Sons merely alleges that the amount is "exorbitant,"[61] "arbitrary, unconscionable,"[62] and "too excessive as to cause

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[56] *Serrano v. NLRC*, 387 Phil. 345 (2000).

[57] *Rollo* (G.R. No. 201658), p. 20.

[58] *People v. Dionisio*, 131 Phil. 408, 411(1968).

[59] *Id.*

[60] *People v. De la Cruz*, 92 Phil. 906, 908 (1953).

[61] *Rollo* (G.R. No. 201658), p. 21.

[62] *Id.* at 24.

grave impact on the business operations, nay [the] very survival of petitioner as a business entity [and] its employees as a whole."[63] These unsubstantiated allegations are not enough to strike down the fine as unconstitutional for being excessive.

Moreover, Sec. 28 of R.A. 9275 cannot be declared unconstitutional simply because the fine imposed may cause grave impact on Dela Merced & Sons' business operations. Indeed, the possibility that a law may work hardship does not render it unconstitutional.[64]

Also, it should be noted that the basis for the amount of fine imposed by the PAB and the CA (i.e. ₱10,000 per day of violation) is the minimum imposable amount under the law. Since penalties are prescribed by statute, their formulation is essentially and exclusively legislative. Having no authority to modify the penalties already prescribed, the courts can only interpret and apply them.[65] As held in *U.S. v. Borromeo*, "[t]he fixing of penalties for the violation of statutes is primarily a legislative function, and the courts hesitate to interfere, unless the fine provided for is so far excessive as to shock the sense of mankind."[66]

During the deliberations on Senate Bill No. 2115 (which was the origin of R.A. 9275), one of the senators made the following statement:

> The lack of usable, clean water resources is a problem that confronts us today. This is the reason, Mr. President, this committee thought of submitting this measure as our humble contribution in finding alternative solutions. x x x
>
> x x x x x x x x x
>
> This bill is not lacking in incentives and rewards and **it has muscle to penalize acts that further pollute all our water sources as well**.

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[63] *Id.* at 20.

[64] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974).

[65] *People v. Muñoz*, G.R. Nos. L-38969-70, 9 February 1989.

[66] 23 Phil. 279, 289 (1912), citing *McMahon v. State*, 70 Neb., 722.

We increased the fines so that with strict implementation, we can curb the damage we continue to inflict, ironically, to our life source. x x x

x x x x x x x x x

[T]he quality of the nation's water resources is of great interest because it is so integrally linked to a long-term availability of water that is clean and safe for drinking, recreation and that is suitable for industry, irrigation and habitat for fish and wildlife.[67](Emphasis supplied)

Clearly, the legislature saw the need to protect and conserve our water resources. To this end, it formulated rules with concomitant penalties to ensure compliance with the law. We will not interfere with its wisdom in drafting the law, especially since the presumption of its constitutionality has not been overturned.

The Fine imposed by the DENR-PAB was Erroneously Reduced by the CA

The DENR-PAB contests the reduction by the CA of the amount of fine the former could impose on Dela Merced & Sons, an issue that involves a question of fact. Since there is a conflict between the finding of the CA and that of PAB, [68] we are constrained to delve into this factual issue.

At the rate of ₱10,000 per day of violation,[69] the fine was computed by the PAB in the amount of ₱3.98 million, which

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[67] I RECORD, SENATE 12th CONGRESS 2nd REGULAR SESSION 117 (5 August 2002).

[68] See *Co v. Vargas*, 676 Phil. 463 (2011) citing *Development Bank of the Philippines vs. Traders Royal Bank*, 642 Phil. 547, 556-557 (2010).

[69] Section 28 of RA 9275 provides: *Fines, Damages and Penalties*. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, **shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (₱10,000.00) nor**

covered the period of **12 October 2006** (when the collected effluent from the facility failed the DENR standards) to **13 November 2007** (the day before the effluent sampling was gathered, which eventually passed the DENR standards)—a total of **398 days**.

On the other hand, the CA reduced the fine to ₱2.63 million, because the period of violation it considered covered only **263 days**—from **12 October 2006** to **3 July 2007** (the date of issuance of the TLO). The CA reduced the fine in view of EMB-NCR's "unreasonable delay" in complying with the order in the TLO to conduct the effluent sampling of the company's Wastewater Treatment Facility.[70]

The PAB pointed out that the effluent samples were collected on 14 November 2007, which was still within the 150-day time frame[71] prescribed in the TLO.[72] It claimed that the period of effectivity of the TLO was based on the Construction Timetable of the Water Treatment Facility attached to Dela Merced & Sons' MR filed with the PAB. The timetable provided a period of 150 to 180 days before completion.[73]

Furthermore, it was only through a letter dated **26 November 2007** that PAB was informed by Dela Merced & Sons that the latter's Permanent Wastewater Treatment Facility had been

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more than Two hundred thousand pesos (₱200,000.00) for every day of violation.

x x x x x x x x x (Emphasis supplied)

[70] *Rollo* (G.R. No. 201658), pp. 50-51.

[71] See *Rollo* (G.R. No. 201501), p. 154. The TLO states:

WHEREFORE, in view of the foregoing, [PAB] hereby resolves to issue in favor of [Dela Merced & Sons] a **Temporary Lifting Order for a period of one hundred fifty (150) days** which shall be reckoned from receipt hereof.

Within the TLO period, the Regional office is hereby instructed to conduct influent and effluent sampling of [Dela Merced & Son]'s Wastewater Treatment Facility (WTF) and to transmit to [PAB] the results of laboratory analysis of samples collected within fifteen (15) days from the termination of the sampling activity.

[72] *Id*. at 25.

[73] *Id.* at 151.

completed on 9 November 2007 and a trial run conducted on 12 November 2007.[74]

Based on the foregoing, it was improper for the CA to indicate the date of issuance of the TLO as the end of the period of violation. As pointed out by the PAB, Dela Merced & Sons merely submitted documentary evidence to convince the former of the company's sincere intention to comply with the DENR standards. Hence, the grant of the request for the issuance of a TLO cannot be equated with compliance or proof that the company's effluent has already passed the standards.[75]

Any delay in conducting the influent and effluent sampling of the Water Treatment Facility cannot be characterized as unreasonable, especially since the period of sampling was well within the 150-day period provided in the TLO. Consequently, the amount of fine imposed by DENR-PAB must be upheld.

A Final Note

The importance of water resources for our existence cannot be overstated. These resources are vital not only for our individual well-being, but also for the survival of society as a whole. Yet, we have continued to abuse them, as if they were inexhaustible.

Pollution has been a perennial problem affecting our water resources. In his sponsorship speech for the Clean Water Bill, one senator cited the Pasig River to illustrate this point. He said, "[i]f we were to present a body of water that typifies the chronic water pollution problem in the country, nothing leads us closer than the notoriously polluted Pasig River. x x x Pasig River is considered biologically dead x x x. [It] is just one of the bodies of water that has been severely prostituted."[76] This is the same river to which the Guadalupe Commercial Complex has discharged its wastewater.[77]

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[74] *Id.* at 155.

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

[76] I RECORD, SENATE 12th CONGRESS 2nd REGULAR SESSION 119 (5 August 2002).

[77] *Rollo* (G.R. No. 201658), p. 42.

Our legislators saw the need for a concerted effort of the government and society to abate, control, and prevent the pollution of our country's water resources.[78] Hence, the *Clean Water Act* was enacted in the hope that "this vital measure will offer the future generation an abundant supply of potable water, clean rivers to swim [in], and a better access to safe water for their daily use."[79]

All of us benefit from clean water, and we are all responsible for its preservation. Dela Merced & Sons is no exception. Thus, we should all do our part in the protection and conservation of our water resources. As the authors of the Clean Water Act have reminded us, we must use our water wisely, for it is the selfsame prosperity we ought to hand down to our children.[80]

WHEREFORE, premises considered, the Petition in **G.R. No. 201501** is **GRANTED**, while that in **G.R. No. 201658** is **DENIED**. The Ruling of the Court of Appeals in CA-G.R. SP. No. 107626 dated 30 June 2011 and its Resolution on 18 April 2012, are hereby **AFFIRMED WITH MODIFICATION** as to the amount of fine imposed.

Following the DENR-PAB's Order dated 13 November 2008 in DENR-PAB Case No. NCR-00760-06, N. Dela Merced and Sons, Inc. is hereby **ORDERED** to pay a fine in the amount of **₱3,980,000 (three million nine hundred eighty thousand pesos)**.

SO ORDERED.

Carpio,** *Leonardo-de Castro, Peralta,**** and *del Castillo, JJ.,* concur.

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[78] I RECORD, SENATE 12th CONGRESS 2nd REGULAR SESSION 119 (5 August 2002).

[79] *Id.*

[80] I RECORD, SENATE 12th CONGRESS 2nd REGULAR SESSION 118 (5 August 2002).

** Designated as additional member in lieu of Associate Justice Francis H. Jardeleza per raffle dated 15 January 2018.

*** Designated as additional member in lieu of Associate Justice Noel Jimenez Tijam per raffle dated 11 December 2017.

FIRST DIVISION

[G.R. No. 208775. January 22, 2018]

JORGE DABON, *a.k.a.* GEORGE DEBONE @ GEORGE, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; BILL OF RIGHTS; SEARCHES AND SEIZURES; THE STATE AND ITS AGENTS CANNOT CONDUCT SEARCHES AND SEIZURES WITHOUT THE REQUISITE WARRANT.—** No less than the 1987 Constitution provides for the protection of the people's rights against unreasonable searches and seizures, x x x Thus, the State and its agents cannot conduct searches and seizures without the requisite warrant. Otherwise, the constitutional right is violated.
2. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; TWO-WITNESS RULE; RULE THAT THE SEARCH SHOULD BE MADE IN THE PRESENCE OF TWO (2) WITNESSES, ELUCIDATED.—** x x x[A] search warrant issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules provide parameters in the proper conduct of a search. One of those parameters set by law is Section 8 of Rule 126, to wit: **Section 8.** *Search of house, room, or premise to be made in presence of two witnesses*. x x x The law is mandatory to ensure the regularity in the execution of the search warrant. This requirement is intended to guarantee that the implementing officers will not act arbitrarily which may tantamount to desecration of the right enshrined in our Constitution. x x x We are not unguarded in ruling for the inadmissibility of evidence obtained in violation of this requirement. In *People v. Go*, We rendered inadmissible the evidence obtained in violation of this rule and stressed that the Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Section 8, Rule 126 provides that the search

should be witnessed by two witnesses of sufficient age and discretion residing in the same locality only in the absence of either the lawful occupant of the premises or any member of his family. In *People v. Del Castillo*, We ruled that although the lawful occupants were present during the search, the fact that they were not allowed to witness the search of the premises violates the mandatory requirement. In *Bulauitan v. People,* We decided for the acquittal of the accused because of failure to comply with the aforequoted rule, which rendered the evidence against him inadmissible.

3. **ID.; ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE SAFEGUARDS PROVIDED BY LAW IN IMPLEMENTING THE SEARCH WARRANT MAKES THE SEARCH UNREASONABLE; CASE AT BAR.—** Here, the hierarchy among the witnesses as explicitly provided under the law was not complied with. For one, the lawful occupants of the premises were not absent when the police authorities implemented the search warrant. Even so, the two-witness rule was not complied with as only one witness, Brgy. *Kagawad* Angalot, was present when the search was conducted. As told, based on the testimonies of PO2 Datoy and Brgy. *Kagawad* Angalot, it is clear that the mandatory rule under Section 8 was violated. Clearly, the contention of the Office of the Solicitor General (OSG) that SK Chairman Angalot was there was belied by the statement of PO2 Datoy and Brgy. *Kagawad* Angalot. Failure to comply with the safeguards provided by law in implementing the search warrant makes the search unreasonable. Thus, the exclusionary rule applies, *i.e.*, any evidence obtained in violation of this constitutional mandate is inadmissible in any proceeding for any purpose. We emphasize that the exclusionary rule ensures that the fundamental rights to one's person, houses, papers, and effects are not lightly infringed upon and are upheld.

4. **ID.; ID.; ID.; ID.; MOTION TO QUASH A SEARCH WARRANT OR TO SUPPRESS EVIDENCE; FAILURE TO FILE A MOTION TO SUPPRESS EVIDENCE OBTAINED AGAINST THE ACCUSED CANNOT BE CONSIDERED AS A SUFFICIENT INDICATION THAT HE CLEARLY, CATEGORICALLY, KNOWINGLY, AND INTELLIGENTLY MADE A WAIVER; CASE AT BAR.—** Lastly, We find that the inadmissibility of the evidence obtained was not defeated by the fact that Dabon failed to timely object

to such evidence's admissibility during trial. Although Section 14 of Rule 126 states that a motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted, the purpose for which such provision was enacted must nevertheless be considered. In the case of *Ogayon v. People*, We clarified that "the provision was intended to resolve what is perceived as conflicting decisions on where to file a motion to quash a search warrant or to suppress evidence seized by virtue thereof. It was certainly not intended to preclude belated objections against the search warrant's validity." In the *Ogayon* case, We brushed aside such procedural defect and gave more prime to a fundamental constitutional right. We set aside adherence to procedural rules and recognized that procedural rules can neither diminish nor modify substantial rights. Like in *Ogayon*, We rule that Dabon's failure to file a motion to suppress the evidence obtained against him cannot be considered as a sufficient indication that he clearly, categorically, knowingly, and intelligently made a waiver. This is in consonance with Our ruling in *People v. Bodoso* where We underlined that in criminal cases where life, liberty and property are all at stake, "[t]he standard of waiver requires that it not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences." After all, he raised the objection in his Omnibus Motion for Reconsideration before the trial court.

APPEARANCES OF COUNSEL

Trabaho-Lim Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Jorge Dabon (Dabon),

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[1] *Rollo*, pp. 4-27.

questioning the Decision[2] dated July 27, 2012 and Resolution[3] dated July 8, 2013 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 01414, affirming the Omnibus Decision[4] dated July 10, 2008 and Omnibus Order[5] dated February 1, 2010 rendered by the Regional Trial Court (RTC) of Bohol, Tagbilaran City, Branch 2, in Criminal Case Nos. 11930, 11931 and 11932.

The Facts

Law enforcement agents applied for a search warrant after the surveillance and test-buy operations conducted by the operatives of the Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG) in Bohol, which confirmed that Dabon was engaged in illegal drug activity.[6]

Search Warrant No. 15, which armed law enforcement agents to search Dabon's residence for violation of Sections 11 and 12, Article II of Republic Act (R.A.) No. 9165[7] or the Comprehensive Dangerous Drugs Act of 2002, was issued.[8]

On July 26, 2003, at about 5:30 a.m., Police Inspector Hermano Mallari (P/Insp. Mallari), Senior Police Officer 2 Arsenio Maglinte (SPO2 Maglinte), SPO1 Noel Triste (SPO1 Triste), Police Officer 3 John Gilbert Basalo (PO3 Basalo), PO3 David Enterina (PO3 Enterina), PO2 Gaudioso Datoy (PO2 Datoy) and PO2 Herold Bihag (PO2 Bihag) of the Bohol Criminal

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[2] Penned by Associate Justice Ramon Paul L. Hernando, concurred in by Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles; *id*. at 31-45.

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

[4] Penned by Presiding Judge Baudilio K. Dosdos; *id.* at 69-77.

[5] *Id*. at 94.

[6] *Id*. at 33.

[7] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved June 7, 2002.

[8] *Rollo*, pp. 33 and 72.

Investigation and Detection Team proceeded to an apartment unit at Boal District, Tagbilaran City where the residence of Dabon is situated.[9]

Upon reaching the two-storey apartment at about 7:30am, the CIDG operatives requested Barangay Kagawad Ariel Angalot (Brgy. Kagawad Angalot), City Councilor Jose Angalot (Councilor Angalot), Sangguniang Kabataan Chairman Marianne Angalot (SK Chairman Angalot), media representative Charles Responte (Responte) and Department of Justice (DOJ) representative Zacarias Castro (Castro) to witness the search.[10]

The group entered the house and the CIDG, together with Brgy. Kagawad Angalot and SK Chairman Angalot went to the second floor where Dabon and his family resided. The second floor had two bedrooms, a kitchen and a living room. They found Eusubio Dumaluan (Dumaluan) in the living room while Dabon was inside one of the bedrooms.[11]

After P/Insp. Mallari handed the copy of the search warrant to Dabon, the CIDG operatives searched the kitchen where PO2 Datoy[12] and PO2 Enterina found, in the presence of Brgy. *Kagawad* Angalot, drug paraphernalia. The police officers then frisked Dumaluan and recovered from his pocket, a coin purse, a lighter, a metal clip, three empty decks of suspected *shabu*, two pieces of blade and crumpled tin foil.[13]

The police officers proceeded to search one of the bedrooms where PO2 Datoy and PO2 Enterina, in the presence of Brgy. *Kagawad* Angalot, found three plastic sachets containing suspected *shabu*, which were hidden in the folded of clothes inside a drawer. They also recovered the following drug paraphernalia: empty cellophane wrapper, rolled tinfoil containing suspected *shabu* residue, twisted tissues, plastic straw

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[9] *Id*. at 72.

[10] *Id*. at 33-34.

[11] *Id*. at 34.

[12] PO2 Datoy at sometimes referred to as PO3 Datoy in the *rollo*.

[13] *Id*.

refiller, three pieces of bamboo clip, improvised metal clip, and blade.[14]

The three plastic sachets and the drug paraphernalia found in the bedroom of Dabon and the drug paraphernalia recovered from Dumaluan were turned over to SPO1 Triste who inventoried and placed them in evidence bags in the presence of Councilor Angalot, Brgy. *Kagawad* Angalot, SK Chairman Angalot, media representative Responte and DOJ representative Castro.[15]

On July 28, 2003, PO2 Diola of the Bohol Provincial Office of the PNP Crime Laboratory received from PO2 Imperina a letter signed by P/Insp. Mallari[16] requesting the conduct of chemical examination on the seized items. The letter and the seized items were turned over to P/Insp. David Tan (P/Insp. Tan), a Forensic Chemical Officer.[17]

The chemical examination and confirmatory test conducted by P/Insp. Tan on the seized items yielded positive results for the presence of methylamphetamine hydrochloride.[18]

Two Information were filed against Dabon for violation of Sections 11 and 12, Article II of R.A. No. 9165, to wit:

Criminal Case No. 11931:

That on or about the 26th day of July 2003, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly have in his possession, custody and control Three (3) packets of shabu powder totally weighing 0.80 gram and One (1) strip of aluminum foil containing traces of shabu powder, the accused knowing fully well that the above-mentioned substance which contains Methylamphetamine Hydrochloride is a dangerous

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[14] *Id*.

[15] *Id*.

[16] P/Insp. Mallari at sometimes referred to as P/Senior Insp. Mallari in the *rollo*.

[17] *Id*.

[18] *Id*.

drug and that he did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.[19]

Criminal Case No. 11932:

That on or about the 26th day of July 2003 in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly have in his possession, custody and control One (1) piece small plastic container (red) containing several pieces of empty decks of shabu, One (1) piece small plastic container (transparent) containing several empty cellophane wrapper for *shabu*, Two (2) pieces improvised tooter (tin foils), Two (2) pieces hardly twisted tissue, Four (4) pieces cut-rolled unused tin foils, One (1) piece plastic straw refiller, Three (3) pieces improvised bamboo clips, One (1) piece improvised metal clip, One piece blade (half[-]size), One (1) piece cellophane pack containing several empty cellophane wrapper used for packing shabu, One (1) unit cellphone (Motorola) with charger, and Cash proceeds amounting to One Thousand Nine Hundred Pesos (PPh 1,900.00) (sic) in difference (sic) bill denomination - the accused knowing fully well that the above-mentioned items are the instruments, apparatus, or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing a dangerous drug into the body, and that he did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.[20]

An information for violation of Section 12, Article II of R.A. No. 9165 was filed against Dumaluan.[21]

For his defense, Dabon argued that he was surprised when he was awakened by alleged members of the CIDG, who entered his room, pointing guns at him and telling them that they will conduct a raid.[22]

Dabon and Dumaluan claimed that they were not allowed to witness the search conducted by the CIDG. Instead, they were

[19] *Id*. at 32.

[20] *Id*.

[21] *Id*. at 33.

[22] *Id*. at 102.

ordered to stay and sit in the living room while other members of the household were locked inside the room of their house helper.[23]

Ruling of the RTC

In an Omnibus Decision[24] dated July 10, 2008, the RTC ruled that the search implemented in Dabon's residence was valid and consequently found Dabon guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of R.A. No. 9165. The RTC upheld the presumption of regularity in the performance of the police officers' duties in the absence of ill motives on their part, thus:

> WHEREFORE, in Criminal Case No. 11931, the Court find (sic) [Dabon], aka George Debone @ George, guilty beyond reasonable doubt of the offense of Violation of Section 11, Article II, of [R.A.] No. 9165, embraced in the afore-quoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, [Dabon] is hereby sentenced to the indeterminate penalty of imprisonment of, from TWELVE (12) YEARS and ONE (1) DAY, as minimum to FOURTEEN (14) YEARS, as maximum, and to pay a fine of THREE HUNDRED THOUSAND (Php 300,000.00) PESOS, with the accessory penalties of the law, and to pay the costs.
>
> In Criminal Cases Nos. 11930 and 11932, the Court finds [Dabon], aka George Debone@ George and [Dumaluan], guilty beyond reasonable doubt of Violation of Section 12, Article II of [R.A.] No. 9165, embraced in the afore-quoted informations. There being no aggravating nor mitigating circumstance adduced and proven at the trial, [Dabon and Dumaluan] are each hereby separately sentenced to the indeterminate penalty of, SIX (6) MONTHS and ONE (1) DAY, as minimum, to FOUR (4) YEARS, as maximum, and to pay a fine of TWENTY FIVE THOUSAND (Php 25,000.00) PESOS, with the accessory penalties of the law, and to pay the costs.
>
> In compliance with Par. 7, Section 21, of R.A. [No.] 9165, the evidence in this case consisting of three (3) sachets of shabu weighing 0.80 gram, and aluminum foil, with traces of shabu, taken from [Dabon], and the specified drug paraphernalia recovered from both

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[23] *Id*.

[24] *Id*. at 69-77.

[Dabon and Dumaluan], are hereby ordered turned-over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition and or destruction. The cellphone and cash subject matter of these cases, were returned to the accused upon the latter's motion.

If preventively detained before putting up bail, the accused concerned, is hereby credited in full of the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.[25]

Only Dabon filed a Motion for Reconsideration[26] before the RTC. In said motion, he essentially questioned the admissibility of the seized items as neither he nor any member of his family was present when the search was conducted. Such motion was denied in an Omnibus Order[27] dated February 1, 2010.

Undeterred, Dabon filed an appeal before the CA. Dabon insisted on the inadmissibility of the evidence obtained against him.

In a Decision dated July 27, 2012,[28] the CA affirmed the conviction of Dabon. The CA ratiocinated that the right of Dabon to question his arrest was deemed waived because he failed to question the same before arraignment. In any case, the CA ruled that the procedural flaw did not cast doubt on the fact that the illegal drugs and paraphernalia were seized at the residence of Dabon. The dispositive portion thereof reads:

WHEREFORE, in view of the foregoing, the appeal is **DENIED**. The July 10, 2008 Omnibus Decision and the February 1, 2010 Omnibus Order of the [RTC], Branch 2, of Tagbilaran City, Bohol is **AFFIRMED** *in toto*. Costs on [Dabon].

SO ORDERED.[29]

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

[26] *Id*. at 78-87.

[27] *Id*. at 94.

[28] *Id*. at 31-44.

[29] *Id*. at 44.

A motion for reconsideration[30] was filed by Dabon, which was denied in a Resolution[31] dated July 8, 2013.

Issue

Is the evidence obtained against Dabon admissible?

Ruling of the Court

No less than the 1987 Constitution provides for the protection of the people's rights against unreasonable searches and seizures, to wit:

> **Section 2.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Thus, the State and its agents cannot conduct searches and seizures without the requisite warrant. Otherwise, the constitutional right is violated.

"It must, however, be clarified that a search warrant issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules provide parameters in the proper conduct of a search."[32] One of those parameters set by law is Section 8 of Rule 126, to wit:

> **Section 8.** *Search of house, room, or premise to be made in presence of two witnesses*. — No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

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[30] *Id*. at 48-61.

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

[32] *Bulauitan v. People*, G.R. No. 218891, September 19, 2016, 803 SCRA 367, 374-375.

The law is mandatory to ensure the regularity in the execution of the search warrant.[33] This requirement is intended to guarantee that the implementing officers will not act arbitrarily which may tantamount to desecration of the right enshrined in our Constitution.

In this case, it is undisputed that Dabon and his wife were actually present in their residence when the police officers conducted the search in the bedroom where the drugs and drug paraphernalia were found. It was also undisputed that, as the CA recognized, only Brgy. *Kagawad* Angalot was present to witness the same.[34]

As gleaned from the records, PO2 Datoy, one of the police officers who conducted the search in the bedroom, testified, thus:

> Q: What part of the house did you personally search?
> A: At the bedroom of [Dabon].
>
> Q Who was with you when you were searching the bedroom of [Dabon]?
> A: PO2 Enterina and [Brgy. *Kagawad* Angalot].
>
> x x x x x x x x x
>
> Q: When you were already inside the room, [Dabon] according to you was still there?
> A: He was in the sala.
>
> Q: He did not go with you?
> A: No, he was sitting in the sala.[35]

Brgy. *Kagawad* Angalot confirmed the statement of PO2 Datoy insofar as the absence of Dabon or any member of his family when the search was conducted, to wit:

> Q: When the bedroom of the couple was subjected to a search, the couple Mr. and Mrs. Dabon were outside the room?

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[33] *People v. Gesmundo*, 292-A Phil. 20, 29 (1993).

[34] *Rollo*, p. 38.

[35] *Id*. at 108-109.

A: They were in the sala.

Q: [Dabon] was at the sala and the wife was at the comfort room accompanied by [SK Chairman Angalot]?

A: Yes, sir.[36]

We are not unguarded in ruling for the inadmissibility of evidence obtained in violation of this requirement. In *People v. Go*,[37] We rendered inadmissible the evidence obtained in violation of this rule and stressed that the Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Section 8, Rule 126 provides that the search should be witnessed by two witnesses of sufficient age and discretion residing in the same locality only in the absence of either the lawful occupant of the premises or any member of his family. In *People v. Del Castillo*,[38] We ruled that although the lawful occupants were present during the search, the fact that they were not allowed to witness the search of the premises violates the mandatory requirement. In *Bulauitan v. People,*[39] We decided for the acquittal of the accused because of failure to comply with the aforequoted rule, which rendered the evidence against him inadmissible.

Here, the hierarchy among the witnesses as explicitly provided under the law was not complied with. For one, the lawful occupants of the premises were not absent when the police authorities implemented the search warrant. Even so, the two-witness rule was not complied with as only one witness, Brgy. *Kagawad* Angalot, was present when the search was conducted.

As told, based on the testimonies of PO2 Datoy and Brgy. *Kagawad* Angalot, it is clear that the mandatory rule under Section 8 was violated. Clearly, the contention of the Office of the Solicitor General (OSG) that SK Chairman Angalot was

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[36] *Id*. at 38.

[37] 457 Phil. 885 (2003).

[38] 482 Phil. 828 (2004).

[39] G.R. No. 218891, September 19, 2016, 803 SCRA 367.

there was belied by the statement of PO2 Datoy and Brgy. *Kagawad* Angalot.

Failure to comply with the safeguards provided by law in implementing the search warrant makes the search unreasonable. Thus, the exclusionary rule applies, *i.e.*, any evidence obtained in violation of this constitutional mandate is inadmissible in any proceeding for any purpose.[40] We emphasize that the exclusionary rule ensures that the fundamental rights to one's person, houses, papers, and effects are not lightly infringed upon and are upheld.[41]

Lastly, We find that the inadmissibility of the evidence obtained was not defeated by the fact that Dabon failed to timely object to such evidence's admissibility during trial.

Although Section 14 of Rule 126 states that a motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted, the purpose for which such provision was enacted must nevertheless be considered. In the case of *Ogayon v. People*,[42] We clarified that "the provision was intended to resolve what is perceived as conflicting decisions on where to file a motion to quash a search warrant or to suppress evidence seized by virtue thereof. It was certainly not intended to preclude belated objections against the search warrant's validity."[43]

In the *Ogayon*[44] case, We brushed aside such procedural defect and gave more prime to a fundamental constitutional right. We set aside adherence to procedural rules and recognized that

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[40] Article II I of the 1987 Constitution provides that:

Section 3(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[41] *People v. Cogaed*, 740 Phil. 212, 241 (2014).

[42] 768 Phil. 272 (2015).

[43] *Id*. at 289.

[44] *Supra.*

procedural rules can neither diminish nor modify substantial rights.[45]

Like in *Ogayon*, We rule that Dabon's failure to file a motion to suppress the evidence obtained against him cannot be considered as a sufficient indication that he clearly, categorically, knowingly, and intelligently made a waiver. This is in consonance with Our ruling in *People v. Bodoso*[46] where We underlined that in criminal cases where life, liberty and property are all at stake, "[t]he standard of waiver requires that it not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences."[47] After all, he raised the objection in his Omnibus Motion for Reconsideration before the trial court.

While We are at one with the government in its campaign against illegal drugs, We cannot disregard a constitutional right and run counter to what is explicitly prescribed by our Constitution and to its purpose, *i.e.*, "to to protect the people against arbitrary and discriminatory use of political power."[48]

WHEREFORE, premises considered, the Decision dated July 27, 2012 and Resolution dated July 8, 2013 of the Court of Appeals in CA-G.R. CEB-CR No. 01414 are **REVERSED and SET ASIDE**.

Accordingly, accused-appellant Jorge Dabon is **ACQUITTED** of the crime charged against him. His immediate release from confinement is hereby ordered unless he is lawfully held in custody for another cause. The Director of the Bureau of Corrections is ordered to forthwith implement this decision and to inform this Court, within ten (10) days from receipt hereof, of the date the accused-appellant was actually released from confinement.

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[45] *Id*. at 288.

[46] 446 Phil. 838 (2003).

[47] *Id*. at 850.

[48] *Allado v. Judge Diokno,* 302 Phil. 213, 238 (1994).

The *shabu* and other *shabu* paraphernalias seized during the search are forfeited in favor of the State.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 215713. January 22, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BOBBY S. ABELARDE,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 9165; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY; *CORPUS DELICTI*; FAILURE TO ESTABLISH THE EXISTENCE OF THE *CORPUS DELICTI* MUST INEVITABLY RESULT IN THE ACQUITTAL OF THE ACCUSED; CASE AT BAR.— As in x x x [*People vs.*] *Denoman* case, we cannot close our eyes to the fact that in the cases under review SPO1 Selibio went through the motion of identifying in court the packets of *shabu* that were allegedly recovered from the accused-appellant that afternoon of March 24, 2005 somewhere in *Barangay* Pasil, Cebu City. But the lapses in procedure x x x are just too egregious and too glaring to be shunted aside; hence such lapses must cast serious lingering doubts upon the prosecution's claim that the packets of alleged *shabu* that were "offered" as evidence in court were the self-

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[*] Designated additional Member per Raffle dated May 8, 2017 *vice* Associate Justice Francis H. Jardeleza.

same packets of *shabu* that were seized from the herein accused-appellant that afternoon in question somewhere in *Barangay* Pasil, Cebu City. Indeed, because of these yawning gaps in the prosecution's evidence, we are not prepared to say that the body of the crime – the *corpus delicti* – has been convincingly identified in these twin cases. And, as stressed in the *Denoman* case, the failure to establish the existence of the *corpus delicti* must inevitably result in the acquittal of the accused-appellant. For, it is axiomatic that in all criminal prosecutions, all the elements constitutive of the crime charged must be duly established. Otherwise, it becomes the constitutional duty of the Court to acquit the accused-appellant his guilt not having been proved beyond reasonable doubt. And this is the situation here.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

"Law enforcers should not trifle with the legal requirement [set forth in Section 21 of Republic Act (RA) No. 9165] to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."[1]

Factual Antecedents:

On April 4, 2005, the Office of the City Prosecutor of Cebu City charged the accused-appellant Bobby S. Abelarde a.k.a. Roberto S. Abelarde, with violation of Section 5, Article II of RA 9165, under an Information which alleged —

[1] *People v. Holgado*, 741 Phil. 78, 81 (2014).

That on or about the 24th day of March, 2005, at about 5:15 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of the law, did then and there sell, deliver or give away to poseur buyer one (1) heat sealed transparent plastic packet of white crystalline substance weighing 0.03 gram, locally known as shabu, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[2]

This case was docketed as Criminal Case No. CBU-72995 of the Regional Trial Court (RTC) of Cebu City.

The next day, April 5, 2005, the Office of the City Prosecutor of Cebu City filed another Information against the same accused-appellant, this time for violation of Section 11, Article II of RA 9165. The Information this time read as follows –

That on or about the 24th day of March, 2005, at about 5:15 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control six (6) heat sealed transparent [plastic packets] of white crystalline substance weighing 0.24 gram, locally known as shabu, containing methylamphetaine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.[3]

This second case was docketed as Criminal Case No. CBU-72996 of the RTC of Cebu City.

Arraigned on these two cases, the accused-appellant, assisted by a lawyer from the Public Attorney's Office, entered a negative plea to both indictments.[4]

During the pre-trial conference, the accused-appellant admitted the following:

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[2] Records, p. 1.

[3] *Id*. at 10.

[4] *Id*. at 20.

1) The qualification of the Forensic Chemist, Police Chief Inspector Mutchit G. Salinas (PCI Salinas), of the Cebu Philippine National Police (PNP) Crime Laboratory;

2) The existence of the Chemistry Report, marked as Exhibit "A" in Criminal Case No. CBU-72995;

3) The existence of the same Chemistry Report also marked as Exhibit "A" in Criminal Case No. CBU-72996;

4) The existence of the buy-bust money;

5) The existence of the Joint Affidavit of SPO1 Elmer Villanueva Abelgas (SPO1 Abelgas), SPO1 Willard Cayang Selibio (SPO1 Selibio); PO2 Rene Genobatin Labiaga (PO2 Labiaga), PO1 Aldwin Nacorda Vicada (PO1 Vicada), all members of the Miscellaneous Team of the PNP, Cebu City. This joint affidavit was marked as Exhibit "B" in Criminal Case No. CBU-72995 and marked as Exhibit "C" in Criminal Case No. CBU-72996.

6) The identity of the accused-appellant; and

7) The fact that the accused-appellant was arrested on the afternoon of March 24, 2005 at Sitio Suba, Pasil, Cebu City, although the accused-appellant is challenging the legality of his arrest.[5]

Version of the Prosecution:

The Government presented only one witness to prove its case: SPO1 Selebio, a member of the so-called "Miscellaneous Team" of the Cebu City PNP which arrested the accused-appellant that afternoon of March 24, 2005 somewhere in Suba, Pasil, Cebu City. The testimony of PCI Salinas, forensic chemist of the Cebu PNP Crime Laboratory was dispensed with, for the reason that the defense admitted the existence of the letter request for chemical examination of the prohibited substance *shabu* involved in these cases, as well as the existence of the chemistry report embodying the result of the chemical examination thereof.[6]

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

[6] See TSN, November 17, 2005, pp. 1-4 & November 24, 2005, pp. 2-6.

SPO1 Selibio testified[7] that on the afternoon of March 24, 2005, he received a call from a concerned citizen that a certain person was engaged in the trading of illegal drugs, somewhere in Garfield, interior portion of Suba, Pasil in Cebu City; that upon receipt of the call, he and his fellow police officers, all members of the Miscellaneous Team of the Cebu City PNP, held a "briefing" together with the confidential informant for the purpose of conducting a "buy-bust" operation. Apart from himself, the other members of this "buy-bust" team were SPO1 Abelgas, PO2 Labiaga, PO1 Vicada and a civilian poseur-buyer. After they reached Garfield Street, *Sitio* Suba, *Barangay* Pasil, Cebu City, their civilian poseur-buyer approached the accused-appellant and struck up a conversation with the latter. From a distance, SPO1 Selibio saw their poseur-buyer give to the accused-appellant the pre-marked ₱100.00 (with Serial Number XC704764), in exchange for something. At this point, the poseur-buyer scratched his head, the pre-arranged signal that the transaction had been consummated, so he and the members of his team rushed toward the accused-appellant and arrested him. He and his teammates frisked the accused-appellant and were able to recover from him a packet of *shabu.* Further search of the accused-appellant's body yielded yet another six packets of the banned substance *shabu.*

The packets of *shabu* were then marked and later sent to the PNP Crime Laboratory at Camp Sotero Cabahug in Cebu City for chemical examination. The chemical analysis disclosed that the specimens were positive for the presence of methamphetamine hydrochloride, a dangerous drug, locally known as *shabu.*

Version of the Defense:

The accused-appellant categorically denied that he ever sold *shabu* to anyone that afternoon of March 24, 2005 in Pasil, Cebu City, or that he was in possession of *shabu* at the said place and time. He claimed that he was simply "framed-up"

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[7] See TSN, August 31, 2005 & May 3, 2006.

by the police officers, and that the alleged packets of *shabu* allegedly taken from him were "planted" evidence.[8]

The accused-appellant, who earns his living as a tricycle driver, testified that on the afternoon in question, he went to the house of one "Nanay," his neighbor at Magsaysay Street, Cebu City, to buy water for bathing and washing; that as no water was yet coming out of "Nanay's" faucet, he passed the time watching TV at the gate of the house of another neighbor, a certain "Mommy," whose house was just opposite, or across from, the house of "Nanay;" that in Nanay's house he in fact saw some acquaintance like Lily and her companions who were playing cards; that while waiting for his pail to be filled with water, police officers appeared in the scene, and after one "balding" police officer had pointed to him, another police officer whom he identified in court as "Sir Willard," at once frisked him; that he resisted the frisking, but this Sir Willard told him to shut up, and to stop being "stubborn" and "just go with them;"[9] that because he insisted that he did not know what wrongdoing he had done, and because the police officers did not care to reply to his query as to what crime he had committed, he put up a stronger resistance to their frisking of his body; that in fact the frisking of his body by the policemen yielded nothing at all; that apparently incensed at his resistance, the police officers forcibly brought him to the Tabo-an Police Station, in Cebu City; that while there, the police officers asked him "who are the drug lords in our place;"[10] and that when he replied that "I do not know about that"[11] the police officers became more infuriated and told him that they would "[add] Section 5 to my case;"[12] and that because he exhibited a persistently defiant attitude, he was brought by the police to another police station,

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[8] See TSN, July 3, 2007.

[9] *Id.* at 7.

[10] *Id*. at 9.

[11] *Id.*

[12] *Id*. at 10.

where he was mauled by a police officer, whose name he could not now recall.

Marily Torrecampo, the accused-appellant's neighbor in Magsaysay Street, *Sitio* Suba, *Barangay* Pasil, Cebu City testified[13] that on the afternoon in question she was in her house playing cards, when the accused-appellant passed by and she invited him to attend the "visita iglesia;" that without replying to her invitation in a clear-cut manner, the accused-appellant went on his way, and the next thing she saw was that the accused-appellant was fetching water, and she later saw him watching television at the opposite end of the street alley where they lived; that after a little while, she suddenly noticed the presence of police officers in that place, and when the police officers got to their alley, one of the police officers pointed to the accused-appellant as the "one selling *shabu*,"[14] and the other police officers at once "handcuffed and arrested"[15] the accused-appellant; that the police officers also frisked the accused-appellant "but we never saw that something was taken from him;"[16] that while being frisked, the accused-appellant put up a strong resistance, but the police officers forcibly brought him with them; that at this point the accused-appellant "shouted to call his mother,"[17] and she herself also called another person "to call Bobby's mother to inform the mother of Bobby that Bobby was arrested;"[18] and that she remembered that the people around them even asked the policemen, "what are you doing with Bobby?"[19] that "he is being treated like a pig x x x considering that [when] Bobby rolled to the ground, they bodily carried Bobby."[20]

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[13] See TSN, August 10, 2006.

[14] *Id.* at 6.

[15] *Id*.

[16] *Id*. at 7.

[17] *Id.*

[18] *Id*.

[19] *Id*. at 8.

[20] *Id*.

Ruling of the Regional Trial Court:

Given these facts, the RTC of Cebu City, Branch 13,[21] held:

The prosecution proved all the elements of the crime of Sale under Sec. 5, Art. II, RA 9165. Thus, the identity of the seller as well as their buyer were clearly proven. There was an exchange of shabu weighing 0.03 gram for ₱100.00. The shabu was identified, marked, presented, and admitted in evidence.

All the elements of possession of the dangerous drugs are likewise present. Thus, after a search incident to a lawful arrest, the police officers found six (6) packets of shabu weighing 0.24 gram in the personal possession of the accused. There is a clear intent to possess them because they were found in his possession. The six (6) plastic packets of shabu were identified, marked, presented and admitted in evidence.

This court is not inspired by the self-serving, general denial interposed by the accused. He did not know any of the police officers who arrested him. There is no evidence that the poseur-buyer had an ax to grind against him. The police officers had no ill-motive to plant evidence against the accused. There is a presumption that the arrest and search of the accused were done in the performance of their public functions. His other witness, Narile Torrecampo who is a close friend of his wife also testified in plain denial of the testimony of prosecution witness Selebio. It must be remembered that when the accused testified, he did not mention Narile Torrecampo.[22]

The RTC thereafter disposed as follows –

WHEREFORE, judgment is hereby rendered finding ACCUSED BOBBY S. ABELARDE also known as Roberto S. Abelarde GUILTY in CBU-72995, for violation of Sec. 5, Art. II, RA 9165 and sentences him to LIFE IMPRISONMENT and fine in the amount of ₱500,000.00 and in CBU-72996, he is likewise found GUILTY of violating Sec. 11, Art. II, RA 9165, and sentences him to TWELVE (12) YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS of imprisonment, plus fine in the amount of ₱300,000.00.

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[21] Presided over by the Honorable Meinrado P. Paredes.

[22] Records, pp. 78-79.

The seven (7) packs of shabu are hereby ordered, CONFISCATED, in favor of the government and DESTROYED pursuant to the [p]rovisions of RA 9165.

With costs against the accused in both cases.

SO ORDERED.[23]

Ruling of the Court of Appeals

From this judgment, accused-appellant appealed to the Court of Appeals (CA), where his appeal was docketed as CA-G.R. CEB-CR HC No. 01072. The accused-appellant's appeal was predicated on a single assignment of error: that the State failed to prove his guilt beyond reasonable doubt. After review, the appellate court rejected the appeal, but made a slight modification in the penalty meted out in Criminal Case No. CBU-72996, thus —

All told, the Court finds nothing in the records that would justify a deviation from the findings of the trial court that the guilt of the accused for the illegal sale and possession of illegal drugs have been proven beyond reasonable doubt.

Under Section 5 of Republic Act No. 9165, the unauthorized sale of shabu, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Hence, the penalty of life imprisonment and fine in the amount of ₱500,000.00 imposed by the trial court in CBU-72995 for violation of Section 5, Art. II, RA 9165 is proper.

Section 11(3) of Republic Act No. 9165 provides that the illegal possession of less than five grams of shabu is penalized with imprisonment of 12 years and one day to 20 years, and a fine ranging from ₱300,000.00 to ₱400,000.00.

Sec. 1 of the Indeterminate Sentence Law mandates that, in case of a special law, the accused shall be sentenced 'to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.'

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[23] *Id*. at 79.

The fine imposed by the trial court in CBU-72996 for violation of Section 11, Article II, R.A. 9165 in the amount of ₱300,000.00 is proper. As regards the penalty [of] imprisonment, the Honorable Supreme Court in *People v. Resurreccion* held that applying the ISL, the penalty of imprisonment from twelve (12) years and one (1) day, as minimum to fourteen (14) years and eight (8) months, as maximum, for the illegal possession of shabu with a total weight of 0.24 gram is in order.

WHEREFORE, the Decision of the Regional Trial Court, Branch 13, Cebu City dated July 4, 2007, is hereby AFFIRMED with the MODIFICATION that in CBU-72996 for violation of Section 11, Article II, R.A. 9165, the accused-appellant Bobby S. Abelarde is sentenced to the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.

SO ORDERED.[24]

Hence, the present recourse.

Our Ruling

There is merit in the present appeal.

The single insurmountable obstacle upon which the prosecution's case here must flounder and fail is its utter and total failure to observe the mandatory directives embodied in Section 21, paragraph 1, Article II of RA 9165 and Section 21(a), Article II of RA 9165.

Almost on all fours to the present Petition is *People v. Denoman*,[25] where this Court speaking through Justice Arturo D. Brion, said:

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic

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[24] CA *rollo*, pp. 107-108.

[25] 612 Phil. 1165 (2009).

worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

Section 21, paragraph 1, Article II of RA No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA No. 9165 give us the procedures that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case. Parenthetically, in *People v. De La Cruz*, we justified the need for strict compliance with the prescribed procedures to be consistent with the principle that penal laws shall be construed strictly against the government and liberally in favor of the accused.

Section 21, paragraph 1, Article II of RA No. 9165, states:

> 1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. [Emphasis supplied]

This provision is further elaborated in Section 21(a), Article II of the IRR of RA No. 9165, which reads:

> (a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media

> and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. [Emphasis supplied]

In the present case, the records show that the buy-bust team did not observe even the most basic requirements of the prescribed procedures. While the markings, 'AOC-BB/17-02-03,' were made in the small plastic sachet allegedly seized from the accused-appellant, the evidence does not show the identity of the person who made these markings and the time and place where these markings were made. Notably, PO1 Carlos' testimony failed to disclose whether a physical inventory and photograph of the illegal drug had been done. Further, nothing in the records also indicates whether the physical inventory and photograph, if done at all, were in the presence of the accused-appellant or his representatives or within the presence of any representative from the media, DOJ or any elected official. Then again, PO1 Carlos' testimony also failed to show that any of these people has been required to sign the copies of the physical inventory, or that any of them was subsequently given a copy of the physical inventory.

We had occasions to discuss and expound in several cases on the implications of the failure to comply with Section 21, paragraph 1, Article II of RA No. 9165.

In *People v. Sanchez*, we declared that in a warrantless seizure (such as in a buy-bust operation) under RA No. 9165, the physical inventory and photograph of the items can be made by the buy-bust team, *if practicable*, at the place of seizure considering that such interpretation is more in keeping with the law's intent of preserving the integrity and evidentiary value of the seized drugs.

People v. Garcia resulted in an acquittal because the buy-bust team failed to immediately mark the seized items at the place of seizure and failed to explain the discrepancies in the markings in the seized items. The underlying reason for the acquittal, of course, was the doubts raised on whether the seized items are the exact same items that were taken from the accused-appellant when he was arrested;

the prosecution failed to satisfactorily establish the *corpus delicti* – a material element of the crime.

Another acquittal was *People v. Robles*, where the Court considered the uncertainty of the origins of the seized drug given the lack of evidence showing compliance with the prescribed procedures on physical inventory, the photographing of the seized articles, and the observance of the chain of custody rule.

While the chain of custody has been a critical issue leading to acquittals in drug cases, we have nevertheless held that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow. The last paragraph of Section 21(a), Article II of the IRR of RA No. 9165 provides a saving mechanism to ensure that not every case of non-compliance will irretrievably prejudice the prosecution's case. To warrant application of this saving mechanism, however, the prosecution must recognize and explain the lapse or lapses in the prescribed procedures. The prosecution must likewise demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

In the present case, the prosecution miserably failed to adduce evidence establishing the chain of custody of the seized illegal drugs, and failed as well to establish compliance with the saving mechanism discussed above.

In *Lopez v. People*, we laid down the requirements that must be followed in handling an illegal drug seized:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

Section 1(b) of Dangerous Drugs Board Resolution No. 1, Series of 2002, which implements RA No. 9165, defines chain of custody in this wise:

> 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;

While the identities of the seller and the buyer and the transaction involving the sale of the illegal drug were duly proven in this case by PO1 Carlos' testimony, we find the testimony deficient for its failure to establish the various links in the chain of custody. PO1 Carlos' did not state the details material to the handling of the items seized from the accused-appellant. This glaring deficiency is readily obvious from PO1 Carlos's short testimony which glossed over the required details. To quote PO1 Carlos:

> Q: After you purchased, what happened next?
> A: We arrested them.
>
> x x x x x x x x x
>
> Q: After that?
> A: We apprised him of his rights and his violation then we brought him to the Pagamutang Bayan.
>
> Q: What was the result of the laboratory examination?
> A: Positive, sir.

Thus, PO1 Carlos failed to testify about the following critical link in the chain of custody—

(a) The first link

The links in the chain of custody start with the seizure of the plastic sachet containing the suspected *shabu* bought in the buy-bust sale. The short testimony of PO1 Carlos in this regard merely showed that after making the arrest, the accused-appellant was taken

to the *Pagamutang Bayan* and thereafter to the police station. His testimony was glaringly silent regarding the handling and disposition of the seized plastic sachet and its contents after the arrest. He did not also identify the person who had care of the seized plastic sachet during the ride to the *Pagamutang Bayan*, and from there to the police station.

(b) The second link

The second link in the chain of custody – the turnover of the seized plastic sachet containing the *shabu* from the buy-bust team to the police investigator – was not supported by evidence. As we mentioned earlier, while markings were made on the seized plastic sachet recovered from the accused-appellant, the prosecution failed to adduce any evidence identifying the person who made the markings and the place and occasion when these markings were made. Similarly, the prosecution also failed to present evidence pertaining to the identity of the person who submitted the seized plastic sachet to the police investigator. Although the records show that the request for laboratory examination of the seized plastic sachet was prepared by one Monchito Glory Lusterio as Chief Police Inspector of the DEU, the evidence does not show that the Chief Police Inspector was the police investigator who received the marked plastic sachet from the buy-bust team.

A close examination of the records likewise shows that the buy-bust sale occurred on February 17, 2003 while the request for laboratory examination was prepared a day after or on February 18, 2003. The evidence does not show who had temporary custody of the seized items during this intervening period of time and before it was taken to the Philippine National Police (*PNP*) Crime Laboratory for examination.

(c) The third link

Evidence showing the custody of the seized plastic sachets at the PNP Crime Laboratory stage has not been adduced. Notably, the identity of the person who took the seized *shabu* to the crime laboratory and the identity of the person who received the seized *shabu* for laboratory examination were not disclosed. The records show that one Albert S. Arturo, as Chief Forensic Chemist, examined the specimens submitted in the request dated February 18, 2003; it does not appear however that he was the person who received the specimens when they were turned over by the Malabon City police. At most, the evidence on hand only identified him as the one who actually examined the specimens submitted by the Malabon City police.

(d) The fourth link

Sections 3 and 6 (paragraph 8) of Dangerous Drugs Board Regulation No. 2. Series of 2003, [require] laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also requires identification of the individuals in this part of the chain. The records of the case are bereft of details showing that this board regulation was ever complied with; the records also do not indicate how the specimen was handled after the laboratory examination and the identity of the person who had the custody of the *shabu* before its presentation in court.

The above enumeration and discussion show the glaring gaps in the chain of custody – from the seizure of the plastic sachet until the *shabu* was presented in court – and the prosecution's failure to establish the identities of the persons who handled the seized items.[26]

Turning to the cases under review: We find that the members of the Miscellaneous Team of the Cebu City PNP which allegedly conducted the "buy-bust" operation that afternoon of March 24, 2005 miserably failed to establish the four critical linkages aforementioned, because specifically, with reference to the critical links in the chain of custody, we find in these two cases that—

(a) The ***first link*** started with the seizure of the seven packets of *shabu* subject of the buy-bust operation and alleged illegal possession. Here, the very frugal and abbreviated testimony of SPO1 Selibio was glaringly silent as regards the handling and disposition of the seven packets of alleged *shabu* and their contents after the accused-appellant's arrest that afternoon of March 24, 2005. Neither did SPO1 Selibio make any effort to identify the person who had care or custody of these alleged seven packets of *shabu* from the time these were allegedly confiscated from the accused-appellant at Suba, Pasil, Cebu City to the time these were delivered to PCI Salinas at Cebu PNP Crime Laboratory, Camp Sotero Cabahug, Cebu City.

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[26] *Id*. at 1175-1182.

(b) The ***second link***, consisting in the turnover of the seized seven packets of *shabu* from the buy-bust team to the police investigator was not supported by any evidence. In fact SPO1 Selibio gave no testimony at all in regard to the turn-over of the allegedly seized seven packets of *shabu* from the buy-bust team to the police investigator (whoever he/she was). And while there were some markings on the allegedly seized seven packets of *shabu*, SPO1 Selibio did not identify the person who made the markings and the place and the occasion when these markings were made. Moreover, SPO1 Selibio did not identify the person (whoever this person was) who submitted the seven packets of alleged *shabu* to the police investigator (whoever this police investigator was).

(c) The ***third link*** requires evidence respecting the custody of the seized seven packets of *shabu* at the said PNP Crime Laboratory at Camp Sotero Cabahug, Cebu City.

Once again, no testimony of any kind was given by SPO1 Selibio relative to the custody of the seven packets of the alleged *shabu* at the PNP Crime Laboratory at Camp Sotero Cabahug, Cebu City. More to the point, SPO1 Selibio did not identify the person who brought the seven packets of alleged *shabu* to the PNP Crime Laboratory at Camp Sotero Cabahug in Cebu City; nor did he testify that it was PCI Salinas, resident forensic chemist, who herself took delivery or custody of the seven packets of *shabu*, when those were brought to the PNP Crime Laboratory at Camp Sotero Cabahug in Cebu City.

(d) The ***fourth link*** is connected to Sections 3 and 6, paragraph 8 of the Dangerous Drugs Board Regulation No. 2, Series of 2004, which make it obligatory for laboratory personnel to document the chain of custody <u>each time</u> a specimen is handled or transferred, until its disposal; the board regulation also requires identification of the individuals in this part of the chain. Here, no evidence of any kind has been adduced to attest to the fact that this Board Regulation No. 2 has ever been complied with; neither was there any evidence to indicate how the seven packets of *shabu* were handled after the laboratory examination (assuming

that indeed there was such a laboratory examination) and the identity of the person who had custody of these seven packets of *shabu* before their presentation in court.

As in the *Denoman* case, we cannot close our eyes to the fact that in the cases under review SPO1 Selibio went through the motion of identifying in court the packets of *shabu* that were allegedly recovered from the accused-appellant that afternoon of March 24, 2005 somewhere in *Barangay* Pasil, Cebu City. But the lapses in procedure heretofore set forth are just too egregious and too glaring to be shunted aside; hence such lapses must cast serious lingering doubts upon the prosecution's claim that the packets of alleged *shabu* that were "offered" as evidence in court were the self-same packets of *shabu* that were seized from the herein accused-appellant that afternoon in question somewhere in *Barangay* Pasil, Cebu City. Indeed, because of these yawning gaps in the prosecution's evidence, we are not prepared to say that the body of the crime – the *corpus delicti* – has been convincingly identified in these twin cases. And, as stressed in the *Denoman* case, the failure to establish the existence of the *corpus delicti* must inevitably result in the acquittal of the accused-appellant. For, it is axiomatic that in **all** criminal prosecutions, **all** the elements constitutive of the crime charged must be duly established. Otherwise, it becomes the constitutional duty of the Court to acquit the accused-appellant his guilt not having been proved beyond reasonable doubt. And this is the situation here.

WHEREFORE, the appeal is **GRANTED**. We hereby **REVERSE and SET ASIDE** the November 29, 2013 Decision of the Court of Appeals in CA-G.R. CEB-CR. HC No. 01072. The accused-appellant Bobby S. Abelarde is hereby **ACQUITTED** of the charges against him in Criminal Case Nos. CBU-72995 and CBU-72996 of the Regional Trial Court of Cebu City, Branch 13. He is immediately ordered released from detention unless he is detained due to some other lawful cause or causes.

Send a copy of this Decision to the Director, Bureau of Corrections, Muntinlupa City for immediate implementation.

The Director of the Bureau of Corrections is commanded to report to this Court the action he has taken relative to this directive within five days from receipt hereof.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 217026. January 22, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LAWRENCE GAJO *y* BUENAFE and RICO GAJO *y* BUENAFE,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL SALE OF *SHABU*; ELEMENTS.—** [F]or the case of illegal sale of *shabu*, the prosecution must prove: 1) the identity of the buyer and the seller as well as the object and consideration of the sale; and, 2) the delivery and payment of the object sold.
2. **ID.; ID.; ILLEGAL POSSESSION OF *SHABU;* ELEMENTS.—** As regards illegal possession of *shabu*, it is necessary to establish: 1) the possession of the accused of an identified prohibited drug; 2) such possession was not legally authorized; and, 3) the accused freely and consciously possessed it.
3. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY; REFERS TO THE RECORDED AUTHORIZED MOVEMENTS AND CUSTODY OF**

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[*] Per September 6, 2017 raffle vice *J*. Jardeleza who recused due to prior action as Solicitor General.

CONFISCATED DANGEROUS DRUGS, OR CONTROLLED SUBSTANCES.— [C]hain of custody refers to recorded authorized movements and custody of confiscated dangerous drugs, or controlled substances. It involves testimony on every link in the chain – from the confiscation of the illegal drugs to its receipt in the forensic laboratory up to its presentation in court. It is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain. Generally, there are four links in said chain of custody: 1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from forensic chemist to the court.

4. **ID.; ID.; ID.; ID.; MARKING; MUST BE DONE IMMEDIATELY UPON THE SEIZURE OF THE ILLEGAL DRUGS AND IN THE PRESENCE OF THE APPREHENDED VIOLATOR OF LAW.—** [T]he *first* link requires seizure and marking of the illegal drugs. To stress, marking must be done immediately upon the seizure of the illegal drugs and in the presence of the apprehended violator of law. Such prompt marking is important because the subsequent handlers of the seized items will use the marking as reference. The marking also sets apart the seized item from other materials from the moment it was confiscated until its disposal after the proceedings. In fine, marking is essential to preserve the integrity and evidentiary value of the recovered dangerous drug. x x x [T]he failure to immediately mark the *shabu* after confiscation, and for marking it without the presence of the accused constituted clear gaps in the chain of custody of the seized illegal drugs.

5. **ID.; ID.; ID.; STRICT COMPLIANCE TO PROCEDURAL RULES IS NOT REQUIRED BUT THE PROSECUTION HAS THE BURDEN TO PROVE JUSTIFIABLE REASON FOR ITS NON-COMPLIANCE.—** While we agree that strict compliance to procedural rules may not be always possible, nonetheless, the prosecution has the burden to prove justifiable reason for its non-compliance. However, in the instant case,

no justifiable reason was given anent the failure of the police to observe the x x x procedural requirements. Certainly, the integrity of the *corpus delicti* was compromised; and the same became highly questionable. Verily, the Court could not determine with moral certainty that the supposed *shabu* seized from Lawrence and Rico were the same ones submitted to the Crime Laboratory, and eventually, presented in court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the October 13, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06071 which affirmed *in toto* the December 6, 2010 Joint Decision[2] of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 77 in Criminal Case Nos. 9185, 9186, and 9187 finding Lawrence Gajo *y* Buenafe (Lawrence) and Rico Gajo *y* Buenafe (Rico) guilty beyond reasonable doubt of violating Section 5 (sale of dangerous drugs), and Section 11 (possession of dangerous drugs), Article II of Republic Act No. 9165[3] (RA 9165), and imposing upon them the penalty of life imprisonment and a ₱500,000.00 fine for illegal sale of *shabu*; and, the indeterminate prison term of twelve (12) years and one (1) day, as minimum, to fifteen (15) years and one (1) day, as maximum, as well as a ₱300,000.00 fine for illegal possession of *shabu.*

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[1] CA *rollo*, pp. 114-136; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Amy C. Lazaro-Javier and Samuel H. Gaerlan.

[2] Records in Crim. Case No. 9185, pp. 249-265; penned by Judge Lily Villareal Biton.

[3] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

Factual Antecedents

The Information for illegal sale of *shabu* against Lawrence and Rico contained the following accusatory allegations:

[In Criminal Case No. 9185]

That, on or about the 23rd day of March 2007, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver or give away to another 0.01 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which substance was found positive to the test for Methamphetamine Hydrochloride, commonly known as 'Shabu', a dangerous drug, in consideration of the amount of Php 200.00, in violation of the above-cited law.

CONTRARY TO LAW.[4]

On the other hand, the Information below respectively charged Lawrence and Rico for illegal possession of *shabu*:

[In Criminal Case No. 9186 – against Lawrence]

That, on or about the 23rd day of March 2007 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control 0.01 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet and which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[5]

[In Criminal Case No. 9187 – against Rico]

That, on or about the 23rd day of March 2007 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully

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[4] Records in Crim. Case No. 9185, p. 1.

[5] Records in Crim. Case No. 9186, p. 1.

authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control 0.02 gram and 0.02 gram, with a total weight of 0.04 gram of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets and which were found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

When arraigned, Lawrence and Rico pleaded "Not Guilty"[7] to the charges against them.

During the trial, the parties stipulated[8] on the intended testimony of Forensic Chemist P/I Ruben M. Apostol, Jr. as regards the existence of Chemistry Report No. D-140-07.[9] This Report found that the submitted specimens with markings GMJ (0.01 gram), GMJ-1 (0.02 gram), GMJ-2 (0.02 gram), and GMJ-3 (0.01 gram) were found positive for the presence of Methamphetamine Hydrochloride or *shabu*.

Version of the Prosecution

To establish its case, the prosecution presented Police Officer 3 Geraldo Justo (PO3 Justo) and PO1[10] Jimmy A. San Pedro (PO1 San Pedro) who narrated on the following facts:

Sometime in March 2007, the Intel Personnel Department of San Mateo (Rizal) Municipal Police Station (Police Station) conducted a surveillance on Lawrence, a resident of Pag-asa Compound, Ampid I, San Mateo, Rizal.[11] A week before the

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[6] Records in Crim. Case No. 9187, p. 1.

[7] Records in Crim. Case No. 9185, p. 8; Crim. Case No. 9186, p. 6; Crim. Case No. 9187; p. 28.

[8] Records in Crim. Case No. 9185, pp. 81-82 (including dorsal portion).

[9] *Id*. at 144.

[10] At the time of his testimony, Jimmy A. San Pedro was already a Police Officer 2 (PO2); *id.* at 195.

[11] *Id*. at 163-164, 180-181.

actual operation, PO3 Justo conducted further surveillance, and witnessed the physical description of their target person and the appearance of the latter's house.[12]

On March 23, 2007, at about 11:05 p.m., PO3 Justo, PO1 Sangahin, and PO1 San Pedro were on duty at the Police Station.[13] While thereat, they planned to conduct a buy-bust operation against Lawrence based on the details given by a civilian informant. PO3 Justo wrote his initials "GMJ" into two ₱100.00 bills,[14] and the police agreed that if PO3 Justo, as poseur buyer, successfully bought *shabu* during the buy-bust, he would remove his cap.[15]

At about 11:20 p.m. of even date, PO3 Justo, PO1 Sangahin and PO1 San Pedro arrived at their target area. PO3 Justo immediately alighted from the vehicle and proceeded to the house of Lawrence. He saw Lawrence standing near a lamp post and approached him.[16] PO3 Justo told Lawrence, "*pakuha ng dos*," handing him (Lawrence) ₱200.00. Lawrence took the money, and replied, "*sandali lang, asa bahay*."[17] And thereafter, he entered his house. After a while, a man, who the police later on identified as Rico,[18] came out of Lawrence's house and handed PO3 Justo a small plastic sachet containing suspected *shabu*. Consequently, PO3 Justo removed his cap, the police's pre-arranged signal that PO3 Justo already bought *shabu*.[19]

When approached by PO1 San Pedro, PO3 Justo told him that Lawrence received the marked money and went inside his

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[12] *Id*. at 183-184.

[13] *Id*. at 196.

[14] *Id*. at 186.

[15] *Id*. at 165.

[16] *Id*. at 166-167.

[17] *Id*. at 185.

[18] *Id.* at 187-A.

[19] *Id*. at 167-168.

(Lawrence's) house.[20] PO3 Justo thereafter held Rico's arm and informed him of his constitutional rights. He also directed Rico to bring out the contents of his pocket. Upon doing so, PO3 Justo saw from Rico's pocket two plastic sachets suspected to contain *shabu*.[21] Meanwhile PO1 San Pedro and PO1 Sangahin entered the house of Lawrence.[22] There, PO1 San Pedro recovered the marked money and one plastic sachet of suspected *shabu* from Lawrence.[23]

In the Police Station, PO3 Justo placed the markings GMJ, GMJ-1, and GMJ-2 on the three sachets he recovered from Rico. He also marked and placed his initials, GMJ-3,[24] on the plastic sachet that PO1 San Pedro recovered from Lawrence.[25] PO3 Justo marked all the seized items in the presence of PO1 San Pedro and PO1 Sangahin. According to PO1 San Pedro, at the time of the marking, "[the accused] was already inside the jail."[26]

In addition, PO3 Justo testified that he marked the plastic sachet at the Police Station because there was already a commotion at the place of the incident.[27] However, PO1 San Pedro denied that there was any commotion immediately after the buy-bust.[28]

In the Police Station, PO1 San Pedro made an inventory of the recovered items. This inventory was the same Initial Laboratory Report[29] submitted to the Crime Laboratory. PO3

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[20] *Id*. at 168-169.

[21] *Id*. at 188-189.

[22] *Id*. at 168.

[23] *Id*. at 197.

[24] *Id*. at 200.

[25] *Id*. at 178, 189-190.

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

[27] *Id*. at 190.

[28] *Id*. at 208.

[29] *Id*. at 144.

Justo and PO1 San Pedro confirmed that they brought the seized items to the Crime Laboratory.[30] However, based on the Request for Laboratory Examination,[31] it was a certain PO2 Cruz who submitted them to the Crime Laboratory Service of Tikling, Taytay, Rizal.

Version of the Defense

For its part, the defense presented Lawrence and Rico, who denied the allegations against them and narrated on these events:

On March 23, 2007, at around 11:00 p.m., Rico was inside his room at the house he had been living with his family, including his brother, Lawrence, and their mother.[32] Suddenly, he heard noise from outside. Upon going out of his room, he saw five armed persons. Later, he learned that these men were Police Officers Arellano, San Pedro, Justo, Benito and Moreno. Thereafter, SPO1 Arellano poked a gun at and asked Rico his name. He also informed the latter that they were looking for Bubot, a neighbor of Rico. In reply, Rico told SPO1 Arellano that Bubot did not reside at their (Rico) house. After insisting that Bubot entered Rico's house, PO1 San Pedro frisked Rico, and eventually, directed him to sit down. The police then searched the house.[33]

Meanwhile, Lawrence who was then sleeping, also heard noise and came out of his room. He saw five men in civilian clothes inside their house. Eventually, he learned that these men were policemen. Lawrence saw that the police were accusing Rico that he was Bubot. He attempted to stop them from arresting Rico. In turn, the police frisked Lawrence and asked him to sit beside Rico.[34]

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[30] *Id*. at 170, 208.

[31] *Id*. at 143, 147.

[32] *Id*. at 214, 237.

[33] *Id*. at 215-219.

[34] *Id*. at 237-240.

After searching Rico's house, the policemen boarded Lawrence and Rico to their (police) vehicle and brought them to the Police Station.[35]

Rico testified that SPO1 Arellano asked ₱20,000.00 from him but he replied that he did not have any money.[36]

Ruling of the Regional Trial Court

According to the RTC, the act of Lawrence of accepting two ₱100.00 bills from PO3 Justo and Rico's turning over one plastic sachet of *shabu* to PO3 Justo proved that there was conspiracy between them to sell drugs. Moreover, PO1 San Pedro recovered one plastic sachet of *shabu* from Lawrence while PO3 Justo recovered two more plastic sachets of *shabu* from Rico. As such, the RTC decreed that Lawrence and Rico were guilty of illegal possession of *shabu* as they failed to prove that they were legally authorized to possess or use the same.

Consequently, the RTC ruled that Rico and Lawrence were guilty of violating Section 5, Article II of RA 9165. It sentenced them to life imprisonment, and ordered them to pay a ₱500,000.00 fine. It also found them guilty of violating Section 11, Article II of RA 9165, imposing upon them the indeterminate penalty of 12 years and one day imprisonment, as minimum, to 15 years and one day, as maximum, and ordering them to pay a ₱300,000.00 fine each.

On appeal, Rico and Lawrence argued that the procedure on the seizure and custody of drugs was not complied with in the case. Thus, the prosecution failed to establish their guilt beyond reasonable doubt.

Ruling of the Court of Appeals

On October 13, 2014, the CA affirmed the RTC Joint Decision. It ruled that the elements of illegal sale of dangerous drugs had been established as the prosecution proved beyond reasonable

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[35] *Id*. at 218.

[36] *Id*. at 219.

doubt a) the identities of Rico and Lawrence as the persons with whom the poseur-buyer transacted for the purchase of *shabu*; b) the Crime Laboratory confirmed that the seized items were *shabu*; and c) the consideration of the sale (₱200.00). Anent the charge of illegal possession of dangerous drugs, the CA held that Rico and Lawrence were in possession and control of three sachets of *shabu*, two of which (0.02 gram each) were obtained from Rico, and the other one (0.01 gram) was obtained from Lawrence.

The CA likewise decreed that the chain of custody requirement had been sufficiently complied with. It explained that the prosecution established the seizure and markings of the illegal drugs; the transfer of the seized items by PO3 Justo to the custody of the requesting authority and Investigating Officer, Anastacio Benzon; and the Rizal Provincial Crime Laboratory received the request for laboratory examination signed by Inspector Benzon. It noted nonetheless that it was a certain PO2 Cruz, not PO3 Justo, who personally delivered the specimens. As regards the last link, it ruled that the same had been substantially complied with after the marking of the specimens during the trial.

According to the CA, while there might be deficiency in compliance on the chain of custody of the seized items, the integrity of the seized drugs had been preserved and the chain of its custody had been continuous and unbroken.

Hence, this appeal.

Our Ruling

Lawrence and Rico contend that the prosecution failed to establish their guilt beyond reasonable doubt because of non-observance of the chain of custody requirement under Section 21, Article II of RA 9165 in the case.

The Court agrees.

Section 21, Article II of RA 9165, as amended by RA 10640,[37] pertinently provides:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, x x x 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, x x x 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.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, x x x the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results x x x shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, x x x

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[37] 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 July 15, 2014.

does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification;

In this case, Lawrence and Rico were indicted for illegal sale and possession of *shabu*. Thus, it is necessary for the prosecution to establish with moral certainty the elements of these offenses. Specifically, for the case of illegal sale of *shabu*, the prosecution must prove: 1) the identity of the buyer and the seller as well as the object and consideration of the sale; and, 2) the delivery and payment of the object sold. As regards illegal possession of *shabu*, it is necessary to establish: 1) the possession of the accused of an identified prohibited drug; 2) such possession was not legally authorized; and, 3) the accused freely and consciously possessed it.[38]

At the same time, to convict Lawrence and Rico, it is primordial that the *corpus delicti* or the confiscated illegal drugs had been proved beyond reasonable doubt. This means that the same illegal drugs possessed and sold by the accused must be the same ones offered in court. As such, the required unbroken chain of custody under Section 21, Article II of RA 9165 above-quoted comes into play to ensure that no unnecessary doubt is created on the identity of the seized illegal drugs.[39]

More particularly, chain of custody refers to recorded authorized movements and custody of confiscated dangerous drugs, or controlled substances. It involves testimony on every link in the chain – from the confiscation of the illegal drugs to its receipt in the forensic laboratory up to its presentation in court. It is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain.[40]

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[38] *People v. Ismael*, G.R. No. 208093, February 20, 2017.

[39] *People v. Gayoso*, G.R. No. 206590, March 27, 2017.

[40] *Id*.

Generally, there are four links in said chain of custody: 1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from forensic chemist to the court.[41]

As stated, the *first* link requires seizure and marking of the illegal drugs. To stress, marking must be done immediately upon the seizure of the illegal drugs and in the presence of the apprehended violator of law. Such prompt marking is important because the subsequent handlers of the seized items will use the marking as reference. The marking also sets apart the seized item from other materials from the moment it was confiscated until its disposal after the proceedings. In fine, marking is essential to preserve the integrity and evidentiary value of the recovered dangerous drug.[42]

In this case, however, the apprehending officer did not make a proper marking of the seized *shabu*.

PO3 Justo confirmed that he marked the seized items upon arrival at the Police Station. He attested that he did not immediately mark the three sachets of *shabu* from Rico and the one sachet recovered by PO1 San Pedro from Lawrence as there was already a commotion at the place of incident. Nonetheless, PO1 San Pedro refuted such claim of PO3 Justo, to wit:

Q: Why did you mark that in the police station?
A: Because that is our usual procedure, sir, that we mar[k] the evidence we confiscated already at the police station.

Q: So, that is the only reason Mr. witness, you don't have any knowledge that these pieces of object evidence should be marked at the scene of the crime?

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[41] *People v. Hementiza,* G.R. No. 227398, March 22, 2017.

[42] *People v. Ismael*, *supra* note 38, citing *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

A: Formerly, sir, we used to mark the object evidence at the police station, because there were times that commotion ensued whenever we are going to arrest and we were being stoned, so to avoid harm to ourselves, we just marked them at the station.[43]

Q: After you have allegedly recovered the said shabu, you immediately proceeded to the police station and placed the markings?
A: Yes, ma'am.

Q: By the way, at that time[,] was there a commotion?
A: None, ma'am.

Q: There was no commotion[?]
A: None, ma'am.[44]

Since there was no commotion that transpired after the seizure of *shabu*, there was nothing that would prevent PO3 Justo from marking the *shabu* immediately after confiscation.

Moreover, PO3 Justo marked it without the presence of Lawrence and Rico. As testified by PO3 Justo himself, he marked the confiscated *shabu* in the presence of PO1 Sangahin and PO1 San Pedro.[45] And, PO1 San Pedro declared that "[the accused] was already inside the jail"[46] when PO3 Justo marked the recovered items.

Indeed, the failure to immediately mark the *shabu* after confiscation, and for marking it without the presence of the accused constituted clear gaps in the chain of custody of the seized illegal drugs.

In *People v. Ismael*,[47] the Court stressed that the failure to mark the illegal drugs immediately after confiscation from the

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[43] Records in Crim. Case No. 9185, p. 201.

[44] *Id*. at 207-208.

[45] *Id*. at 170.

[46] *Id*. at 201.

[47] *Supra* note 38.

accused casts doubt on the prosecution's evidence and warrants the acquittal of the accused on reasonable doubt. Also, in *Ismael*, the Court ruled that the requirement that the marking be done in the presence of the accused is not a mere technicality as it assures the preservation of the identity and integrity of the illegal drugs. As such, the non-compliance with this requirement is fatal to this case against Lawrence and Rico.

In addition, the *second* link was not complied with here.

To reiterate, to establish an unbroken chain of custody, every person who touched the seized illegal drug must describe how and from whom it was received; its condition upon receipt, including its condition upon delivery to the next link in the chain.

Here, PO3 Justo supposedly turned over the confiscated *shabu* to Police Chief Inspector Anastacio B. Benzon (PC/Insp. Benzon), the investigating officer. Nevertheless, the prosecution did not present PC/Insp. Benzon to testify on the matter. Such non-presentation undeniably constitutes another gap in the chain of custody of the seized prohibited drugs.

Similarly, the *third* link in the chain of custody was also infirm. This is because the Request for Laboratory Examination indicated a certain PO2 Cruz as the person who delivered the specimens to the crime laboratory for examination. Nevertheless, like in the case of PC/Insp. Benzon, the prosecution did not present PO2 Cruz to testify on his receipt of the seized *shabu*. Evidently, this non-presentation of a necessary witness constituted another gap in the chain of custody.

Additionally, while the parties stipulated on the intended testimony of Forensic Chemist P/I Ruben M. Apostol, Jr., the same was rendered futile by reason of the above-discussed gaps in the chain of custody of the seized *shabu*. It could not thus be denied that the seized illegal drugs were not properly handled from the time they were confiscated to their turnover in the Police Station including their transfer to the Crime Laboratory.

Likewise, the Court observes that no physical inventory and photograph of the seized items were made in the presence of

the accused or their counsel or representative, and in the presence of a representative of the media and the Department of Justice, and any elected public official. While we agree that strict compliance to procedural rules may not be always possible, nonetheless, the prosecution has the burden to prove justifiable reason for its non-compliance. However, in the instant case, no justifiable reason was given anent the failure of the police to observe the foregoing procedural requirements. Certainly, the integrity of the *corpus delicti* was compromised; and the same became highly questionable.[48] Verily, the Court could not determine with moral certainty that the supposed *shabu* seized from Lawrence and Rico were the same ones submitted to the Crime Laboratory, and eventually, presented in court.

Also similar to *People v. Barte,*[49] this case came about after the conduct of a buy-bust operation based on information given by a civilian informant whose identity was never confirmed. Added to this, the alleged surveillance made on Lawrence were not recorded, and there was no other proof to support the conclusion that the target of the surveillance was indeed Lawrence. Taking into account these matters, and the fact that buy-busts are prone to police abuse, the safeguards provided under Section 21, RA 9165 or the chain of custody requirements must be complied with to "protect the innocent from abuse and violation of their rights[, and to] guide the law enforcers on ensuring the integrity of the evidence to be presented in court."[50]

Indeed, the constitutional right of accused Lawrence and Rico to be presumed innocent must be upheld. This right shall prevail over the presumption of regularity in the performance of duties of the concerned police officers as the latter presumption had been overcome by contrary proof, that is, the non-compliance by the police with the requirements under Section 21, RA 9165.[51]

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[48] *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

[49] G.R. No. 179749, March 1, 2017.

[50] *Id.*

[51] *People v. Hementiza, supra* note 41.

WHEREFORE, the appeal is **GRANTED**. The October 13, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06071 is **REVERSED AND SET ASIDE**. Appellants Lawrence Gajo *y* Buenafe and Rico Gajo *y* Buenafe are **ACQUITTED** of the charges as their guilt had not been established beyond reasonable doubt. Their immediate release from detention is ordered, unless other lawful and valid grounds for their further detention exist.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 224673. January 22, 2018]

CECILIA RIVAC, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO REOPEN A CRIMINAL CASE MAY BE FILED EVEN AFTER PROMULGATION OF JUDGMENT AND BEFORE THE SAME LAPSES INTO FINALITY; THE ONLY PARAMETER IS TO "AVOID THE MISCARRIAGE OF JUSTICE."—** [T]he CA clearly erred in holding that: (*a*) it was improper for the RTC to reopen its proceedings because the latter court had already promulgated its judgment; and (*b*) assuming *arguendo* that what it did was a new trial, there were no grounds for its allowance. To reiterate, a motion to reopen

[*] Per raffle dated October 18, 2017 vice Justice Francis H. Jardeleza who recused due to prior participation as Solicitor General.

may be filed even after the promulgation of a judgment and before the same lapses into finality, and the only guiding parameter is to "avoid the miscarriage of justice." As such, the RTC correctly allowed the reopening of proceedings to receive Fariñas's subsequent testimony in order to shed light on the true nature of her transaction with Rivac, and potentially, determine whether or not the latter is indeed criminally liable.

2. **ID.; ID.; EFFECTS OF AN APPEAL IN CRIMINAL CASES.—** Time and again, it has been held 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.

3. **CRIMINAL LAW; REVISED PENAL CODE (RPC); *ESTAFA*; ELEMENTS, PRESENT IN CASE AT BAR.—** The elements of *Estafa* under Article 315 (1) (b) of the RPC are as follows: (*a*) the offender's receipt of money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same; (*b*) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (*c*) the misappropriation, conversion or denial is to the prejudice of another; and (*d*) demand by the offended party that the offender return the money or property received. x x x In this case, the facts clearly show the existence of all the elements of the crime charged, considering that: (*a*) Rivac received various pieces of jewelry from Fariñas on a sale-on-consignment basis, as evidenced by the consignment document; (*b*) Rivac was under the obligation to either remit the proceeds of the sale or return the jewelry after the period of seven (7) days from receipt of the same; (*c*) Rivac failed to perform her obligation, prompting Fariñas to demand compliance therewith; and (*d*) Rivac failed to heed such demand, thereby causing prejudice to Fariñas, who lost the pieces of jewelry and/or their aggregate value of ₱439,500.00.

4. **REMEDIAL LAW; EVIDENCE; RECANTATION; THE COURT LOOKS A RECANTATION WITH DISFAVOR**

SINCE IT IS GENERALLY VIEWED WITH SUSPICION AND RESERVATION.— [A]s correctly ruled by the courts *a quo*, Fariñas's testimony partakes of a recantation, which is aimed to renounce her earlier statement and withdraw the same formally and publicly. Verily, recantations are viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable as there is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which, when coupled with the retraction, raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.

5. **ID.; ID.; ID.; THE ASSAILED RECANTATION IN THIS CASE SHOULD BE SEEN AS NOTHING BUT A LAST-MINUTE ATTEMPT TO SAVE PETITIONER FROM PUNISHMENT.—** Fariñas's testimony during the reopened proceedings was supposedly her "correct recollection" of the events that transpired in connection with the instant criminal case filed against Rivac. However, after a scrutiny of the same, the Court sees no sufficient reason to overturn Rivac's conviction for the crime charged. As aptly observed by the RTC, Fariñas had various opportunities to make a "correct recollection" of her testimony, and yet she did not do so. Thus, Fariñas's act of making a complete turnaround in her testimony at the time when a judgment of conviction had already been promulgated is suspect. Coupled with the RTC's observation that the retraction is highly inconsistent with Rivac's own testimony, Fariñas's recantation should be seen as nothing but a last-minute attempt to save the latter from punishment. Clearly, Rivac's conviction of the crime charged must be upheld.

6. **CRIMINAL LAW; RPC AS AMENDED BY REPUBLIC ACT NO. 10951; *ESTAFA*; PROPER PENALTY.—** Anent the proper penalty to be imposed on Rivac, it is worthy to point out that pending resolution of this case before the Court, Republic Act No. (RA) 10951 was enacted into law. As may be gleaned

from the law's title, it adjusted the values of the property and damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the Revised Penal Code was enacted in 1932. While it is conceded that Rivac committed the crime way before the enactment of RA 10951, the newly-enacted law expressly provides for retroactive effect if it is favorable to the accused, as in this case. x x x Thus, applying the provisions of RA 10951, as well as the Indeterminate Sentence Law, and taking into consideration that the aggregate value of the misappropriated jewelry is ₱439,500.00, Rivac must be sentenced to suffer the penalty of imprisonment for the indeterminate period of three (3) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum, there being no aggravating and mitigating circumstances present in this case.

APPEARANCES OF COUNSEL

Macario Arquillo for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 11, 2016 and the Resolution[3] dated April 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 34247, which affirmed the conviction of petitioner Cecilia Rivac (Rivac) for the crime of *Estafa*, defined and penalized under Article 315 (1) (b) of the Revised Penal Code (RPC).

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[1] *Rollo*, pp. 10-29.

[2] *Id*. at 32-47. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion concurring.

[3] *Id*. at 50-51.

The Facts

The instant case stemmed from an Information[4] filed before the Regional Trial Court of Laoag City, Ilocos Norte, Branch 14 (RTC), charging Rivac of the crime of *Estafa*, the accusatory portion of which reads:

That on about the 4th day of August 2007, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused received for sale on consignment from Asuncion C. Fariñas the following pieces of jewelry as follows:

1. One (1) set diamante	₱125,000.00
2. One (1) set heart shape with titus	85,000.00
3. One (1) pc. 7 days bangle	80,000.00
4. One (1) pc. bracelet w. charm	55,000.00
5. One (1) set rositas w. bagets	45,600.00
6. One (1) pc. charm tauco w. pendant	48,900.00
Total	₱439,500.00

with a total value of FOUR HUNDRED THIRTY NINE THOUSAND FIVE HUNDRED PESOS (₱439,500.00) under the express obligation to remit the proceeds of the sale or if not sold, to return the pieces of jewelry to Asuncion C. Fariñas not later than August 11, 2007, but far from complying with her obligation and despite repeated demands, said accused did then and there willfully, unlawfully and feloniously misappropriate and convert to her own personal use and benefit the pieces of jewelry, to the damage and prejudice of Asuncion C. Fariñas in the aforestated amount.

Contrary to law.[5]

The prosecution alleged that on August 4, 2007, Rivac went to the jewelry store owned by private complainant Asuncion C. Fariñas (Fariñas) where she received from the latter several pieces of jewelry in the aggregate amount of ₱439,500.00, which were meant for her to sell on consignment basis,[6] as evidenced

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[4] Not attached to the *rollo*.

[5] See *id.* at 33.

[6] See *id.* at 34.

by a document called jewelry consignment agreement (consignment document).[7] Fariñas and Rivac agreed that after seven (7) days, Rivac was obligated to either remit the proceeds of the sold jewelry or return the unsold jewelry to Fariñas should she fail to sell the same. However, despite the lapse of the aforesaid period, Rivac failed to perform what was incumbent upon her, causing Fariñas to send her a demand letter.[8] This prompted Rivac to go to Fariñas's store and offer her a parcel of land covered by Original Certificate of Title (OCT) No. 0-936[9] as partial payment for the jewelry. However, Fariñas refused the offer as she discovered that the property was involved in a land dispute, and instead, reiterated her demand that Rivac return the pieces of jewelry or pay their value in cash.[10]

During arraignment, Rivac pleaded "not guilty" and maintained that her liability is only civil, and not criminal, in nature. She narrated that she asked Fariñas for a loan as she badly needed money for her husband's dialysis, to which the latter agreed. As such, she went to Fariñas's store and handed over OCT No. 0-936 and other supporting documents to the latter as collateral.[11] In turn, Fariñas gave her the amount of ₱150,000.00 and asked her to sign a blank consignment document.[12] She further averred that she was able to pay interest for several months but was unable to pay the entire loan. According to Rivac, Fariñas told her that she would foreclose the collateral. Thereafter, she sent her a letter demanding payment of the principal amount of ₱280,000.00 plus interest.[13]

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[7] Not attached to the *rollo*.

[8] See *id*. at 34.

[9] Not attached to the *rollo*.

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

[11] *Id*. at 35.

[12] *Id*.

[13] *Id*.

The RTC Proceedings

In a Judgment[14] dated September 30, 2010, the RTC found Rivac guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for the indeterminate period of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and ordered her to pay Fariñas the amount of ₱439,500.00 and the costs of suit.[15]

The RTC found that the prosecution was able to establish all the elements of the crime charged, under the following circumstances: (*a*) Rivac received the pieces of jewelry from Fariñas, as evidenced by the consignment document which contains her signature; and (*b*) she failed to either return said jewelry or remit its proceeds to Fariñas after the lapse of the seven (7)-day period agreed upon by them, to the latter's prejudice. In this regard, the RTC did not give credence to Rivac's theory that she was only made to sign the consignment document as proof of her loan to Fariñas, ratiocinating that absent any of the allowed exceptions to the parol evidence rule, she is not allowed to present evidence to modify, explain, or add to the terms of the said document.[16] It further pointed out that the only reason why Fariñas had possession of OCT No. 0-936 was because Rivac herself offered the same as partial payment, but the former ultimately decided against accepting it as such.[17]

After the promulgation of the aforesaid Judgment and before it lapsed into finality, Rivac moved to reopen proceedings on the ground that she intends to present the testimonies of Fariñas and a certain Atty. Ma. Valenie Blando (Atty. Blando)

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[14] *Id.* at 53-64. Penned by Presiding Judge Francisco R. D. Quilala.

[15] *Id*. at 64.

[16] See *id*. at 58-59.

[17] *Id.* at 59-60.

to prove the true nature of her transaction with Fariñas.[18] In an Order[19] dated January 6, 2011, the RTC, *inter alia*, partly granted the motion insofar as Fariñas's testimony was concerned, as the apparent revision of her recollection of events could not have been anticipated during the course of the trial.[20] It, however, denied the same as to Atty. Blando's testimony, opining that there was no showing that Rivac could not present her during the trial proper.[21] Consequently, the Court re-took Fariñas's testimony, where she "clarified" that she now remembered that the consignment document never became effective or enforceable as she did not allow Rivac to take the jewelry because she has yet to pay her outstanding loan obligation plus interest.[22]

In an Order[23] dated April 18, 2011, the RTC affirmed its assailed Judgment.[24] It held that Fariñas's testimony was in the nature of a recantation, which is looked upon with disfavor by the courts. Moreover, the RTC pointed out that there have been various circumstances prior to the promulgation of the assailed Judgment where she could have "correctly recollected" and revised her testimony, such as when she: (*a*) sent a demand letter to Rivac; (*b*) reiterated her demand during barangay conciliation; (*c*) executed her complaint-affidavit for the instant case; (*d*) paid the filing fee for the case; and (*e*) testified before the court.[25] Further considering that the retraction does not jibe with Rivac's testimony, the RTC found the same to be unworthy of credence.[26]

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[18] See Motion to Reopen Proceedings dated October 14, 2010; *id.* at 78-79.

[19] *Id.* at 65-69.

[20] *Id*. at 67.

[21] *Id.*

[22] See *id*. at 72.

[23] *Id*. at 70-77.

[24] *Id*. at 77.

[25] See *id*. at 74-75.

[26] *Id*. at 76.

The CA Ruling

In a Decision[27] dated January 11, 2016, the CA upheld Rivac's conviction.[28] Preliminarily, it held that the RTC erred in allowing the reopening of the case, since it had already promulgated a ruling therein.[29] In this regard, the CA opined that the RTC proceedings after the promulgation of its ruling can be likened to a new trial, which is likewise improper as the grounds for its allowance are not extant.[30]

Anent the merits, the CA held that all the elements of *Estafa* defined and penalized under Article 315 (1) (b) of the RPC are present, as the prosecution had established that Rivac misappropriated the proceeds of the sale of the jewelry consigned to her by Fariñas, considering her failure to either return the jewelry or remit its proceeds at the end of the agreed period, obviously to the prejudice of Fariñas.[31] Notably, the CA stated that Fariñas's recantation is not only looked upon with disfavor for being exceedingly unreliable, but also that the same does not necessarily vitiate her original testimony.[32]

Undaunted, Rivac moved for reconsideration,[33] but the same was denied in a Resolution[34] dated April 14, 2016; hence, this petition.[35]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly: (*a*) ruled that it was improper for the RTC to

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[27] *Id*. at 32-47.

[28] See *id*. at 40.

[29] *Id*. at 45.

[30] *Id*.

[31] *Id*. at 40-42.

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

[33] Motion for Reconsideration is not attached to the *rollo*.

[34] *Id*. at 50-51.

[35] *Id*. at 10-29.

reopen its proceedings; and (*b*) upheld Rivac's conviction for the crime of *Estafa*.

The Court's Ruling

The petition must be denied.

I.

Section 24, Rule 119 of the 2000 Revised Rules on Criminal Procedure governs the reopening of criminal cases for further trial. It states in verbatim: "**At any time before finality of the judgment of conviction**, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings **to avoid a miscarriage of justice**. The proceedings shall be terminated within thirty (30) days from the order granting it." In *Cabarles v. Maceda*,[36] the Court expounded on the novelty, nature, and parameters of this rule, to wit:

> A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.
>
> x x x Section 24, Rule 119 and existing jurisprudence stress the following requirements for reopening a case: **(1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.**
>
> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, and in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears.

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[36] 545 Phil. 210 (2007).

A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline covering a motion to reopen is the paramount interest of justice. This remedy of reopening a case was meant to prevent a miscarriage of justice.[37] (Emphases and underscoring supplied)

In this light, the CA clearly erred in holding that: (*a*) it was improper for the RTC to reopen its proceedings because the latter court had already promulgated its judgment; and (*b*) assuming *arguendo* that what it did was a new trial, there were no grounds for its allowance. To reiterate, a motion to reopen may be filed even after the promulgation of a judgment and before the same lapses into finality, and the only guiding parameter is to "avoid the miscarriage of justice." As such, the RTC correctly allowed the reopening of proceedings to receive Fariñas's subsequent testimony in order to shed light on the true nature of her transaction with Rivac, and potentially, determine whether or not the latter is indeed criminally liable.

II.

Time and again, it has been held 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.[38] 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.[39]

Guided by this consideration, the Court affirms Rivac's conviction with modification as to the penalty, as will be explained hereunder.

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[37] *Id.* at 217-218; citations omitted.

[38] *People v. Dahil*, 750 Phil. 212, 225 (2015); citation omitted.

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

Article 315 (1) (b) of the RPC states:

Article 315. *Swindling (Estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

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

The elements of *Estafa* under Article 315 (1) (b) of the RPC are as follows: (*a*) the offender's receipt of money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same; (*b*) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (*c*) the misappropriation, conversion or denial is to the prejudice of another; and (*d*) demand by the offended party that the offender return the money or property received.[40] In *Cheng v. People*,[41] the Court further elucidated:

The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use

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[40] *Cheng v. People*, G.R. No. 174113, January 13, 2016, 780 SCRA 374, 382; citing *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

[41] *Id*.

different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. **In proving the element of conversion or misappropriation, the legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.**[42] (Emphases and underscoring in the original)

In this case, the facts clearly show the existence of all the elements of the crime charged, considering that: (*a*) Rivac received various pieces of jewelry from Fariñas on a sale-on-consignment basis, as evidenced by the consignment document; (*b*) Rivac was under the obligation to either remit the proceeds of the sale or return the jewelry after the period of seven (7) days from receipt of the same; (*c*) Rivac failed to perform her obligation, prompting Fariñas to demand compliance therewith; and (*d*) Rivac failed to heed such demand, thereby causing prejudice to Fariñas, who lost the pieces of jewelry and/or their aggregate value of ₱439,500.00.[43]

In an attempt to absolve herself from liability, Rivac moved to reopen the proceedings. Upon the partial grant thereof, Rivac presented the testimony of no less than Fariñas, who then testified that she now remembers that the consignment document never became effective nor enforceable, as she did not allow Rivac to take the jewelry because she has yet to pay her outstanding loan obligation plus interest.[44]

However, as correctly ruled by the courts *a quo*, Fariñas's testimony partakes of a recantation, which is aimed to renounce her earlier statement and withdraw the same formally and publicly. Verily, recantations are viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit

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[42] *Id*. at 382-383, citing *Pamintuan v. People*, 635 Phil. 514, 522 (2010).

[43] *Rollo*, pp. 40-41.

[44] See *id*. at 72.

of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable as there is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which, when coupled with the retraction, raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.[45] In *People v. Lamsen*,[46] the Court made a thorough discussion on the nature and probative value of recantations, as follows:

> Indeed, it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. x x x
>
> This Court has always looked with disfavor upon retraction of testimonies previously given in court. The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.
>
> x x x **Especially when the affidavit of retraction is executed by a prosecution witness after the judgment of conviction has already been rendered, "it is too late in the day for his recantation without portraying himself as a liar." At most, the retraction is an afterthought which should not be given probative value.**
>
> Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the

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[45] *People v. Lamsen*, 721 Phil. 256, 259 (2013); citations omitted.

[46] *Id.*

application of the general rules of evidence. **A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed.** The unreliable character of the affidavit of recantation executed by a complaining witness is also shown by the incredulity of the fact that after going through the burdensome process of reporting to and/or having the accused arrested by the law enforcers, executing a criminal complaint-affidavit against the accused, attending trial and testifying against the accused, the said complaining witness would later on declare that all the foregoing is actually a farce and the truth is now what he says it to be in his affidavit of recantation. And in situations, like the instant case, **where testimony is recanted by an affidavit subsequently executed by the recanting witness, we are properly guided by the well-settled rules that an affidavit is hearsay unless the affiant is presented on the witness stand and that affidavits taken *ex-parte* are generally considered inferior to the testimony given in open court.**[47] (Emphases and underscoring in the original)

Here, Fariñas's testimony during the reopened proceedings was supposedly her "correct recollection" of the events that transpired in connection with the instant criminal case filed against Rivac. However, after a scrutiny of the same, the Court sees no sufficient reason to overturn Rivac's conviction for the crime charged. As aptly observed by the RTC, Fariñas had various opportunities to make a "correct recollection" of her testimony, and yet she did not do so. Thus, Fariñas's act of making a complete turnaround in her testimony at the time when a judgment of conviction had already been promulgated is suspect. Coupled with the RTC's observation that the retraction is highly inconsistent with Rivac's own testimony, Fariñas's recantation should be seen as nothing but a last-minute attempt to save the latter from punishment.[48] Clearly, Rivac's conviction of the crime charged must be upheld.

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[47] *Id*. at 259-260; citing *Firaza v. People*, 547 Phil. 573, 584-586 (2007).

[48] See *id*. at 260; citing *Firaza v. People*, 547 Phil. 573, 586 (2007).

III.

Anent the proper penalty to be imposed on Rivac, it is worthy to point out that pending resolution of this case before the Court, Republic Act No. (RA) 10951[49] was enacted into law. As may be gleaned from the law's title, it adjusted the values of the property and damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the Revised Penal Code was enacted in 1932.[50] While it is conceded that Rivac committed the crime way before the enactment of RA 10951, the newly-enacted law expressly provides for retroactive effect if it is favorable to the accused, as in this case.

Section 85 of RA 10951 adjusted the graduated values where penalties for *Estafa* are based. Portions pertinent to this case read:

Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is further amended to read as follows:

Article 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty Thousand Pesos (₱40,000.00) but does not exceed One million two hundred thousand pesos (₱1,200,000.00).

x x x x x x x x x

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[49] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE', AS AMENDED," approved on August 29, 2017.

[50] See Article 1 of the RPC.

Thus, applying the provisions of RA 10951, as well as the Indeterminate Sentence Law, and taking into consideration that the aggregate value of the misappropriated jewelry is ₱439,500.00, Rivac must be sentenced to suffer the penalty of imprisonment for the indeterminate period of three (3) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum, there being no aggravating and mitigating circumstances present in this case.

Finally, Rivac must be ordered to pay the value of the misappropriated pieces of jewelry, plus legal interest at the rate of six percent (6%) per annum from the finality of this ruling until fully paid.[51]

WHEREFORE, the petition is **DENIED**. The Decision dated January 11, 2016 and the Resolution dated April 14, 2016 of the Court of Appeals in CA-G.R. CR No. 34247 finding petitioner Cecilia Rivac **GUILTY** beyond reasonable doubt of the crime of *Estafa*, defined and penalized under Article 315 (1) (b) of the Revised Penal Code, are hereby **AFFIRMED** with **MODIFICATION**, sentencing her to suffer the penalty of imprisonment for the indeterminate period of three (3) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum, and ordering her to pay private complainant Asuncion C. Fariñas the amount of ₱439,500.00 plus legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson), *Caguioa, Tijam,*[*] and *Reyes, Jr., JJ.,* concur.

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[51] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 390-391.

[*] Designated additional member per raffle dated December 13, 2017.

THIRD DIVISION

[G.R. No. 229829. January 22, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNEL KALIPAYAN *y* ANIANO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS, PROVEN BEYOND REASONABLE DOUBT.—** Jurisprudence dictates that the elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide. There is no need to dwell on the first two (2) elements. Accused-appellant admitted that he indeed stabbed Glaiza which resulted to the latter's death. The last element also exists as Glaiza and accused-appellant were only in a boyfriend-girlfriend relationship at the time of the crime, albeit with a common child, but no relationship that would be classified as falling within the definition of parricide or infanticide.

2. **ID.; ID.; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS, NOT PROVEN IN THIS CASE.—** As concluded by the RTC, evident premeditation is not present in this case. This Court is in agreement but for a different reason. The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts. These elements have to be proven beyond reasonable doubt. Though accused-appellant went into the house in a sudden and unexpected manner, presumably to attack Glaiza, there is no proof beyond reasonable doubt that he decided to do so and clung to this amounting to evident premeditation. The Court cannot fully subscribe to the RTC's theory that accused-appellant planned to confront Glaiza but did not plan to kill her. On the

contrary, the evidence shows that when he swiftly entered the house and went straight to the kitchen, he already had a decision to harm Glaiza. However, the element that there was a sufficient lapse of time between the decision to commit the crime and its actual commission was not proven satisfactorily inasmuch as it would qualify the killing as murder. The testimonies and object evidence do not necessarily yield the conclusion that he clung to the determination to kill Glaiza. The decision to kill prior to the moment of its execution must have been the result of meditation, calculation, reflection or persistent attempts. This aspect was not proven by the prosecution beyond reasonable doubt and as such, evident premeditation cannot be said to be present here.

3. **ID.; ID.; ID.; TREACHERY; ELEMENTS THEREOF ATTENDANT IN CASE AT BAR; THE ESSENCE OF TREACHERY IS THE SUDDEN AND UNEXPECTED ATTACK WITHOUT THE SLIGHTEST PROVOCATION ON THE PART OF THE PERSON BEING ATTACKED.—** Treachery has long been defined by this Court, especially as to its character as a qualifying circumstance for murder. It is a circumstance that must be proven as indubitably as the crime itself and constitutes two (2) elements: (1) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) that said means of execution were deliberately or consciously adopted. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked. A swift and unexpected attack on an unarmed victim that insures its execution without risk to the assailant arising from the defense of his victim is an indication that treachery is present. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In that sense, even attacks that occur from the front may be considered treacherous if the attack was so sudden and unexpected that the deceased had no time to prepare for self-defense. The mode of attack must also be consciously adopted. The accused must make some preparation to kill the deceased in a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. The attack, then, must not spring from the unexpected turn of events. Both elements of treachery are doubtlessly attendant here.

4. **ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH IS ABSORBED IN TREACHERY.—** With this finding that treachery is present, the conclusion that the circumstance of abuse of superior strength is absorbed therein necessarily follows. Even without a definite finding as to whether it exists in this case or not, it is beyond cavil that treachery, as a qualifying circumstance, absorbs the aggravating circumstance abuse of superior strength even though the latter was alleged in the information. Thus, the circumstance of abuse of superior strength should not be appreciated as a separate aggravating circumstance.

5. **ID.; ID.; MURDER; PROPER PENALTY WHEN THERE IS AGGRAVATING CIRCUMSTANCE OF DWELLING; CIVIL LIABILITY.—** As correctly held by the RTC and CA, the crime committed by accused-appellant is murder, qualified by treachery. However, the Court has to modify the penalty, as well as the awarded damages, because of the existence of the aggravating circumstance of dwelling. x x x Glaiza was only preparing dinner in the sanctity of her home when the attack happened. There was no prior incident that would give rise to accused-appellant's sudden actions. Clearly, there was no provocation that would exempt this case from being aggravated by the circumstance of dwelling. There is also no question that Glaiza was living in the same house where the crime was committed. Therefore, the penalty imposed upon accused-appellant should be that for an aggravated crime, the higher of the two (2) indivisible penalties, which is death in this case. However, pursuant to Republic Act No. 9346, the penalty of *reclusion perpetua* shall be imposed, with no eligibility for parole. Not only that, the amount of the civil indemnity, moral and exemplary damages have to be modified accordingly. The case of *People v. Jugueta* laid down the amounts that should be awarded to the victims of some particular crimes. For the crime of murder, punished by death but reduced to *reclusion perpetua* without eligibility for parole because of Republic Act No. 9346, the heirs of Glaiza should be awarded the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. The award of funeral expenses claimed by Josephine is sustained.

APPEARANCES OF COUNSEL

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

D E C I S I O N

GESMUNDO, *J*.:

This is an appeal from the Decision[1] dated July 29, 2016 of the Court of Appeals-Visayas Station (*CA*) docketed as CA-G.R. CEB-CR-HC No. 01962. The CA affirmed with modification the Judgment[2] dated November 26, 2014 of the Regional Trial Court (*RTC*) of Tacloban City, Branch 34, finding accused-appellant Arnel Kalipayan *y* Aniano (*accused-appellant*) guilty of murder.

<u>The Antecedents</u>

Accused-appellant was charged with the crime of murder under Article 248 of the Revised Penal Code (*RPC*). The accusatory portion of the information reads:

Criminal Case No. 2008-06-323

That on or about the 25th day of June 2008 in the City of Tacloban and within the jurisdiction of this Honorable Court the above-named accused with intent to kill, with treachery, evident premeditation and abuse of superior strength did then and there wilfully [*sic*] and feloniously stab several times Glaiza Molina, his former live-in partner inside her house with the use of bladed knife hitting different parts of the latter's body causing her some injuries thereon resulting to her instantaneous death.

Said act is attended with the aggravating circumstance of "dwelling."

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[1] *Rollo*, pp. 4-12. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap, concurring.

[2] CA *rollo*, pp. 44-52. Penned by Judge Frisco T. Lilagan.

Contrary to law.[3]

On September 10, 2008, accused-appellant was arraigned and he pleaded not guilty to the charge.[4] Thereafter, trial ensued.

Evidence for the Prosecution

Prosecution witnesses testified that Glaiza Molina (*Glaiza*) and accused-appellant were lovers and they have a child. They lived with Glaiza's grandmother Celestina Molina (*Celestina*) for some time. Their living arrangements changed throughout the years until it was agreed that Glaiza, together with the couple's daughter, would live with Celestina so that Glaiza can continue her studies. Glaiza and accused-appellant's relationship took a negative turn with the incident that occurred on June 25, 2008.[5]

Josephine Paraiso (*Josephine*), Glaiza's mother, testified that on June 25, 2008, at around 5:45 p.m., she was watching television inside their house while Celestina and Glaiza were in the kitchen preparing their dinner. Accused-appellant entered their house without permission, approached Glaiza, stabbed her in the back and held her hair. Accused-appellant then made Glaiza face him and continued stabbing her in the abdomen. Josephine tried to stop accused-appellant but the latter poked the knife at her, telling her not to interfere as it was none of her business. Josephine then ran outside the house and asked for help. A neighbor, Dennis Alegre, tried to stop accused-appellant but the latter was undeterred, even when Josephine was begging him to stop. Josephine decided to leave the house while accused-appellant escaped. With accused-appellant gone, Josephine went back inside their house, where she found Glaiza still breathing. Glaiza was brought to Remedios Trinidad Romualdez Medical Foundation Hospital where she was declared dead on arrival.

On cross-examination, she testified that accused-appellant entered the house through the main door. Glaiza was about to

[3] Records, p. 1.

[4] *Id*. at 17.

[5] CA *rollo*, p. 46.

put the pot on the stove with her back facing accused-appellant when the latter stabbed her using a 9 ½ inch long Rambo knife, which they did not have in their kitchen. She likewise said that accused-appellant and Glaiza did not have a conversation immediately prior to the incident.

Celestina testified that she was in the kitchen with Glaiza while the latter was trying to cook rice. Celestina was doing something to the gas tank when accused-appellant suddenly entered the house and stabbed Glaiza. The latter fell to the ground but accused-appellant continued stabbing her. Celestina then went out of the house to seek help and she was prevented by their neighbors to go back inside.

SPO2 Marion Lavadia testified that he was the policeman on duty and he received the phone call about the stabbing incident. Celestina met the police who responded to the incident and informed them that Glaiza was stabbed several times. They later discovered that accused-appellant could be somewhere in V&G Subdivision in Tacloban City. When they saw accused-appellant, Josephine confirmed that he was the one that stabbed Glaiza. The police arrested accused-appellant and frisked him, which resulted in the discovery of the knife used against Glaiza.

The Medico-Legal Autopsy Report[6] stated that the victim Glaiza Molina (*Glaiza*) suffered one (1) puncture wound on her head, eight (8) stab wounds and one (1) puncture wound on her chest, one (1) stab wound on her abdomen, two (2) incise wounds, and three (3) stab wounds on her extremities.[7]

Evidence for the Defense

Accused-appellant presented a different account of the incident. He claimed that he confronted Glaiza because he believes that the latter was having an affair with another man and the situation hurt him. Accused-appellant and Glaiza then went to the balcony of the house near the kitchen, where they

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[6] Records, p. 7.

[7] *Rollo*, p. 49.

ended up arguing and shouting. Glaiza was angry at him, and thereafter went to the kitchen, and he followed her. Accused-appellant took a knife from the sink and threatened Glaiza, causing the latter to slap him. Accused-appellant then lost control and started stabbing Glaiza, and he could not remember the number of times he stabbed her. He could also not recall what happened until he surrendered when the police saw him at V&G Subdivision.

On cross-examination, accused-appellant stated that he had no intention of hurting Glaiza; instead he wanted to mend their relationship. Glaiza, however, was cold to him. He insisted that he was not armed when he went to Glaiza and he only found the knife inside the house.

The RTC Ruling

In the judgment dated November 26, 2014, the RTC found accused-appellant guilty beyond reasonable doubt of committing the crime of murder. On the matter of the circumstance of abuse of superior strength, it noted that Glaiza was unarmed and stabbed numerous times and it showed that accused-appellant abused his superior strength and demonstrated his brutality. Nevertheless, the RTC opined that this circumstance is absorbed in treachery which was also present in this case. Treachery was proven by the clear and credible testimony of Celestina. The trial court observed that due to the suddenness of the attack, Glaiza was unable to defend herself and repel the attack. On the subject of dwelling as an aggravating circumstance, the RTC stated that there is no evidence showing that the crime was deliberately and purposely intended to be inside Glaiza's house and to cause disrespect to the sanctity of the dwelling.

It held, however, that the evidence presented by the prosecution did not sufficiently show that the killing was attended by evident premeditation. As pointed out by the court, though accused-appellant planned to confront Glaiza, it was not tantamount to planning to kill Glaiza. The RTC concluded that there was no direct or circumstantial proof demonstrated by the prosecution to show that accused-appellant meditated and reflected on

committing murder. The dispositive portion of the RTC ruling states:

> WHEREFORE, premises considered, the herein accused ARNEL KALIPAYAN y Aniano is hereby found guilty beyond reasonable doubt of the offense of MURDER and is hereby sentenced to suffer a penalty of *Reclusion Perpetua.*
>
> Accused Arnel Kalipayan is hereby ordered to indemnify Josephine Paraiso, the mother of the victim, the amount of Php75,000.00 as moral damages, the heirs of Glaiza Molina Php75,000.00 as death indemnity, Php30,000.00 for funeral expenses and Php 25,000.00 as exemplary damages.
>
> The herein accused Arnel Kalipayan shall be credited the period of his detention during the pendency of this case in accordance with existing laws and procedures.
>
> COSTS against the accused
>
> SO ORDERED.[8]

Accused-appellant appealed to the CA.

The CA Ruling

In its decision dated July 29, 2016, the CA denied the appeal. It held that there was suddenness in the attack, as gathered from the testimonies of the prosecution, when accused-appellant swiftly appeared inside Glaiza's house and attacked her. The numerous stab wounds found on Glaiza's body, delivered in a sudden manner, negates the claim that Glaiza might have defended herself. The CA likewise agreed with the RTC that there was the qualifying circumstance of abuse of superior strength but the same is absorbed in the circumstance of treachery.

The CA sustained the grant of civil indemnity and moral damages of ₱75,000.00, and the award of ₱30,000.00 for funeral expenses and ₱25,000.00 as exemplary damages. The monetary award was, however, modified by adding an interest of six percent (6%) per annum on the aggregate amount of the monetary awards,

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

computed from the time of finality of the decision until its full payment. The CA disposed the appeal in this wise:

WHEREFORE, this appeal is DENIED. The *Judgment* dated 26 November 2014 of Branch 34 of the Regional Trial Court of Tacloban City in Crim. Case No. 2008-06-323 is AFFIRMED with MODIFICATION. Appellant shall pay an interest of six percent (6%) per annum on the aggregate amount of the monetary awards computed from the time of finality of this Decision until full payment.

SO ORDERED.[9]

Hence, this appeal.

Issue

WHETHER THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH ANY QUALIFYING CIRCUMSTANCE.

The records of this case were forwarded by the CA pursuant to its Resolution[10] dated October 26, 2016, which gave due course to the notice of appeal. The Court required the parties to submit their respective supplemental briefs. The Office of the Solicitor General (*OSG*), representing the appellee People of the Philippines, filed a Manifestation[11] stating it will not file a Supplemental Brief to avoid a repetition of arguments already presented in its Appellee's Brief dated January 29, 2016. Appellant likewise filed a Manifestation in lieu of a Supplemental Brief[12] adopting *in toto* the Appellant's Brief filed before the CA.

Arguments of accused-appellant

Accused-appellant admits that he committed the acts that eventually led to Glaiza's death. However, he argues that the

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[9] *Rollo*, p. 11.

[10] CA *rollo,* p. 109.

[11] *Rollo*, pp. 20-21.

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

qualifying circumstances alleged in the information were not sufficiently proven by the prosecution. Accused-appellant points to the nature of the attack against Glaiza, which he characterizes as not sudden and unexpected. He claims that there was a commotion and a heated argument prior to the killing, which would have allowed Glaiza to raise her guard. The weapon used was also found in Glaiza's residence showing that the means of execution was only adopted as a result of an impulse prior to the killing. Thus, accused-appellant argues that there was no treachery proven.

Accused-appellant likewise posits that the presence of evident premeditation is not backed by evidence, which was acknowledged by the RTC. There was no proof that accused-appellant decided to kill the victim and that there was time for him to reflect upon his decision.

Finally, accused-appellant reiterates abuse of superior strength was also not present. He insists that the prosecution failed to show the disparity in age, size and strength, or force, except for the gender of the parties. Further, there appeared no actual difference between the body types of accused-appellant and Glaiza that will constitute superior strength on his part.

Accused-appellant concludes that these circumstances negate the suddenness of the attack, the deliberateness or conscious adoption of the method of killing, and the existence of treachery. Hence, he underscores that his conviction should only be for the crime of homicide.

Arguments of appellee

Contrary to the protestations of appellant, the OSG claims that the presence of a prior heated argument is untrue based on the testimonies of the prosecution witnesses. Both Josephine and Celestina were actually surprised of his presence in their house. The OSG also highlights that the testimonies show that Glaiza was held by the hair and was stabbed in the back, rendering the latter incapable of defending herself. Not only was Glaiza unaware of accused-appellant's presence, she was also caught unaware of his impending attack on her.

The Court's Ruling

The appeal is unmeritorious.

It is a hornbook rule that an appeal of a criminal case throws the entire case up for review. It becomes the duty of the appellate court to correct any error that may be found in the appealed judgment, whether assigned as an error or not.[13] Bound by this doctrine, this Court will thus review not just the propriety of appellant's conviction, but likewise the penalty and monetary award given to the heirs of the victim.

The elements of murder were proven beyond reasonable doubt by the prosecution

Accused-appellant is charged with the murder of his former girlfriend who also happened to be the mother of his child. Art. 248 of the RPC states:

Murder. — Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

5. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x x x x x x x

5. With evident premeditation.

x x x x x x x x x

Jurisprudence dictates that the elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.[14]

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[13] *Candelaria v. People of the Philippines*, 749 Phil. 517, 530 (2014) citing *People v. Balacano,* 391 Phil. 509, 525-526 (2000).

[14] *People of the Philippines v. Bensig*, 437 Phil. 748, 763 (2002).

There is no need to dwell on the first two (2) elements. Accused-appellant admitted that he indeed stabbed Glaiza which resulted to the latter's death. The last element also exists as Glaiza and accused-appellant were only in a boyfriend-girlfriend relationship at the time of the crime, albeit with a common child, but no relationship that would be classified as falling within the definition of parricide or infanticide. The sole issue in this case is the existence of a circumstance that would qualify the killing of Glaiza to the crime of murder.

There is no question that appellate courts will not overturn the findings of fact of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. Generally, though, the findings of the trial court, especially as to its calibration of witnesses' testimonies and assessment of their credibility and conclusions anchored on these findings, are given due deference and respect.[15]

As concluded by the RTC, evident premeditation is not present in this case. This Court is in agreement but for a different reason. The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts.[16] These elements have to be proven beyond reasonable doubt.[17]

Though accused-appellant went into the house in a sudden and unexpected manner, presumably to attack Glaiza, there is no proof beyond reasonable doubt that he decided to do so and clung to this amounting to evident premeditation. The Court cannot fully subscribe to the RTC's theory that accused-appellant planned to confront Glaiza but did not plan to kill her. On the

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[15] *People of the Philippines v. Pulgo*, G.R. No. 218205, July 5, 2017.

[16] *People of the Philippines v. Sebastian*, 428 Phil. 622, 626-627 (2002).

[17] *People of the Philippines v. Paragas*, 434 Phil. 124, 143 (2002).

contrary, the evidence shows that when he swiftly entered the house and went straight to the kitchen, he already had a decision to harm Glaiza. However, the element that there was a sufficient lapse of time between the decision to commit the crime and its actual commission was not proven satisfactorily inasmuch as it would qualify the killing as murder. The testimonies and object evidence do not necessarily yield the conclusion that he clung to the determination to kill Glaiza. The decision to kill prior to the moment of its execution must have been the result of meditation, calculation, reflection or persistent attempts.[18] This aspect was not proven by the prosecution beyond reasonable doubt and as such, evident premeditation cannot be said to be present here. Nevertheless, the conclusion that the crime is still murder stays not because of the existence of evident premeditation, but of treachery.

Treachery is present in this case

Accused-appellant's main contention is that the qualifying circumstance of treachery was not proven by the prosecution; hence, the crime should be homicide, not murder.

The Court disagrees.

Based on the clear, consistent, and convincing testimonies of Josephine and Celestina, accused-appellant entered the house and commenced stabbing Glaiza while the latter was preparing dinner. Celestina was even in the same small vicinity where the attack was committed while she was working with the gas tank that Glaiza needed to cook the rice.

Accused-appellant's version is belied by the testimonies of Celestina and Josephine, who averred that they did not notice his presence and arrival at their home prior to the stabbing incident. Not only was his account of the events riddled with inconsistencies, it is also self-serving and unsupported by any other circumstance that would make the Court believe his story over that of Josephine's and Celestina's.

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[18] *Id*. at 144.

Treachery has long been defined by this Court, especially as to its character as a qualifying circumstance for murder. It is a circumstance that must be proven as indubitably as the crime itself and constitutes two (2) elements: (1) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) that said means of execution were deliberately or consciously adopted.[19]

The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person being attacked.[20] A swift and unexpected attack on an unarmed victim that insures its execution without risk to the assailant arising from the defense of his victim is an indication that treachery is present.[21] What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[22] In that sense, even attacks that occur from the front may be considered treacherous if the attack was so sudden and unexpected that the deceased had no time to prepare for self-defense.[23] The mode of attack must also be consciously adopted. The accused must make some preparation to kill the deceased in a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. The attack, then, must not spring from the unexpected turn of events.[24]

Both elements of treachery are doubtlessly attendant here. Even in the short span of time that Celestina turned her back to switch on the stove, accused-appellant already managed to start his deplorable deed. This is a sign of his conscious choice to employ the specific means and methods to kill Glaiza, and not the product of some sudden emotional response. There is

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[19] *People of the Philippines v. Aquino*, 396 Phil. 303, 307 (2000).

[20] *Supra* note 16 at 626.

[21] *People of the Philippines v. Caboquin*, 420 Phil. 744, 750 (2001).

[22] *Supra* note 16 at 626.

[23] *People of the Philippines v. Perez*, 404 Phil. 380, 388 (2001).

[24] *People of the Philippines v. Santillana*, 367 Phil. 373, 389 (1999).

also no proof to show that he and Glaiza were engaged in a heated discussion immediately prior to the incident. On the other hand, the courts *a quo* were thoroughly convinced that accused-appellant unexpectedly entered the house, went straight for Glaiza, and immediately, without warning and through an almost stealthy manner, stabbed the latter numerous times. The circumstances are typical of a treacherous attack constituting of murder and not homicide.

Further, Glaiza was attacked in the back, with accused-appellant holding her hair to prevent her from moving. Josephine testified to this fact in this wise:

Q: While watching TV, what if any happened?
A: While watching TV my daughter Glaiza was preparing for our supper.
Q: And after that, what happened next?
A: At the time Arnel Kalipayan, the former live-in partner of my daughter suddenly entered our house having with him a bladed weapon.
Q: Upon entering your house, what if any did Arnel Kalipayan do?
A: **He suddenly entered the house without permission and approached my daughter who was at that time preparing for our meals stabbed her at her back and held her hair and let my daughter faced him and stabbed her on her stomach and the food that she ate spilled out of her stomach.**
Q: As far as you know, how many times did Arnel Kalipayan stabbed your daughter?
A: 17 times.
Q: And while he was stabbing your daughter, what did you do, if any?
A: I tried to stop him but he instead faced me and poked at me the bladed weapon that he used in stabbing my daughter and he said "do you intervene because you have no business."[25]
x x x x x x x x x
Q: When your daughter was stabbed, what was she doing at the time she was stabbed?
A: She was cooking.

[25] TSN dated October 6, 2009, p. 4.

Q: You mean she was preparing for the rice to be cooked?
A: She was preparing to cook the rice.
Q: So, what is that, was she washing the rice to be cooked?
A: When she was about to put the rice to be cooked over the stove she requested my mother to open the stove because it was leaking and at that time when they were having a conversation with my mother that was the time when Arnel Kalipayan entered the house.
Q: **If you know, where was your daughter hit for the first time?**
A: At her back (witness pointed to her back towards the shoulder).
Q: Using the Interpreter, please indicate whether your daughter was hit for the first time?
A: Here (witness indicated by touching the middle portion of the back of the Interpreter, the spinal column).[26] (emphasis supplied)

Celestina's account of the events also shows not only the suddenness of the attack but that accused-appellant rendered Glaiza efenceless as well, to wit:

Q: After she requested you to open the tank, what did you do?
A: I went near the LPG tank to open it.
Q: Were you able to open it?
A: I was not able to open it, because when I was about to open it I saw Arnel Kalipayan already stabbing my granddaughter.
Q: Did you notice where Arnel Kalipayan came from?
A: I just saw him inside our house already stabbing Glaiza.
Q: What was the position of Glaiza when she [*sic*] first stabbed by Arnel Kalipayan?
A: She was already lying down faced up and she was being stabbed by Arnel.
Court: The first time you saw Arnel Kalipayan what she was doing?
A: That's it, when I was about to open the gas, when I turned my head to the left (witness demonstrated by turning her head to the left) that was what I saw, Arnel Kalipayan was already stabbing my granddaughter Glaiza.[27]

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[26] *Id*. at 5.

[27] TSN dated June 21, 2011, pp. 6-7.

Though she was asked several times[28] at various points during the course of her testimony, Celestina did not waver in her story and remained consistent throughout.

The Medico-Legal Autopsy Report corroborates these statements. From what can be made out from the said report, the following are the wounds sustained by Glaiza:

HEAD:

- Punctured wound, right lower mandibular region, measuring 1 x 0.5 x1 cms AML.

CHEST:

- Stab wound, left chest, anterior at the level of the 3rd ICS, measuring 3 x 1 x 9 cms. AML, 8 cms in depth penetrating the left thoracic cavity hitting the upper lobe of the left lung.
- Punctured wound, anterior chest, left, measuring 1 x 0.5 x 2 cms AML, muscle deep, non-penetrating.
- Stab wound, left chest, anterior portion, measuring 3 x 1 x 12 cms AML, directed medialwards, non-penetrating.
- Stab wound, left anterior chest, measuring 3 x 2 x 1 cms AML, 6 cms in deep, directed posteriorwards penetrating [indiscernible] cavity, left hitting the substance of the heart.
- Stab wound, [indiscernible] portion of the left chest at the level of the 4th ICS, measuring [indiscernible] x13 cms AML, directed medially, penetrating the left thoracic cavity hitting the left lung and the side of the heart.
- Stab wound, right anterior chest, at the level of the 3rd ICS, measuring 3 x 2 x 9 cms AML, 4 cms in depth, directed posteriorwards, penetrating the right thoracic cavity hitting the middle lobe of the left lung.
- Stab wound, anterior chest right, at the level of the 3rd ICS, at the level of the anterior mid mammary line, measuring 3 x 1 x 3 cms AML, non-penetrating.
- **Stab wound, [indiscernible] posterior chest, right at the level of the 5th ICS, measuring 1 x 1 just along the posterior median line measuring 1 x 1 cms.**
- **Stab wound, left posterior chest at the level of the 5th CIS, measuring 1 x 1 x 2 cms, non-penetrating.**

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[28] *Id.* at 18, 20, 21, 24, 25.

ABDOMEN:

- Stab WOUND, lateral left portion of the abdomen, measuring 3 x 3 x 10 cms AML, directed medially, penetrating the abdominal cavity.

EXTREMITIES:

- Stab wound, right forearm, middle third, anterior portion, measuring 3 x 1 cms.
- Incised wound, left hand, at the base portion of the left finger, measuring 3 x 2 cms.
- Incised wound, posterior portion of the left hand, measuring 4 x 3 cms.
- Stab wound, left thigh, anterior lower third, measuring 4 x 2 cms.
- Stab wound, medial portion of the left thigh measuring 1 x 1 cms. (emphasis supplied)

While many of the stab and puncture wounds were frontally made, it is notable that Glaiza sustained posterior wounds, which strengthens Josephine's claim that Glaiza was first struck in the back. Given this, and uncontroverted by convincing evidence, the only reasonable conclusion that can be made is that the attack was attended by treachery.

Furthermore, the above details show that Glaiza was not expecting the attack. She was also rendered helpless and unprotected not only by the swiftness of the attack, but also because she was already stabbed in the back before even becoming fully aware that a reprehensible act was being committed against her. From this, the first element of treachery is demonstrated without question.

The second element of treachery is likewise undoubtedly present. The time and place, and manner of attack were deliberately chosen and accused-appellant was immediately cloaked with impunity to ensure its successful execution. The time of the attack, at around 5:30 p.m., was a time in which people usually prepare their supper and households are buzzing with activity. Accused-appellant's mode of attack, of suddenly entering the house and going straight to where Glaiza was while

the latter was preparing food, is also clearly indicative of his nefarious plan to attack when Glaiza was not in a position to defend herself.

With this finding that treachery is present, the conclusion that the circumstance of abuse of superior strength is absorbed therein necessarily follows. Even without a definite finding as to whether it exists in this case or not, it is beyond cavil that treachery, as a qualifying circumstance, absorbs the aggravating circumstance abuse of superior strength even though the latter was alleged in the information.[29] Thus, the circumstance of abuse of superior strength should not be appreciated as a separate aggravating circumstance.

Penalty and damages

As correctly held by the RTC and CA, the crime committed by accused-appellant is murder, qualified by treachery. However, the Court has to modify the penalty, as well as the awarded damages, because of the existence of the aggravating circumstance of dwelling. This circumstance was discussed by the RTC in this wise:

> Reviewing the evidence of the prosecution, there is no evidence to prove that Arnel had deliberately and purposely intended to carry his evil design inside the house of Glaiza, and to cause disrespect to the sanctity of Glaiza's dwelling place. In fact, this Court even eliminated the presence of evident premeditation as an attendant qualifying circumstance.[30]

Notably, the aggravating circumstance of dwelling need not be "deliberately and purposely intended" by an accused for it to be appreciated. Rather, it aggravates the felony when the crime was committed in the residence of the offended party and the latter did not give any provocation. It is considered an aggravating circumstance primarily because of the sanctity of privacy accorded to the human abode. Repeated across many

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[29] *People of the Philippines v. Castro, et al.*, 346 Phil. 894, 912 (1997).

[30] CA *rollo*, p. 51.

cases are these lines: "[o]ne's dwelling is a sanctuary worthy of respect thus one who slanders another in the latter's house is more severely punished than one who offends him elsewhere. According to Cuello Calon, the commission of the crime in another's dwelling shows worse perversity and produces graver harm."[31] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[32]

As pointed out earlier, Glaiza was only preparing dinner in the sanctity of her home when the attack happened. There was no prior incident that would give rise to accused-appellant's sudden actions. Clearly, there was no provocation that would exempt this case from being aggravated by the circumstance of dwelling. There is also no question that Glaiza was living in the same house where the crime was committed. Therefore, the penalty imposed upon accused-appellant should be that for an aggravated crime, the higher of the two (2) indivisible penalties, which is death in this case. However, pursuant to Republic Act No. 9346,[33] the penalty of *reclusion perpetua* shall be imposed, with no eligibility for parole. Not only that, the amount of the civil indemnity, moral and exemplary damages have to be modified accordingly. The case of *People v. Jugueta*[34] laid down the amounts that should be awarded to the victims of some particular crimes. For the crime of murder, punished by death but reduced to *reclusion perpetua* without eligibility for parole because of Republic Act No. 9346, the heirs of Glaiza should be awarded the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. The award of funeral expenses claimed by Josephine is sustained.

WHEREFORE, the appeal is **DISMISSED.** The July 29, 2016 Decision of the Court of Appeals-Visayas Station in CA-

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[31] *People of the Philippines v. Taboga*, 426 Phil. 908, 928-929 (2002), among others.

[32] *People of the Philippines v. Belo*, 360 Phil. 36, 50 (1998).

[33] An Act prohibiting the imposition of death penalty in the Philippines.

[34] G.R. No. 202124, April 5, 2016.

GR CEB-CR-HC No. 01962 is **AFFIRMED with MODIFICATION** that accused-appellant Arnel Kalipayan y Aniano is found **GUILTY** beyond reasonable doubt of murder and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of Glaiza Molina ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. All the other monetary awards ordered by the RTC are sustained. Appellant shall pay an interest of six percent (6%) per annum on the aggregate amount of the monetary awards computed from the time of finality of this Decision until full payment.

SO ORDERED.

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

Martires, J., on leave.

THIRD DIVISION

[G.R. No. 230144. January 22, 2018]

THE MANILA BANKING CORPORATION, *petitioner, vs.* **BASES CONVERSION AND DEVELOPMENT AUTHORITY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; FAILURE TO INCLUDE A NOTICE OF HEARING IN A MOTION FOR RECONSIDERATION IS NOT FATAL WHERE THE OTHER PARTY WAS GIVEN THE OPPORTUNITY TO BE HEARD.—** Rule 15, Section 4 of the Rules of Court requires every motion to be set

for hearing by the applicant and to give notice of such hearing to the other party at least three days before the date of the hearing. Section 5 of the same Rule mandates that the notice of hearing should be addressed to all parties concerned and should specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. Where a motion has no notice of hearing, it is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading. Nevertheless, this Court has relaxed procedural rules when a rigid application of these rules only hinders substantial justice. x x x [T]he relaxation of its rules is subject to certain conditions and for liberality to be applied, it must be assured that the adverse party has been afforded the opportunity to be heard through pleadings filed in opposition to the motion. In the present case, the records reveal that TMBC was given the opportunity to be heard when it filed a comment/ opposition to the motion for reconsideration, assailing the same and raising substantive arguments for its dismissal. Moreover, the RTC went a step further and directed the parties to submit judicial affidavits of their witnesses with documentary exhibits to substantiate their respective positions. Clearly, the requirements of procedural due process were substantially complied with and such compliance justified a departure from a literal application of the rule on notice of hearing.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; EXPROPRIATION; JUST COMPENSATION; THE COURT OF APPEALS (CA) WAS CORRECT IN REVERSING THE TRIAL COURT AND IN FIXING THE JUST COMPENSATION AT ₱75 PER SQUARE METER BASED ON THE STANDARDS SET IN RA 8974.—** We find that the CA committed no reversible error in reversing and setting aside the trial court's determination of just compensation and in fixing the just compensation of the subject property at ₱75 per square meter. The CA, guided by the standards set in RA 8974, took into consideration the documentary evidence presented by the parties to determine the appropriate value of the property at the time it was taken in November 2003.

3. **CIVIL LAW; INTEREST; GUIDELINES IN COMPUTING LEGAL INTEREST, REITERATED; THE CA WAS CORRECT IN MODIFYING THE INTEREST RATES TO BE IMPOSED ON THE JUST COMPENSATION.—** In the

landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*, the Court laid down the guidelines regarding the manner of computing legal interest, particularly declaring that when judgments of the court awarding a sum of money become final and executory, the rate of legal interest shall be 12% per annum from such finality until its satisfaction, since this interim period is deemed to be by then an equivalent to a forbearance of credit. With the issuance of BSP-MB Circular No. 799, Series of 2013, however, which became effective on July 1, 2013, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum but shall now be six percent (6%) per annum effective July 1, 2013. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013, and from July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable. x x x From the foregoing, it is clear that the CA was correct in imposing an interest on the just compensation at the rate of 12% per annum from November 21, 2003 up to June 30, 2013, and 6% per annum from July 1, 2013 until full payment.

APPEARANCES OF COUNSEL

De Guzman Dionido Caga Jacuban and Associates Law Offices for petitioner.

Office of the Government Corporate Counsel for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated

[1] *Rollo*, pp. 47-63. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Ramon Paul L. Hernando and Nina G. Antonio-Valenzuela.

October 26, 2016 and the Resolution[2] dated February 22, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 104234, which reversed and set aside the Order dated August 28, 2014 of Branch 60, Regional Trial Court (RTC) of Angeles City, Pampanga, in Civil Case No. 03-11226.

The Facts

Respondent Bases Conversion and Development Authority ("BCDA") was created as a government corporation on March 13, 1992 by virtue of Republic Act No. 7227 (RA 7227). It is tasked mainly to manage the Clark and Subic military reservations/camps and their extensions and to adopt and implement a comprehensive development plan for their conversion into productive uses, with a view to promoting the economic and social development of the country (Section 4, RA 7227). Among the powers expressly granted to it is the power to exercise the right of eminent domain (Section 5[k]).[3]

On November 21, 2003, BCDA filed a complaint against herein petitioner The Manila Banking Corporation ("TMBC") and Bangko Sentral ng Pilipinas ("BSP"), seeking to expropriate a parcel of land covered by Transfer Certificate of Title (TCT) No. 308513-R of the Registry of Deeds of Pampanga, registered in the name of TMBC with a total area of Ten Million Two Hundred Forty Thousand square meters (10,240,000 sq.m.) situated in Barangay Dolores, Municipality of Porac, Province of Pampanga ("Subject Property"). The area to be affected by expropriation was estimated to be One Hundred Eighty-Six Thousand Three Hundred Fifty-Five square meters (186,355 sq.m.), more or less.[4] BCDA also alleged that the subject property was classified as agricultural land and had the zonal value of 30 per square meter at the time of filing of the complaint.[5]

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[2] *Id*. at 64-66.

[3] *Id*. at 47.

[4] *Id., id.* at 68-69.

[5] *Id*. at 69.

According to BCDA, the subject property was being expropriated to pave the way for the implementation of the Subic-Clark-Tarlac Expressway (SCTEX) Project of the national government. The SCTEX Project was supposed to provide the shortest, direct and efficient link among vital development areas in Central Luzon, more specifically among three prime economic zones (Subic Bay Special Economic Zone in Zambales, Clark Special Economic Zone in Pampanga and the Hacienda Luisita Industrial Park in Tarlac) and significantly alleviate the worsening traffic condition of the North Luzon Expressway. BCDA further claimed that "the government will suffer immense and irreparable damage if this project will not proceed as scheduled by reason of the failure to negotiate with supposed owner after diligent efforts to do so."[6]

BCDA prayed for the issuance of a writ of possession upon payment to the landowner of an amount equivalent to 100% of the value of the subject property based on the current zonal valuation, pursuant to Section 4(a) of RA 7227, and thereafter, an order of expropriation requiring the defendants to answer within the time specified in the summons and authorizing BCDA to take the property sought to be expropriated for public purpose as stated in the complaint.[7]

Prior to the filing of the complaint on June 21, 1999, it appears that the property was the subject of a *Dacion En Pago Con Pacto de Retro* agreement between TMBC and the Central Bank Board of Liquidators ("CB-BOL"). Pursuant to a revised repayment plan, TMBC delivered several properties in settlement of the balance of its debt to CB-BOL amounting to ₱2,265,953,378.83. On December 20, 2000, CB-BOL assigned all its rights and interests under the *Dacion* agreement in favor of the BSP. Thus, BSP sought the release of 100% of the value of the property based on the current zonal valuation of the Bureau of Internal Revenue ("BIR"), in accordance with Section 2, Rule 67 of the 1997 Rules of Procedure. TMBC opposed the

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[6] *Id*. at 48.

[7] *Id*.

motion and the issue was submitted for resolution at the trial during the pre-trial conference.[8]

Records also reveal that a Final Offer to Buy dated October 9, 2003 was sent by BCDA to TMBC, whereby BCDA offered the price of 75 per square meter for the subject property.[9]

On January 22, 2004, BCDA deposited the amount of Five Million Five Hundred Ninety Thousand and Six Hundred Fifty Pesos (₱5,590,650) before the Office of the Clerk of Court of Angeles, Pampanga. This amount was equivalent to the value of the actual affected area of the subject property based on the then current zonal valuation provided by the BIR.[10]

The trial court issued a writ of possession on March 11, 2004 and the subject property was placed in the possession of BCDA on June 10, 2004.[11]

BCDA filed a Motion to Admit Supplemental Complaint, manifesting the reduction of the area to be taken from the original 186,355 sq.m. to One Hundred Sixty-Six Thousand Three Hundred Fifty-Five square meters (166,355 sq.m.) due to the realignment of the expressway. On April 11, 2007, BCDA further amended its complaint by adding an area of Six Thousand Seven Hundred Forty-Four square meters (6,744 sq.m.), making the total affected area of the subject property as One Hundred Seventy-Three Thousand Fifty-Nine square meters (173,059 sq.m.).[12]

In its Answer, TMBC contended that the offered price of ₱30 per square meter is way below the fair market value of the subject property. It pointed out that the subject property's value lies in the fact that it is the only remaining compact area of its size and nature within the Province of Pampanga; the proposed

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[8] *Id*.

[9] *Id.*

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

[11] *Id.* at 48-49.

[12] *Id*. at 71.

project would cut the property into two by the construction of fences on both sides thereby rendering inaccessible one side to the other and its value would substantially depreciate. Just compensation should, thus, include expected depreciation of the remaining areas.[13]

In its Order dated April 29, 2005, the RTC declared that BCDA has clearly established its lawful right to take the property sought to be expropriated for public use or purpose described in the complaint upon the payment of just compensation. After termination of pre-trial, the parties were ordered to submit their nominations for the commissioners who will assist the trial court in arriving at the just compensation for the subject property.[14]

Meanwhile, TMBC filed a motion to release payment which was opposed by BSP. Subsequently, they agreed for the release of the entire amount (initial payment of BCDA) to TMBC to be deposited by the latter in an escrow account with BSP, without prejudice to the eventual determination of the just compensation, and who between BSP and TMBC is entitled to the expropriation proceeds. On June 19, 2008, the RTC denied TMBC's motion for release of payment for being premature as there is still a need to determine who between TMBC and BSP is entitled to the proceeds of the property. However, pursuant to the RTC's Order dated March 12, 2009, TMBC's motion for reconsideration was granted and the amount of Five Million Three Hundred Sixty-Six Thousand and Ten Pesos (Php5,366,010.00) was released in favor of TMBC and was thereafter deposited in an escrow account with BSP pursuant to their compromise agreement.[15]

On August 14, 2009, the RTC conducted an ocular inspection of the subject property in the presence of counsels for TMBC and BCDA, and the nominee-appraiser of BCDA, Mr. Alberto Murillo, Jr. ("Mr. Murillo"), then City Assessor of Angeles

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[13] *Id*. at 49.

[14] *Id*.

[15] *Id., id.* at 70-71.

City, Pampanga. On September 24, 2009, TMBC filed a motion to set a second ocular inspection stating that the joint nominee of TMBC and BSP, Engr. Jose L. Ocampo ("Engr. Ocampo"), was unable to attend the ocular inspection. Said motion was granted by the trial court and a second ocular inspection was conducted on December 3, 2009, this time attended by counsels for BCDA and Manila Bank, and Engr. Ocampo.[16]

Mr. Murillo submitted to the court his report on August 19, 2009. TMBC moved to set aside the said report on grounds that it was filed even before he took his oath of office and that he failed to notify TMBC and BSP, nor were there hearings conducted for reception of evidence to aid him in reaching a fair, unbiased and comprehensive report on the fair market value of the property. In its comment, BCDA manifested that another report will just be submitted, adding that there is no necessity for Mr. Murillo to conduct any hearing since what was submitted is his individual report and TMBC's commissioner should submit his own recommendation and the matter of just compensation will be left to the discretion of the court. TMBC insisted that an order directing Mr. Murillo to re-submit his Commissioner's Report would be greatly prejudicial as he had already shown bias in this case, failed to apply any basic standards of his office, and never accorded the parties an equal opportunity to be heard.[17]

Meanwhile, Engr. Ocampo requested to withdraw as commissioner on account of his deteriorating health. He was replaced by Engr. Roger F. Tolosa, Jr. ("Engr. Tolosa"), who was nominated by both TMBC and BSP. In its Order dated June 30, 2011, the RTC resolved to: (1) set aside Mr. Murillo's report dated August 18, 2009; (2) appoint Engr. Tolosa as Commissioner *vice* Engr. Ocampo; (3) appoint the Municipal Assessor of Porac, Pampanga as Commissioner in this case; (4) direct Engr. Tolosa and the Municipal Assessor to take their oath of office; and (5) direct the three Commissioners, parties

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[16] *Id*. at 49-50.

[17] *Id*. at 50.

and their counsels to conduct an ocular inspection on August 9, 2011 and submit their respective reports within 30 days. Municipal Assessor Myrna V. Lumanlan declined her appointment and instead recommended Engr. Glen I. Lansangan ("Engr. Lansangan"), Municipal Planning and Development Officer of Porac, Pampanga.[18]

The final group of Commissioners consisted of Mr. Murillo, Engr. Tolosa, and Engr. Lansangan. On October 6, 2011, they took their respective oaths of office.[19]

On October 6, 2011, the scheduled ocular inspection proceeded with the attendance of the counsel/representative from BCDA, TMBC, BSP, and the three Commissioners. As directed, the parties submitted their respective documentary evidence to the Commissioners.[20]

The Commissioners did not come up with a group report, but made individual reports after their ocular inspection and they received the documents submitted by the parties.[21]

Engr. Tolosa submitted his Report dated November 2, 2011 where he concluded that:

> Based on our investigation and analysis of all relevant facts and as supported by the accompanying narrative report, it is our opinion that the **Market Value** (for Just Compensation) of the land appraised as of October 6, 2011 is **Php388 per square meter** and is represented in the amount of **SIXTY-SEVEN MILLION, ONE HUNDRED FORTY-SIX THOUSAND EIGHT HUNDRED NINETY-TWO (PhP67,146,892) PESOS** subject to the attached limiting conditions.[22]

For his part, Engr. Lansangan made this recommendation in his Report:

> Inspection and Valuation

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[18] *Id*.

[19] *Id*. at 72.

[20] *Id*. at 50.

[21] *Id*. at 126.

[22] *Id*. at 51.

We have personally inspected the property on October 6, 2011 and arriving at a reasonable valuation, I have researched price information from reputable sources and also giving consideration to the:

a. Highest and best use at the property; and

b. Zoning and current land usage in the locality

In view of the foregoing, it is of the opinion of the Commissioner that the Fair Market Value of the affected property is **Three Hundred Fifty Pesos (Php 350.00)** per square meter.[23]

On the other hand, the Report of Mr. Murillo dated October 24, 2011 stated that—

Still I maintained my appraisal at Thirty Pesos per square meter (₱30.00/sq.m.) based at the time of taking. It is my honest opinion that the Thirty Pesos per square meter (₱30.00/sq.m.) be paid as just compensation to the owner. It is reasonable and fair enough to both parties concerned considering that **they are only agricultural lands which have a lower value than industrial or commercial lots**. Besides it is the general public who will benefit from the use of the SCTEX and not the government.

It is therefore recommended that the appraised value of Thirty Pesos per square meter (₱30.00/sq.m.) be approved as basis for the payment of just compensation of the above mentioned property owner.[24]

During the hearings, the three Commissioners testified and the parties presented their respective evidence. After the formal offer of evidence and submission of the parties' respective memorandum, the case was submitted for decision.

Ruling of the Regional Trial Court

In a Decision[25] dated September 4, 2012, the RTC ordered respondent BCDA to pay petitioner TMBC the amount of ₱250

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[23] *Id*.

[24] *Id*.

[25] *Id*. at 68-87. Rendered by Presiding Judge Ofelia Tuazon Pinto.

per square meter as just compensation for the property taken. The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, the Court hereby renders judgment ordering the plaintiff to pay the defendants, the amount of Two Hundred Fifty Pesos Per Square Meter (Php. 250.00/ per sq. m.), or a total of Thirty Seven Million Eight Hundred Ninety Eight Thousand and Seven Hundred Forty Pesos (Php. 37,898,740.00) representing the principal balance on the just compensation due on the taking of a total affected area of One Hundred Seventy Three Thousand Fifty Nine Square Meters (173,059 sq. m.) that is covered by TCT 671482- R and TCT 671484- R; both derived from the mother title- TCT 308513- R in the name of Manila Banking Corporation; plus twelve [percent] (12%) interest per annum, from November 21, 2003 until fully paid.
>
> SO ORDERED.[26]

Respondent BCDA filed a Motion for Reconsideration[27] dated November 21, 2012. However, petitioner pointed out that BCDA failed to put a notice of hearing in its motion. In an attempt to remedy this procedural infirmity, BCDA file a Manifestation and Motion on January 3, 2013, praying that the motion be heard. This was opposed by TMBC in a Comment/Opposition dated January 17, 2013.[28]

Nevertheless, the RTC issued an Order dated July 26, 2013, reopening the case and requiring the parties to submit judicial affidavits to hear the case anew. TMBC moved for the reconsideration of the July 26, 2013 Order and for the declaration that the trial court's September 4, 2012 Decision be declared final and executory.[29]

Without acting on TMBC's motion for reconsideration, the RTC granted BCDA's motion for reconsideration in an Order[30]

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[26] *Id*. at 87.

[27] *Id*. at 88-106.

[28] *Id.* at 119.

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

[30] *Id*. at 118-136. Issued by Presiding Judge Eda P. Dizon-Era.

dated August 28, 2014 fixing the just compensation at 190 per sq.m. The dispositive portion of the August 28, 2014 Order reads:

> WHEREFORE, PREMISES CONSIDERED, the motion for reconsideration is given due course, the decision dated September 4, 2012 is hereby reconsidered[.] Judgment is hereby rendered fixing the just compensation of the subject lot at ₱190.00 per square meter or a total of thirty two million eight hundred eighty one thousand and two hundred ten pesos (Php32,881,210.00)[.] Considering that five million three hundred sixty six thousand and ten pesos (Php5,366,010) had been deposited as a condition for the issuance of writ of possession on March 3, 2004, the plaintiff Bases Conversion Development Authority is directed to pay the balance of twenty seven million five hundred fifteen thousand and two hundred ten pesos (Php27,515,210.00) to defendant the Manila Banking Corporation which shall earn interest at the rate of 12% per annum or the prevailing rate of interest whichever is lower from the time of actual taking on November 23, 2003[.]
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> SO ORDERED.[31]

Respondent BCDA elevated the case to the CA, seeking to reverse the RTC's determination of just compensation and imposition of 12% interest rate for the unpaid balance of the just compensation.

Ruling of the Court of Appeals

Pursuant to the Resolution dated July 18, 2016 issued by the CA, BSP was dropped as a party from the title of the case after submitting proof of the "Release and Cancellation" executed by BSP in favor of TMBC concerning the subject property.[32]

On October 26, 2016, the CA rendered the assailed Decision, giving due course to the petition and ruling in favor of respondent BCDA. The dispositive portion of the assailed Decision reads:

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[31] *Id.* at 135.

[32] *Id*. at 24.

WHEREFORE, the appeal is **GRANTED**. The Order dated August 28, 2014 of the Regional Trial Court of Angeles City, Pampanga, Branch 60 in Civil Case No. 03-11226 is hereby **REVERSED** and **SET ASIDE**.

Just compensation for the portions of the property of The Manila Banking Corporation consisting of 173,059 square meters, expropriated by BCDA for the SCTEX Project, is hereby fixed at Php75.00 per square meter, or a total of Twelve Million Nine Hundred Seventy Nine Thousand Four Hundred Twenty Five Pesos (Php12,979,425.00). Since BCDA already deposited the amount of Five Million Three Hundred Sixty Six Thousand and Ten Pesos (Php5,366,010.00), BCDA is **DIRECTED** to pay to TMBC the balance of Seven Million Six Hundred Thirteen Thousand Four Hundred Fifteen Pesos (Php7,613,415.00), which shall earn interest at the rate of 12% per annum from November 21, 2003 up to June 30, 2013, and 6% per annum from July 1, 2013 until fully paid. Said amount shall further earn interest at 6% per annum from the date of the finality of this Decision until full payment.

SO ORDERED.[33]

Petitioner TMBC's Motion for Reconsideration was denied in the assailed Resolution dated February 22, 2017.[34]

Hence, this petition.

The Petition

Petitioner TMBC claims that the CA's Decision and Resolution are contrary to law and prevailing jurisprudence.

First, the trial court's determination of just compensation in its September 4, 2012 Decision and August 28, 2014 Order had legal and factual basis which were existing at the time of the taking of the property, contrary to the pronouncement of the CA. TMBC reiterated the pertinent portions of the RTC's September 4, 2012 Decision, which relied on factors such as character and utility of the property, sales and holding prices of similar land within the immediate vicinity, and the highest

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[33] *Id*. at 63.

[34] *Id.* at 65.

and best use of the property, in determining that ₱250 per square meter was the appropriate just compensation for the subject property at the time of its taking. TMBC also argued that the August 28, 2014 Decision of the RTC was based on clear and unequivocal reasons and used the comparative approach in fixing the just compensation at ₱190 per square meter.[35]

Second, TMBC asserts that the CA failed to make a ruling on whether the September 4, 2012 Decision of the RTC was already final and executory, considering that the motion for reconsideration filed by BCDA was defective as it did not contain any notice of hearing. Since the motion for reconsideration was a mere scrap of paper which did not toll the running of the period to appeal, then the RTC's September 4, 2012 Decision had become final and executory.[36]

Third, TMBC argues that contrary to the CA's observation, the RTC did not merely "solely and primarily rely on the valuation made by the DPWH Provincial Appraisal Committee." It also finds error in the CA's pronouncement that the trial court "should have given weight to the actual and reliable data consisting of the tax declarations, zonal valuation and documentary evidence in the sales of the SCTEX Project" since there are other factors which must also be considered under the law in determining just compensation.[37]

TMBC cited Section 5 of Republic Act No. 8974[38] (RA 8974) which included the standards for the courts to use in the

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[35] *Id*. at 27-31.

[36] *Id*. at 31-33.

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

[38] An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Project and For Other Purposes.

Section 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.* — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

determination of just compensation. It argued that the CA erred in fixing the just compensation based on the selling prices in deeds of absolute sale of similarly affected landowners in the vicinity for the SCTEX project and in disregarding factors such as size of the property and the "highest and best use of the land," as well as the appraisal of a similar property in the area made by the Provincial Appraisal Committee.[39]

Finally, TMBC finds error in the CA's pronouncement that the award of interest of 6% per annum should be reckoned from July 1, 2013. Instead, it argues that considering the case is not yet final and executory as the case is still pending appeal, then the 12% interest should continue to accrue, and the 6% interest should only begin to accrue upon the finality of judgment of this case.[40]

In compliance with this Court's July 3, 2017 Resolution,[41] respondent BCDA filed its Comment[42] dated August 29, 2017.

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;

(f) This size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

[39] *Rollo*, pp. 34-35.

[40] *Id*. at 37-38.

[41] *Id*. at 140.

[42] *Id.* at 144-160.

It argued that the CA was correct in finding that the RTC did not have factual and legal bases in determining just compensation at ₱190. BCDA asserts that the CA considered all applicable factors to this case in its determination of just compensation.[43] It further contends that there was no need for the CA to decide on the validity of its motion for reconsideration since it was already rendered moot and academic by the trial court's action on the same.[44]

BCDA also refutes TMBC's argument that the CA erred in not factoring in the "highest and best use of the land," citing *Republic of the Philippines represented by the DPWH v. Spouses Tan Song Bok, et al.*[45] *(Tan Song Bok* case). It pointed out that unlike in the Tan Song Bok case where there were no relevant evidence for the court to determine just compensation except for the highest and best use of the land, BCDA presented other pieces of evidence which were properly taken into consideration by the CA, specifically, the deeds of absolute sale executed with landowners in Porac, Pampanga indicating a value of ₱60 to ₱75 for parcels of land adjacent and contiguous to the subject property and similarly acquired for the SCTEX Project.

BCDA further noted that the Tan Song Bok case had already been superseded by the case of *Secretary of Public Works and Highways, et al. v. Spouses Tecson*[46] (*Tecson* case), where this Court ruled that just compensation is determined by considering the value of the property at the time of actual taking.[47]

Relying on the *Tecson* case, BCDA argued that the CA correctly ruled on the rate of interest to be applied where the interest rate shall be 12% for the period beginning November

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[43] *Id.* at 149-152.

[44] Id. at 152-154.

[45] G.R. No. 191448, November 16, 2011.

[46] G.R. No. 179334, April 21, 2015.

[47] *Rollo*, pp. 154-155.

21, 2003 until June 30, 2013, and 6% from July 1, 2013 until fully paid.[48]

The Issues

Petitioner TMBC raised the following issues:

1. Whether respondent BCDA's Motion for Reconsideration of the September 4, 2012 Decision of the RTC tolled the running of the period to appeal the said decision.

2. Whether the CA erred in reversing and setting aside the RTC's Decision and Order on its determination of just compensation and interest.

3. Whether the CA erred in awarding just compensation at the rate of ₱75 per square meter, instead of ₱250 per square meter as originally ordered by the RTC in its September 4, 2012 Decision, or ₱190 per square meter as reconsidered by the RTC in its August 28, 2014 Order.

4. Whether the CA was correct in imposing an interest rate of 12% per annum from November 21, 2003 up to June 30, 2013, and 6% per annum from July 1, 2013 until full payment.

The Court's Ruling

The petition lacks merit.

Failure to include a notice of hearing in a motion for reconsideration is not fatal where the other party was given the opportunity to be heard

Rule 15, Section 4 of the Rules of Court requires every motion to be set for hearing by the applicant and to give notice of such hearing to the other party at least three days before the date of the hearing. Section 5 of the same Rule mandates that the notice of hearing should be addressed to all parties concerned and should specify the time and date of the hearing which must not

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[48] *Id.* at 155-156.

be later than ten (10) days after the filing of the motion. Where a motion has no notice of hearing, it is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.[49]

Nevertheless, this Court has relaxed procedural rules when a rigid application of these rules only hinders substantial justice.[50] The rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application especially on technical matters, which tends to frustrate rather than promote substantial justice, must be avoided. Even the Revised Rules of Court envisions this liberality. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from the courts.[51] Yet, the relaxation of its rules is subject to certain conditions and for liberality to be applied, it must be assured that the adverse party has been afforded the opportunity to be heard through pleadings filed in opposition to the motion.[52]

In the present case, the records reveal that TMBC was given the opportunity to be heard when it filed a comment/opposition to the motion for reconsideration, assailing the same and raising substantive arguments for its dismissal.[53] Moreover, the RTC went a step further and directed the parties to submit judicial affidavits of their witnesses with documentary exhibits to substantiate their respective positions.[54] Clearly, the requirements

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[49] *Jehan Shipping Corporation v. National Food Authority*, G.R. No. 159750, December 14, 2005.

[50] *City of Dagupan, represented by the City Mayor Benjamin S. Lim v. Ester F. Maramba, represented by her Attorney-in-Fact Johnny Ferrer*, G.R. No. 174411, July 2, 2014.

[51] *Julie S. Sumbilla v. Matrix Finance Corporation*, G.R. No. 197582, June 29, 2015.

[52] *Magellan Aerospace Corporation v. Philippine Air Force*, G.R. No. 216566, February 24, 2016.

[53] *Rollo*, pp. 119-120.

[54] *Id*. at 39.

of procedural due process were substantially complied with and such compliance justified a departure from a literal application of the rule on notice of hearing.

The Court of Appeals was correct in reversing the trial court and in fixing the just compensation at ₱75 per square meter

For the second and third issues raised by petitioner, the Court shall discuss them jointly considering they are closely interrelated.

In reversing and setting aside the trial court's determination of just compensation, the CA reviewed the reports submitted by the commissioners, as well as the trial court's September 4, 2012 Decision and the August 28, 2014 Order. The CA noted that while the trial court based its first valuation on the recommendations of the commissioners, it did not give any explanation on how it arrived at the amount of ₱250 per square meter. As for the second valuation of ₱190, the CA observed that the trial court gave more weight to two documents included in Engr. Tolosa's Report, specifically: 1) Resolution No. 12-2006 of the DPWH Provincial Appraisal Committee which fixed the just compensation of an expropriated land for the Porac Mancatian Dike Project at ₱190 per square meter; and 2) Deed of Absolute Sale between TMBC and DPWH over the property taken in the area for the price of ₱190 per square meter.[55]

We agree with the findings of the appellate court.

Section 5 of RA 8974 provides:

Section 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

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[55] *Id*. at 58-59.

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

There is no question that at the time of taking of the subject property, it was classified as agricultural land, based on the records of the Municipal Assessor's Office of Porac, Pampanga.[56] As observed by Mr. Murillo in his Commissioner's Report, the subject property consists of sugar land and sand deposits. He further noted that while there were allegations that the property was reclassified to industrial land, there was no sign of industrial development at the time of the ocular inspection except for the construction of the SCTEX project.[57]

We could not give any weight to Engr. Lansangan's Report since he did not provide any explanation for arriving at his recommendation of ₱350 per square meter as just compensation for the subject property, except for his declaration that he arrived at the same based on the price information he had researched from reputable sources, as well as the highest and best use of the property and the zoning and current land usage in the locality.[58]

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[56] Records, pp. 836, 842.

[57] *Id*. at 810.

[58] *Id*. at 820-821.

During his testimony, Engr. Lansangan clarified that his recommendation was based on the reclassification of the property to residential, commercial and industrial areas, the BIR Zonal Valuation as industrial area with assessed value of ₱200 per square meter, and the value for residential area at ₱500 per square meter, the average of which is ₱350 per square meter.[59] However, Engr. Lansangan's recommendation was erroneous since it was established that the subject property was not included in the area which was reclassified by the province.[60] Furthermore, the reclassification was made after the time of taking of the subject property; thus, any change in valuation as a result thereof would have no bearing on the amount of just compensation.

As for Engr. Tolosa's Report, a review thereof shows that his recommendation to set the just compensation for the subject property at the amount of ₱388 per square meter was mostly based on the market approach, where the value of the land is based on sales and listings of comparable properties within the vicinity.[61] While this approach is an acceptable basis to determine just compensation, We note that the data gathered by Engr. Tolosa on which he relied his recommendation were based on current market values at the time of the ocular inspection which was on October 6, 2011—almost eight years from the time of taking of the subject property in November 2003.

In arriving at the amount of ₱250 per square meter, the trial court relied on the eight DPWH transactions of neighboring properties as relevant market data on the actual value of the subject property in November 2003.[62] The RTC failed to consider the nine Deeds of Absolute Sale between BCDA and several landowners for the sale of properties situated in Barangay Dolores, Porac, Pampanga with selling price ranging from ₱60 to ₱75 per square meter, which were executed between March

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[59] *Id*. at 820-821.

[60] *Rollo*, p. 132.

[61] Records, p. 865.

[62] *Rollo*, pp. 86-87.

2004 and September 2008. The RTC reasoned that the BCDA allegedly failed to establish the proximity of these properties with the subject property.[63]

As correctly observed by the CA, however, the properties subject of the nine deeds of absolute sale were directly contiguous and adjacent to the subject property, to wit:

> We hold that the RTC committed reversible error for it is plainly obvious that the areas expropriated for the SCTEX project are contiguous and adjacent properties. Specifically, the lands covered by no less than nine (9) Deeds of Absolute Sale are all situated in Barangay Dolores, Municipality of Porac, Province of Pampanga. BCDA's offer to buy the subject property at Php75.00 per square meter was the same selling price of its neighboring properties affected by the same infrastructure project. Such price is also based on the following factual considerations: (1) the nature of the subject property as agricultural land with no improvements ("no electricity, no road outlet and not accessible to regular mode of transportation"); (2) the zonal valuation by the BIR (Php30.00 per square meter); and (3) tax declarations ("Agricultural-Sugar") indicating the total market value of the subject property at Php27,400.92.[64] (citations omitted)

Time and again, this Court has ruled that the determination of just compensation must be based on reliable and actual data, as explained in *Republic of the Philippines v. C.C. Unson Company, Inc.*,[65] to wit:

> In *Republic v. Asia Pacific Integrated Steel Corporation*, the Court defined just compensation "as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to intensify the meaning of the word 'compensation' and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. Such 'just'-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property. Trial courts

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[63] Records, pp. 741-778.

[64] *Rollo*, pp. 59-60.

[65] G.R. No. 215107, February 24, 2016.

are required to be more circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds."

The Court further stated in *National Power Corporation v. Tuazon*, that "[t]he determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. This judicial function has constitutional *raison d'être;* Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation." Legislative enactments, as well as executive issuances, fixing or providing for the method of computing just compensation are tantamount to impermissible encroachment on judicial prerogatives. They are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount of just compensation. (citations omitted)

Based on the foregoing, We find that the CA committed no reversible error in reversing and setting aside the trial court's determination of just compensation and in fixing the just compensation of the subject property at ₱75 per square meter. The CA, guided by the standards set in RA 8974, took into consideration the documentary evidence presented by the parties to determine the appropriate value of the property at the time it was taken in November 2003.

The Court of Appeals committed no reversible error in modifying the interest rates to be imposed on the just compensation

For the final issue raised by petitioner, it argues that the award of interest of 6% per annum as imposed under the BSP – Monetary Board (BSP-MB) Circular No. 799, Series of 2013, should only be reckoned from the date of finality of judgment and not from July 1, 2013 as ruled by the CA.

Petitioner is mistaken.

In the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*, the Court laid down the guidelines regarding the manner of computing legal interest, particularly declaring that

when judgments of the court awarding a sum of money become final and executory, the rate of legal interest shall be 12% per annum from such finality until its satisfaction, since this interim period is deemed to be by then an equivalent to a forbearance of credit.[66]

With the issuance of BSP-MB Circular No. 799, Series of 2013, however, which became effective on July 1, 2013, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum but shall now be six percent (6%) per annum effective July 1, 2013. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013, and from July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.[67]

In the recent case of *Secretary of the Department of Public Works and Highways v. Spouses Tecson*,[68] the Court explained:

> Lastly, from finality of the Court's Resolution on reconsideration until full payment, the total amount due to respondents-movants shall earn a straight six percent (6%) legal interest, pursuant to Circular No. 799 and the case of Nacar. Such interest is imposed by reason of the Court's decision and takes the nature of a judicial debt.
>
> Clearly, the award of interest on the value of the land at the time of taking in 1940 until full payment is adequate compensation to respondents movants for the deprivation of their property without the benefit of expropriation proceedings. Such interest, however meager or enormous it may be, cannot be inequitable and unconscionable because it resulted directly from the application of law and jurisprudence—standards that have taken into account fairness and equity in setting the interest rates due for the use or forbearance of money. Thus, adding the interest computed to the market value

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[66] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

[67] *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013.

[68] G.R. No. 179334, April 21, 2015.

of the property at the time of taking signifies the real, substantial, full and ample value of the property. Verily, the same constitutes due compliance with the constitutional mandate on eminent domain and serves as a basic measure of fairness.

From the foregoing, it is clear that the CA was correct in imposing an interest on the just compensation at the rate of 12% per annum from November 21, 2003 up to June 30, 2013, and 6% per annum from July 1, 2013 until full payment.

WHEREFORE, the petition is **DENIED**. The Decision dated October 26, 2016 and the Resolution dated February 22, 2017 of the Court of Appeals in CA-G.R. CV No. 104234 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

Martires, J., on leave.

EN BANC

[A.C. No. 5473. January 23, 2018]

GENE M. DOMINGO, *complainant, vs.* **ATTY. ANASTACIO E. REVILLA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ESTABLISHED CIRCUMSTANCES OF THIS CASE SHOW THAT RESPONDENT'S ACTS CONSTITUTE DELIBERATE DEFRAUDATION OF HIS CLIENT.— After reviewing the established circumstances of the case, the Court accepts the

findings against the respondent but modifies the recommended penalty considering that his violation of the *Code of Professional Responsibility* constituted deliberate defraudation of the client instead of mere negligence. Firstly, the respondent misled the complainant into thinking that it would be his law firm that was to take on the case. Secondly, despite the fact that he had intimated to the complainant that it would be highly unlikely to still have the adoption decree nullified due to the decree having long become final and executory, he nonetheless accepted the case. Thirdly, he told the complainant that he had already instituted the action for the annulment of the adoption despite not having yet done so. Fourthly, he kept on demanding more money from the complainant although the case was not actually even moving forward. Fifthly, he continued to make up excuses in order to avoid having to furnish to the complainant the requested copies of court documents that, in the first place, he could not produce. And, lastly, he claimed that he intended to return the money to the complainant but instead sent the latter a stale check. All these acts, whether taken singly or together, manifested the respondent's dishonesty and deceit towards the complainant, his client, in patent violation of Rule 1.01 of the *Code of Professional Responsibility*.

2. **ID.; ID.; DISBARMENT; VARIOUS OFFENSES COMMITTED BY RESPONDENT DEMONSTRATED HIS UNWORTHINESS TO REMAIN AS A MEMBER OF THE LEGAL PROFESSION; IN VIEW OF RESPONDENT'S PRIOR DISBARMENT, THE COURT CAN NO LONGER IMPOSE THE APPROPRIATE PENALTY OF DISBARMENT.—** Despite the fact that the complainant engaged his services and advanced sums of money to cover the court fees and related expenses to be incurred along the way, the respondent did not file the petition for annulment. His conduct was reprehensible because it amounted to dishonesty and plain deceit. His filing of the petition for annulment later on did not mitigate his sin because he did so only because he had meanwhile received the complainant's demand letter that contained the threat of filing administrative charges against him. Moreover, he repeatedly did not inform the complainant on the actual status of the petition although the latter regularly sought to be updated. Instead, the respondent kept on making up excuses and conjured up pretenses to make it appear that

the case was moving along. His conduct of accepting money for his legal services in handling the annulment of the adoption decree, and of failing to render the contracted legal services violated Canon 18 of the *Code of Professional Responsibility*. Also, the highly fiduciary and confidential relation of attorney and client required that he as the lawyer should promptly account for all the funds received from, or held by him for, the complainant as the client. Furthermore, the respondent did not abide by the mandate of Canon 15 that required members of the Legal Profession to observe candor, fairness and loyalty in all their dealings and transactions with their clients. In their conversations, the respondent told the complainant that the judge handling the case would rule in their favor only if he would be given 10% of the value of the property at Better Living Subdivision, Parañaque, and that the handling judge consequently agreed on the fee of ₱200,000.00 but needed an additional ₱50,000.00 "for the boys" in the Court of Appeals and the Supreme Court. In doing so, the respondent committed calumny, and thereby violated Rules 15.06 and 15.07 of Canon 15 of the *Code of Professional Responsibility[.] x x x* The respondent's commission of various offenses constituting professional misconduct only demonstrated his unworthiness to remain as a member of the Legal Profession. He ought to be disbarred for such offenses upon this complaint alone. A review of his record as an admitted member of the Bar shows, however, that in *Que v. Revilla, Jr.*, the Court had disbarred him from the Legal Profession upon finding him guilty of violations of the Lawyers Oath; Canon 8; Rules 10.01 and 10.03, Canon 10; Rules 12.02 and 12.04, Canon 12; Rule 19.01, Canon 19 of the *Code of Professional Responsibility*; and Sections 20(d), 21 and 27 of Rule 138 of the *Rules of Court*. In view of his prior disbarment, we can no longer impose the appropriate penalty of disbarment as deserved because we do not have double or multiple disbarments in this jurisdiction.

3. **ID.; ID.; ID.; DISMISSAL OF THE CASE CANNOT BE GRANTED ON THE GROUND OF AMICABLE SETTLEMENT BETWEEN THE PARTIES; IT ONLY OBLITERATED THE LEGAL OBLIGATION TO RETURN TO COMPLAINANT THE AMOUNTS OBTAINED BY DECEIT BUT RESPONDENT WAS NOT ENTITLED TO DEMAND THE DISMISSAL OF THE CASE AGAINST**

HIM.— The *Most Respectful Motion to Dismiss* on the ground of the amicable settlement between the parties cannot be granted. Although the amicable settlement obliterated the legal obligation to return to the complainant the amounts obtained by deceit, the respondent was not entitled to demand the dismissal of the charges against him for that reason. He ought to have known that his professional responsibilities as an attorney were distinct from his other responsibilities. To be clear, the primary objective of administrative cases against lawyers is not only to punish and discipline the erring individual lawyers but also to safeguard the administration of justice by protecting the courts and the public from the misconduct of lawyers, and to remove from the legal profession persons whose utter disregard of their Lawyer's Oath has proven them unfit to continue discharging the trust reposed in them as members of the Bar.

4. **ID.; ID.; ID.; ATTENDANT CIRCUMSTANCES IN THE PRESENT CASE CONSIDERED AND APPRECIATED IN MITIGATING THE PENALTY.—** [C]ircumstances attendant in his case should be considered and appreciated in mitigating the penalty to be imposed. The first of such circumstances related to the context of the engagement between the parties. Upon reflecting on the adverse effects on his inheritance from his late mother of his cousin's adoption by her, the complainant had engaged the respondent's legal services and representation for the purpose of nullifying or undoing the adoption. At the outset, the respondent was candid in explaining to the complainant that the prosecution of the case would be complicated mainly because the adoption had been decreed in 1979 yet, and also because the complainant, as a permanent resident of the United States of America, would be thereby encountering difficulties and high costs, aside from untold inconvenience due to his physical presence in the country being needed every now and then. The respondent's candid explanations notwithstanding, the complainant persisted in pursuing the case, impelling the respondent to take on the engagement. Another circumstance is that the respondent had already returned to the complainant the amount of ₱650,000.00 the former had received from the latter on account of the professional engagement. The returned amount was in full and complete settlement of the latter's claims. x x x [T]he voluntary restitution by the respondent herein of the amount received in

the course of the professional engagement, even if it would not lift the sanction meted on him, manifested remorse of a degree on his part for his wrongdoing, and was mitigating in his favor. And, thirdly, the Court cannot but note the respondent's several pleas for judicial clemency to seek his reinstatement in the ranks of the Philippine Bar. He has backed up his pleas by adverting to his personal travails since his disbarment. He claims, too, that his health has been failing of late considering that he had been diagnosed to be suffering from chronic kidney disease, stage five, and has been undergoing dialysis three times a week. His advancing age and the fragile state of his health may also be considered as a mitigating factor. x x x Pleas for judicial clemency reflected further remorse and repentance on the part of the respondent. His pleas appear to be sincere and heartfelt. In human experience, remorse and repentance, if coupled with sincerity, have always been regarded as the auspicious start of forgiving on the part of the offended, and may eventually win even an absolution for the remorseful. The Court will not be the last to forgive though it may not forget.

5. **ID.; ID.; ID.; ID.; PERPETUAL DISQUALIFICATION FROM BEING REINSTATED WILL BE TOO GRAVE A PENALTY IN VIEW OF THE MITIGATING CIRCUMSTANCES; FINE OF ₱100,000.00 WITH A STERN WARNING, IMPOSED.—** In view of the foregoing circumstances, perpetual disqualification from being reinstated will be too grave a penalty in light of the objective of imposing heavy penalties like disbarment to correct the offenders. The penalty ought to be tempered to enable his eventual reinstatement at some point in the future. Verily, permanently barring the respondent from reinstatement in the Roll of Attorneys by virtue of this disbarrable offense will deprive him the chance to return to his former life as an attorney. To start the respondent on the long road to reinstatement, we fine him in the amount of ₱100,000.00, a figure believed to be a fair index of the gravity of his misdeeds. x x x But the fine comes with the stern warning to the respondent that he must hereafter genuinely affirm his remorse and start to demonstrate his readiness and capacity to live up once again to the exacting standards of conduct demanded of every member of the Bar in good standing and of every officer of the Court; otherwise, he would be sanctioned with greater severity.

APPEARANCES OF COUNSEL

Gumpal Ruiz Valenzuela & Associates for complainant.

D E C I S I O N

***PER CURIAM*:**

A disbarred lawyer who is found to have committed an offense that constitutes another ground prior to his eventual disbarment may be heavily fined therefor. The Court does not lose its exclusive jurisdiction over his other disbarrable act or actuation committed while he was still a member of the Law Profession.

The Case

Before this Court is the complaint for disbarment instituted by Gene Domingo (complainant) against Atty. Anastacio E. Revilla, Jr. (respondent),[1] alleging that the latter deliberately and feloniously induced and persuaded the former into releasing almost half a million pesos on the false pretense of having performed and accomplished legal services for him.

Antecedents

The complainant is an American citizen of Filipino descent. During a visit to the Philippines in 2000, he sought the services of a lawyer to handle the cases to be filed against his cousin Melchor Arruiza and to work on the settlement of the estate of his late mother Judith Arruiza.[2] In April 2000, petitioner met respondent, a lawyer recommended by a friend. Petitioner informed respondent about his need for the services of a lawyer for the rescission of Melchor Arruiza's adoption and for the settlement of his mother's estate.[3]

The complainant alleged that the respondent represented to him that he would take on the cases in behalf of the law firm

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[1] *Rollo,* Vol. I, pp. 1-6.

[2] *Id.* at 1.

[3] *Id.* at 2.

of Agabin Verzola Hermoso Layaoen & De Castro, where he worked as an associate. He assured petitioner that the law firm was able and willing to act as his legal counsel in the cases he intended to institute against his adopted brother, and to undertake the transfer of his mother's properties to his and his children's names.[4] Trusting the representations of respondent, the complainant agreed to engage respondent and his law firm, and paid the initial amount of ₱80,000.00.

Being based in the United States of America, the complainant maintained constant communication with respondent often through electronic mail (e-mail) and sometimes by telephone to get updates on the cases. The complainant alleged that based on his correspondences with respondent, the latter made several misrepresentations, as follows:

> [a)] He [had] filed the annulment of adoption of Melchor Arruiza in Abra, stating that the hearing would commence by the end of May 2000; and that the trial had been brought to completion;
>
> [b)] He was processing the transfer of the titles of the properties [in the names of petitioner and his children;]
>
> [c)] He processed the cancellation of the adverse claim of Melchor Arruiza annotated on the two titles of the properties, claiming that he was there at the Land Registration Authority in Quezon City for the final approval of the cancellation;
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> [d)] He was processing the payment of taxes and other fees on the properties to be transferred, including capital gains tax, transfer tax, registration fees and documentary stamp tax;
>
> [e)] That he was negotiating with the Bureau of Internal Revenue to reduce the tax from ₱80,000.00 to ₱10,000.00;
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> [f)] That the new titles in the names of petitioner's children would be ready by July 20, 2000;
>
> [g)] That the new titles in the children's names were issued;
>
> [h)] That Melchor Arruiza opposed the cancellation of the adoption, and boasted that he knew many big time politicians in Abra who would help him;

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[4] *Id*.

[i)] That the Judge x x x handling the case for the cancellation of the adoption [would] rule in petitioner's favor only if he would give to the Judge 10% of the value of the property in Better Living Subdivision, Parañaque City;

[j)] That the Judge agreed on x x x ₱200,000.00 but he (respondent) needed an additional ₱50,000.00 "for the boys" in the Court of Appeals and the Supreme Court;

[k)] That the Judge [already wrote] a decision in petitioner's favor, but [for his protection insisted upon a *kaliwaan* of the copy of the decision and the payment;]

[l)] That the Judge received the money and [already promulgated the] decision in petitioner's favor;

[m)] That said decision was appealed to the Court of Appeals and eventually to the Supreme Court where respondent was working doubly hard to influence [a favourable] outcome;

[n)] That the Supreme Court had to meet *en banc* on the decision of the Abra Regional Trial Court (RTC) Judge in petitioner's favor; and

[o)] That in consideration of all the above transactions, he (respondent) needed money [totalling] ₱433,002.61 [as payment to the Judge, BIR and related agencies, actual expenses and legal fees], [but requested] the payment in staggered amounts and on different dates.[5]

Based on the respondent's representation as to how justice was achieved in the Philippines, the complainant was constrained to give to the respondent the requested amounts in the belief that he had no choice.[6] The complainant would repeatedly request the original or at the very least copies of the decisions and the titles by e-mail, facsimile (fax) or courier service, but respondent repeatedly failed to comply with the requests, giving various reasons or excuses. The respondent even volunteered to meet with the complainant in the United States of America to

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

[6] *Id*. at 4.

personally deliver the promised documents. The respondent never went to the United States of America to meet with the complainant. He also did not turn over the requested documents to the latter. Even worse, the respondent ultimately tried to avoid the complainant by cutting off communications between them.

Given the respondent's evasion, the complainant decided to write the law firm of Agabin Verzola Hermoso Layaoen & De Castro to inform them of the fraudulent actions of the respondent.[7] The complainant was surprised to be informed by the law firm that he had never been its client.[8] The law firm also told him that the respondent had been forced to resign from the law office because of numerous complaints about his performance as a lawyer.[9]

Hence, the complainant terminated the services of the respondent for refusal to respond and to surrender the alleged documents in his possession. He engaged the services of another law firm to verify the status of the cases allegedly brought by respondent in petitioner's behalf. The new law firm secured a certification from the RTC of Abra to the effect that no case against Melchor Arruiza had been filed. The complainant also discovered that none of the representations of the respondent, as enumerated above, had come to pass because all of such representations were sham and intended to induce him to remit almost half a million pesos to the respondent.[10]

On July 24, 2001, the complainant filed his complaint for disbarment in this the Court accusing the respondent of committing acts in violation of Canons 1, 2, 13, 15 & 16 of the Code of Professional Responsibility.[11]

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[7] *Id.*

[8] *Id.* at 67.

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

[10] *Id.*

[11] *Supra* note 1.

On August 22, 2001, the Court required the respondent to comment.[12]

In his comment dated October 21, 2001,[13] the respondent denied the accusations, and countered as follows:

a) Petitioner wanted to have the adoption of Melchor D. Arruiza by his late mother Judith D. Arruiza granted by the Municipal Circuit Trial Court (MCTC) of Dolores-San Juan in the Province of Abra annulled because he had not been informed about the adoption which affected his inheritance, particularly with respect to the two parcels of land located in Parañaque City. Petitioner related to respondent why he (petitioner) filed the action for annulment of adoption in the RTC in Parañaque City, but Branch 258 of the RTC dismissed the petition on January 19, 2000 for lack of jurisdiction over the case;

b) Following the dismissal of the case, petitioner desperately wanted to revive it in the RTC in Abra. Petitioner also wanted the annotation of rights, title and interest of Melchor Arruiza as a legally adopted son of his late mother on the two titles cancelled, and to have the properties transferred in the names of petitioner's children;

c) Respondent explained to petitioner that it would be very hard to revive the case because the order of adoption issued on May 25, 1979 had long become final and executory;

d) It would also be inconvenient for petitioner to pursue the cancellation case considering that he was a permanent resident of the United States of America and the need for his personal presence at the RTC in Abra to testify against his adopted brother;

e) Respondent further told petitioner that his law firm at the time did not allow its members to handle personal cases, especially if the cases were filed in far flung provinces; and that the particular case of annulment of the judgment of adoption, being a special proceeding, would take years to finish inasmuch as the losing party would likely elevate the matter up to the Supreme Court and would be very costly in terms of expenses and attorney's fees;

f) Respondent claimed that petitioner still profusely pleaded with him to pursue the case no matter how much it would cost him, as

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[12] *Rollo,* p. 70.

[13] *Id.* at 74-79.

long as his adopted brother was prevented from inheriting from the estate of his mother;

g) Respondent tried to talk some sense into petitioner, particularly that it was only just and fair that his adopted brother would inherit from their mother, but petitioner could not be swayed;

h) Even though respondent sensed the greediness, wickedness and scheming design of petitioner, he still accepted the engagement to handle the case of annulment of the judgment of adoption, as well as to have the annotations at the back of the titles cancelled and eventually have the properties transferred in the names of petitioner's children;

i) Respondent proposed that petitioner pay ₱500,000.00, more or less, as the total package of expenses and attorney's fees; petitioner agreed to the proposal and promised to remit the amount by installment upon his return to the United States of America, and to send the special power of attorney authorizing respondent to bring the case against Melchor Arruiza;

j) As a means of protecting the interest of petitioner, respondent offered to issue a check for ₱500,000.00 as a security for the amount to be remitted by petitioner from his United States of America account; his offer of the check was to give a sign of his good faith, because his primary aim was to provide the best and effective legal services petitioner needed under the circumstances;

k) Respondent then prepared an affidavit of self-adjudication for petitioner respecting the two properties registered in the name of petitioner's late mother; he caused the publication of the affidavit in a tabloid;

l) Respondent informed petitioner that there was no way for him to win the annulment case unless he personally appeared and testified against his adopted brother, but petitioner said that he could not personally testify because he feared for his life due to Abra being an NPA- infested area;

m) On August 27, 2001, respondent went on and filed the complaint for annulment of the adoption in the RTC in Abra, docketed as Civil Case No. 1989, even without any firm assurance from petitioner that he would personally appear in court;

n) After the filing of the case, petitioner started making unreasonable demands, like having an immediate decision from the RTC in Abra

in his favor, the cancellation of the adverse claim of his adopted brother on the titles of the properties, and transferring the titles in the names of petitioner's three children;

o) Respondent tried to explain to petitioner that his demands were impossible to meet because civil and special proceedings cases take years to finish inasmuch as the aggrieved parties would elevate the cases up to the Supreme Court; and that the cancellation of the adverse claim would depend on the outcome of the case they filed, but his refusal to appear and testify was still a problem;

p) Petitioner still adamantly insisted that respondent comply with his demands, or else he would sue him if he did not.[14]

On November 26, 2001, the Court referred the complaint for disbarment and the comment to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision.[15]

The Commission on Bar Discipline (CBD) of the IBP conducted hearings. The case was then submitted for resolution after the complainant and the respondent submitted their manifestation and reply/counter manifestation, respectively.

The IBP's Report and Recommendation

In a Report and Recommendation dated September 6, 2002,[16] the IBP-CBD found the respondent guilty of violating the Code of Professional Responsibility with respect to negligence in the performance of his duties towards his client, and recommended the penalty of reprimand with a stern warning that a repetition of the offense would warrant a more severe penalty. It ruled that the proceeding before it was basically a disciplinary proceeding; that it could only decide on the fitness of respondent to continue in the practice of law;[17] that it could not go beyond the sanctions that could be imposed under the

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[14] *Id*. at 74-78.

[15] *Id*. at 114.

[16] *Rollo,* Vol. II, pp. 165-171.

[17] *Id*. at 169.

Rules of Court; that it had the power to require the restitution of the client's money as part of the penalty; that it could only order the restitution of whatever amount that was given by petitioner to respondent but not other monetary claims of petitioner like travel and plane fare and litigation expenses, which were properly within the jurisdiction of other authorities;[18] and that, accordingly, it ordered respondent to immediately deliver to petitioner the amount of ₱513,000.00, plus interest computed at the legal rate.

In Resolution No. XV-2002-597 passed on October 19, 2002,[19] the IBP Board of Governors adopted and approved the Report and Recommendation dated September 6, 2002 of the Investigating Commissioner.

On January 14, 2003, the complainant filed a Motion for Reconsideration,[20] praying that Resolution No. XV-2002-597 be reconsidered and set aside, and that the appropriate penalty of disbarment, or, at the very least, suspension be imposed on the respondent.

On January 25, 2003, the IBP Board of Governors passed and adopted Resolution No. XV-2003-49[21] denying the complainant's Motion for Reconsideration on the ground that the Board had no jurisdiction to consider and resolve the matter by virtue of its having already been endorsed to the Court.

Meanwhile, on January 29, 2003, the Court issued a resolution: (1) noting the resolution of the IBP-CBD reprimanding the respondent; and (2) directing him to inform the IBP of his compliance with the resolution.[22]

After the IBP denied petitioner's Motion for Reconsideration, the complainant filed his petition dated March 6, 2003.[23]

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[18] *Id*. at 170.

[19] *Id*. at 164.

[20] *Id*. at 177-186.

[21] *Id*. at 206.

[22] *Id*. at 219.

[23] *Id*. at 231-247.

On April 3, 2003, the respondent filed his Manifestation and Motion praying that the resolution of the IBP Board of Governors be reconsidered and set aside.[24]

On April 30, 2003, the Court noted the IBP's denial of the complainant's Motion for Reconsideration for lack of jurisdiction, and the respondent's Manifestation and Motion; and took cognizance of the March 6, 2003 petition of the complainant, and required the respondent to file his Comment.[25]

On October 20, 2003, the Court took note of the respondent's Comment with Motion for Reconsideration, and required the complainant to file his Reply.[26] After requesting an extension of time to file his Reply, the complainant filed his Reply on December 8, 2003.[27]

Ruling of the Court

In its findings, the IBP concluded that the respondent was guilty of negligence in the performance of his duties to his client, and recommended that: (*a*) he be reprimanded with a stern warning that any repetition of his conduct would be dealt with more severely; and (*b*) he be ordered to return the sums of money totalling ₱513,000.00 he had received from the complainant.

After reviewing the established circumstances of the case, the Court accepts the findings against the respondent but modifies the recommended penalty considering that his violation of the *Code of Professional Responsibility* constituted deliberate defraudation of the client instead of mere negligence.

Firstly, the respondent misled the complainant into thinking that it would be his law firm that was to take on the case. Secondly, despite the fact that he had intimated to the complainant

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[24] *Id.* at 281-284.

[25] *Id.* at 298.

[26] *Id.* at 325.

[27] *Id.* at 341-345.

that it would be highly unlikely to still have the adoption decree nullified due to the decree having long become final and executory, he nonetheless accepted the case. Thirdly, he told the complainant that he had already instituted the action for the annulment of the adoption despite not having yet done so. Fourthly, he kept on demanding more money from the complainant although the case was not actually even moving forward. Fifthly, he continued to make up excuses in order to avoid having to furnish to the complainant the requested copies of court documents that, in the first place, he could not produce. And, lastly, he claimed that he intended to return the money to the complainant but instead sent the latter a stale check.

All these acts, whether taken singly or together, manifested the respondent's dishonesty and deceit towards the complainant, his client, in patent violation of Rule 1.01[28] of the *Code of Professional Responsibility*.

We note that the respondent filed the case for the annulment of the adoption decree only on August 27, 2001[29] after the complainant had sent him the demand letter dated April 10, 2001.[30] Such filing was already during the pendency of the administrative investigation of the complaint against him in the IBP. Had the complainant not threatened to charge him administratively, he would not have filed the petition for annulment of the adoption at all.

Rule 18.03, Canon 18 of the *Code of Professional Responsibility* states:

> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

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

[29] *Rollo,* Vol. I, p. 109.

[30] *Rollo,* Vol. II, p. 130.

The Court has consistently held, in respect of this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered *per se* a violation.[31]

Despite the fact that the complainant engaged his services and advanced sums of money to cover the court fees and related expenses to be incurred along the way, the respondent did not file the petition for annulment. His conduct was reprehensible because it amounted to dishonesty and plain deceit. His filing of the petition for annulment later on did not mitigate his sin because he did so only because he had meanwhile received the complainant's demand letter that contained the threat of filing administrative charges against him. Moreover, he repeatedly did not inform the complainant on the actual status of the petition although the latter regularly sought to be updated. Instead, the respondent kept on making up excuses and conjured up pretenses to make it appear that the case was moving along. His conduct of accepting money for his legal services in handling the annulment of the adoption decree, and of failing to render the contracted legal services violated Canon 18 of the *Code of Professional Responsibility*.[32] Also, the highly fiduciary and confidential relation of attorney and client required that he as the lawyer should promptly account for all the funds received from, or held by him for, the complainant as the client.[33]

Furthermore, the respondent did not abide by the mandate of Canon 15 that required members of the Legal Profession to observe candor, fairness and loyalty in all their dealings and transactions with their clients.

In their conversations, the respondent told the complainant that the judge handling the case would rule in their favor only if he would be given 10% of the value of the property at Better Living Subdivision, Parañaque, and that the handling judge

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[31] *Solidon v. Macalalad,* A.C. No. 8158, February 24, 2010, 613 SCRA 472, 476.

[32] *Reyes v. Vitan*, A.C. No. 5835, April 15, 2005, 456 SCRA 87, 90.

[33] *In re Bamberger*, 49 Phil. 962, 964 [1924].

consequently agreed on the fee of ₱200,000.00 but needed an additional ₱50,000.00 "for the boys" in the Court of Appeals and the Supreme Court. In doing so, the respondent committed calumny, and thereby violated Rules 15.06 and 15.07 of Canon 15 of the *Code of Professional Responsibility*, to wit:

Rule 15.06 — A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

Rule 15.07 — A lawyer shall impress upon his client compliance with the laws and principles of fairness.

Members of the Bench are tasked with ensuring that the ends of justice are served. Such negative imputations against them and the collegial bodies of the Judiciary on the part of the respondent tended to erode the trust and confidence of the people in our judicial system. The Court should not take such conduct of the respondent lightly considering that the image of the Judiciary was thereby diminished in the eyes of the public; hence, the Court must severely reprove the respondent.

The respondent's commission of various offenses constituting professional misconduct only demonstrated his unworthiness to remain as a member of the Legal Profession. He ought to be disbarred for such offenses upon this complaint alone. A review of his record as an admitted member of the Bar shows, however, that in *Que v. Revilla, Jr.*,[34] the Court had disbarred him from the Legal Profession upon finding him guilty of violations of the Lawyers Oath; Canon 8; Rules 10.01 and 10.03, Canon 10; Rules 12.02 and 12.04, Canon 12; Rule 19.01, Canon 19 of the *Code of Professional Responsibility*; and Sections 20(d), 21 and 27 of Rule 138 of the *Rules of Court*. In view of his prior disbarment, we can no longer impose the appropriate penalty of disbarment as deserved because we do not have double or multiple disbarments in this jurisdiction.[35]

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[34] A.C. No. 7054, December 4, 2009, 607 SCRA 1.

[35] *Sanchez v. Torres*, A.C. No. 10240, November 25, 2014, 741 SCRA 620, 627; *Yuhico v. Gutierrez*, A.C. No. 8391, November 23, 2010, 635 SCRA 684, 689.

In the meanwhile, on February 15, 2016, the respondent filed a so-called *Most Respectful Motion to Dismiss*[36] in which he adverted to the earlier submission through his *Manifestation* filed on April 24, 2015[37] of the copy of the amicable settlement he had concluded with the complainant to the effect that, among others, he had already paid back to the latter, through his lawyer (Atty. Hope Ruiz Valenzuela), the amount of ₱650,000.00 "as full and complete settlement of the Complainant's claims against the Respondent." He thereby sought the dismissal of the complaint out of "justice and fairness."

In the resolution promulgated on September 22, 2015, the Court merely noted without action the *Manifestation* dated April 21, 2015.[38]

The *Most Respectful Motion to Dismiss* on the ground of the amicable settlement between the parties cannot be granted. Although the amicable settlement obliterated the legal obligation to return to the complainant the amounts obtained by deceit, the respondent was not entitled to demand the dismissal of the charges against him for that reason. He ought to have known that his professional responsibilities as an attorney were distinct from his other responsibilities. To be clear, the primary objective of administrative cases against lawyers is not only to punish and discipline the erring individual lawyers but also to safeguard the administration of justice by protecting the courts and the public from the misconduct of lawyers, and to remove from the legal profession persons whose utter disregard of their Lawyer's Oath has proven them unfit to continue discharging the trust reposed in them as members of the Bar.[39]

Moreover, the practice of law is a privilege heavily burdened with conditions.[40] Every attorney is a vanguard of our legal

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[36] *Rollo*, pp. 399-403.

[37] *Id.* at 382-396.

[38] *Id.* at 397.

[39] *Rivera v. Corral,* A.C. No. 3548, July 4, 2002, 384 SCRA 1, 9.

[40] *Rafols, Jr. v. Barrios, Jr.,* A.C. 4973, March 15, 2010, 615 SCRA 206, 220.

system, and, as such, is expected to maintain not only legal proficiency but also a very high standard of morality, honesty, integrity, and fair dealing in order that the people's faith and confidence in the legal system are ensured.[41] He must then conduct himself, whether in dealing with his clients or with the public at large, as to be beyond reproach at all times.[42] Any violation of the high moral standards of the Legal Profession justifies the imposition on the attorney of the appropriate penalty, including suspension and disbarment.[43] Verily, the respondent's deceitful conduct as an attorney rendered him directly answerable to the Court on ethical, professional and legal grounds despite the fact that he and the complainant had amicably settled any differences they had that might have compelled the complainant to bring the complaint against him.

In fine, the gravity of the respondent's professional misconduct and deceit should fully warrant his being permanently barred from reinstatement to the ranks of the Philippine Bar and from having his name restored in the Roll of Attorneys.

However, circumstances attendant in his case should be considered and appreciated in mitigating the penalty to be imposed.[44]

The first of such circumstances related to the context of the engagement between the parties. Upon reflecting on the adverse effects on his inheritance from his late mother of his cousin's adoption by her, the complainant had engaged the respondent's

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[41] *Cham v. Paita-Moya*, A.C. No. 7494, June 27, 2008, 556 SCRA 1, 9.

[42] Rule 7.03, *Code of Professional Responsibility,* to wit:

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[43] *Cham v. Paita-Moya*, *supra* note 41.

[44] *Foronda v. Atty. Jose L. Alvarez,* A.C. 9976, June 25, 2014, 727 SCRA 155; *Ong v. Atty. William F. Delos Santos,* A.C. 10179, March 4, 2014, 717 SCRA 663; *Somosot v. Lara,* A.C. No. 7024, January 30, 2009, 577 SCRA 158, 174*; In Re: Edillion, AC-1928,* December 19, 1980, 101 SCRA 612.

legal services and representation for the purpose of nullifying or undoing the adoption. At the outset, the respondent was candid in explaining to the complainant that the prosecution of the case would be complicated mainly because the adoption had been decreed in 1979 yet, and also because the complainant, as a permanent resident of the United States of America, would be thereby encountering difficulties and high costs, aside from untold inconvenience due to his physical presence in the country being needed every now and then.[45] The respondent's candid explanations notwithstanding, the complainant persisted in pursuing the case, impelling the respondent to take on the engagement.

Another circumstance is that the respondent had already returned to the complainant the amount of ₱650,000.00 the former had received from the latter on account of the professional engagement. The returned amount was in full and complete settlement of the latter's claims.[46] Judicial precedents exist in which the Court treated the return in full of the money the respondent attorneys had received from their complaining clients as mitigating circumstances that lowered the penalties imposed.[47] For sure, the voluntary restitution by the respondent herein of the amount received in the course of the professional engagement, even if it would not lift the sanction meted on him, manifested remorse of a degree on his part for his wrongdoing, and was mitigating in his favor.

And, thirdly, the Court cannot but note the respondent's several pleas for judicial clemency to seek his reinstatement in the ranks of the Philippine Bar.[48] He has backed up his pleas by adverting to his personal travails since his disbarment. He claims, too, that his health has been failing of late considering that he had

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[45] *Supra* note 14, at 75.

[46] *Rollo*, pp. 383-384, 387-389.

[47] See *Foronda. v. Atty. Jose L. Alvarez, supra* note 44 at 170-171; *Ong v. Atty. Delos Santos, supra* note 44, at 672.

[48] *Que v. Revilla, Jr.*, A.C. No. 7054, November 11, 2014, 739 SCRA 459, 464.

been diagnosed to be suffering from chronic kidney disease, stage five, and has been undergoing dialysis three times a week.[49] His advancing age and the fragile state of his health may also be considered as a mitigating factor.[50] In addition, it is noteworthy that he has been devoting some time to Christian and charity pursuits, like serving with humility as a Lay Minister at St. Peter Church in Quezon City and as a regular lecturer on the Legal Aspects of Marriage.[51]

Pleas for judicial clemency reflected further remorse and repentance on the part of the respondent.[52] His pleas appear to be sincere and heartfelt. In human experience, remorse and repentance, if coupled with sincerity, have always been regarded as the auspicious start of forgiving on the part of the offended, and may eventually win even an absolution for the remorseful. The Court will not be the last to forgive though it may not forget.

In view of the foregoing circumstances, perpetual disqualification from being reinstated will be too grave a penalty in light of the objective of imposing heavy penalties like disbarment to correct the offenders.[53] The penalty ought to be tempered to enable his eventual reinstatement at some point in the future. Verily, permanently barring the respondent from reinstatement in the Roll of Attorneys by virtue of this disbarrable offense will deprive him the chance to return to his former life as an attorney.

To start the respondent on the long road to reinstatement, we fine him in the amount of ₱100,000.00, a figure believed to be a fair index of the gravity of his misdeeds. Less than

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[49] *Id.*

[50] See *In Re: Edillion,* A.C. No. 1928, December 19, 1980, 101 SCRA 612, 617.

[51] *Supra* note 48, at 464-465.

[52] *Que v. Revilla, Jr.*, *supra* note 48.

[53] *Bernardo v. Mejia,* A.C. No. 2984, August 31, 2007, 531 SCRA 639, 643.

such amount might undeservedly diminish the gravity of his misdeeds. At this juncture, it is relevant to note that he committed the offense complained of herein before the Court disbarred him in A.C. 7054. Meting the stiff fine despite his disbarment is a way for the Court to assert its authority and competence to discipline all acts and actuations committed by the members of the Legal Profession. The Court will not waver in doing so.

But the fine comes with the stern warning to the respondent that he must hereafter genuinely affirm his remorse and start to demonstrate his readiness and capacity to live up once again to the exacting standards of conduct demanded of every member of the Bar in good standing and of every officer of the Court;[54] otherwise, he would be sanctioned with greater severity.

WHEREFORE, the Court **FINDS AND DECLARES ATTY. ANASTACIO REVILLA, JR. GUILTY** of violating Rule 1.01 of Canon 1, Rules 15.06 and 15.07 of Canon 15, and Rule 18.03 of Canon 18 of the *Code of Professional Responsibility*, but, in view of his continuing disbarment, hereby **METES** the penalty of FINE of ₱100,000.00.

This decision is **IMMEDIATELY EXECUTORY**.

Let copies of this decision be furnished to: (a) the 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 to be appended to the respondent's personal record as a member of the Bar.

SO ORDERED.

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

Caguioa and *Martires, JJ.,* on leave.

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[54] *Valencia v. Antiniw,* A.C. Nos. 1302, 1391 & 1543, June 30, 2008, 556 SCRA 503, 515.

EN BANC

[A.M. No. P-17-3639. January 23, 2018]
(Formerly OCA I.P.I. No. 14-4314-P)

MA. CECILIA FERMINA T. ROXAS, *complainant, vs.* **ALLEN FRANCISCO S. SICAT, Sheriff III, Office of the Clerk of Court, Municipal Trial Court in Cities, Angeles City, Pampanga,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; DUTIES IN THE IMPLEMENTATION OF A WRIT OF EXECUTION.—** Section 10, Rule 141 of the Rules of Court x x x enumerates the steps to be followed in the payment and disbursement of fees for the execution of a writ: (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the *ex-officio* sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit. It is clear from the enumeration that sheriffs are not authorized to receive direct payments from a winning party.

2. **ID.; ID.; ID.; ID.; IN VIEW OF THE TOTALITY OF RESPONDENT'S ACTS, HE IS FOUND GUILTY OF GROSS NEGLECT OF DUTY AND INEFFICIENCY IN THE PERFORMANCE OF OFFICIAL DUTIES AND FOR MISCONDUCT FOR IRREGULARITIES IN THE CONDUCT OF THE AUCTION SALE; PENALTY.—** The Court agrees with the Investigating Judge and the OCA that since the writ was only addressed to defendant Miradora Mejia, it should have prompted respondent to clarify with the court that issued the writ whether defendant Renato Nunag could be made subject of the implementation of the writ. The Investigating

Judge correctly noted that if respondent submitted a report to the court regarding the non-implementation of the writ within 30 days from its issuance and then reported every 30 days thereafter on the proceedings taken thereon until the judgment was satisfied, respondent could have been clarified about the involvement of Ricky Dizon and Miradora Mejia or Renato Nunag in the Compromise Agreement, or whether Nunag's property could be subject of levy. Moreover, irregularities were found in the conduct and documentation of the auction sale. Respondent insisted that the auction sale was conducted on November 29, 2013, while the Daily Collection Report of Ricky Dizon showed that the auction sale was conducted on December 10, 2013, but the undated Certificate of Sale and Certificate of Final Sale dated January 14, 2015 stated that the auction sale was conducted on November 4, 2013. Further, respondent failed to give the judgment debtor a notice on the sale of the property; there was no proof of publication of the notice and of the raffle among the accredited publishing companies for the selection of the newspaper that would publish the notice of sale of property. x x x Further, respondent discharged the wrongful levy on the property of Renato Nunag without proper court order. Based on the foregoing, respondent is guilty of gross neglect of duty and inefficiency in the performance of official duties and for misconduct for the irregularities in the conduct of the auction sale and his circumvention of the established rule on motions. x x x [R]espondent x x x is **ORDERED DISMISSED** from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

D E C I S I O N

***PER CURIAM*:**

On July 17, 2014, complainant Ma. Cecilia Fermina T. Roxas, Manager and Corporate Secretary of ROTA Creditline Finance Corporation (*ROTA*), filed a letter-complaint[1] with the Office

[1] *Rollo*, pp. 1-4.

of the Court Administrator (*OCA*)-Legal Office against respondent Allen Francisco S. Sicat, Sheriff III, Office of the Clerk of Court, Municipal Trial Court in Cities (*MTCC*), Angeles City, Pampanga, charging him with gross inefficiency and gross misconduct relative to Civil Case No. 10-826, entitled *ROTA Creditline Finance Corp. v. Arnold Cruz, et al.*

Complainant Roxas stated that ROTA, a financial institution, has been filing collection cases in the courts of Angeles City, Pampanga. Whenever its cases are decided in its favor, ROTA would acquire properties through judicial/extra-judicial foreclosure proceedings. Complainant, as ROTA's manager, would often deal with court personnel, particularly sheriffs, who would frequently ask ROTA for grease money or *padulas* before they would serve summonses and other court processes. She claimed that these sheriffs would ask for ₱1,000.00 supposedly to answer for their transportation and meal allowance even though these expenses are already covered by the Sheriff's Trust Fund. Moreover, sheriffs have been observed to report to the office at 11:00 a.m. and they would leave at 3:00 p.m. They were sometimes spotted loitering inside Marquee Mall during office hours. They are often observed to be grossly inefficient in performing their job.

The complaint against respondent stemmed from Civil Case No. 10-826 for a sum of money filed by ROTA against Arnold Cruz, Renato Nunag and Miradora Mejia before the MTCC, Branch 2, Angeles City, presided by Judge Katrina Nora S. Buan-Factora. During the mediation proceedings of the said case on September 30, 2010,[2] only Ricky Dizon, plaintiff ROTA's representative, and defendant Miradora Mejia appeared. They entered into a Compromise Agreement,[3] which stipulated that defendants' obligation to the plaintiff is ₱200,539.00 to be paid in installment at ₱12,000.00 a month; and in the event that the defendants fail to pay two monthly installments due, the remaining obligation shall become demandable and the plaintiff

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[2] *Id.* at 352.

[3] *Id.*

is entitled to the issuance of a writ of execution for the enforcement of the Compromise Agreement. The hearing on the approval of the Compromise Agreement was set on November 11, 2010.[4] In the hearing of November 11, 2010, only Ricky Dizon and Miradora Mejia were present and they were the only signatories in the Compromise Agreement.[5] Miradora Mejia affirmed before the court that she understood and agreed that she was the only one bound by the Compromise Agreement. On November 12, 2010, the trial court rendered a Decision[6] approving the Compromise Agreement and ordered the parties to strictly comply with the terms and conditions thereof.

On November 11, 2011, ROTA, though its counsel, filed a Motion for the Issuance of a Writ of Execution[7] in Civil Case No. 10-826 (when defendant Miradora Mejia failed to comply with the terms and condition of the Decision dated November 12, 2010). The motion was granted by the trial court on March 9, 2012.[8] On March 12, 2012, the Writ of Execution[9] was issued, ordering respondent Sheriff Sicat to cause the execution of the judgment, to levy on the goods and chattels of the defendant. After seven months, respondent issued a Levy on Execution/Attachment Replevin dated October 30, 2012, attaching a real property with a land area of 10,841 square meters located in Magalang, Pampanga. The subject property is covered by Transfer Certificate of Title (*TCT*) No. 502474-R (and registered in the names of defendant Renato Nunag and his wife Juanita Nunag). Complainant stated that after more than a year of persistent follow-up, respondent finally issued the Notice of Sheriff's Sale dated November 4, 2013 and set the Sheriff's Sale on December 10, 2013 at 10:00 a.m.

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[4] *Id.* at 354.

[5] *Id.*

[6] *Id.* at 355-356.

[7] *Id.* at 358.

[8] *Id.* at 7.

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

Complainant narrated that when respondent learned that the property being auctioned for bidding was a resort, he expressed interest to purchase it. Complainant told respondent that he cannot do so because of conflict of interest. In order that respondent would not be able to purchase the property, complainant increased the bid price to ₱2 million. Respondent issued the Certificate of Sale at the bid price of ₱200,539.63, which was the principal amount in the Compromise Agreement approved by the trial court on November 12, 2010. Complainant stated that the price was damaging to her, because the outstanding balance of the loan as of the date of redemption on January [14], 2015 was ₱715,223.57. Complainant said that respondent did not ask her the outstanding balance of the loan before the auction sale.

Moreover, complainant stated that respondent delayed the issuance of the Certificate of Sale, which she had annotated on the title of the property without reading that the sale price was only ₱200,539.63. When she received the certified true copy of the title, that was the only time she saw that the sale price of the said property was only ₱200,539.63, so she called respondent's attention to the fact that the outstanding balance of the loan was ₱715,223.57. Respondent told her that she should have her lawyer amend the Writ of Execution and that she should send another formal offer. On March 3, 2014, she sent another formal offer with a bid price of ₱720,000.00, since the outstanding balance of the loan was ₱715,223.57. Complainant stated that she was disappointed, because respondent has not issued a new Certificate of Sale for the amendment of the annotation on the title of the property.

In his Comment[10] dated October 14, 2014, respondent Sheriff Allen Francisco S. Sicat stated that based on the Decision of the MTCC, the amount of the judgment obligation was ₱200,539.63 and there was no stipulation of interest. He explained why the implementation of the writ of execution was delayed. Despite diligent efforts, no available personal properties could

[10] *Id.* at 18-20.

be found in the name of the defendant (Miradora Mejia) in the writ of execution. Complainant's representative, Ricky Dizon, also informed him that the said defendant asked for additional time to amicably settle the obligation. When defendants failed to fulfill their promise to settle the obligation after a reasonable period of time, plaintiff ROTA, through Ricky Dizon, again requested the enforcement of the writ of execution against the real property of defendant Renato Nunag.

On October 30, 2012, a Levy on Execution[11] of real property was filed before the Office of the Register of Deeds for Angeles City. Thereafter, defendant Nunag requested plaintiff-complainant for additional time to settle the amount of ₱200,539.63. Upon learning that defendants failed to fulfill their promise, respondent issued a Notice of Sheriff's Sale[12] dated November 4, 2013, setting the auction sale on November 29, 2013. (However, the records show, particularly the undated Certificate of Sale[13] and the Certificate of Final Sale[14] dated January 14, 2015, that the auction sale was conducted on November 4, 2013.)

Respondent stated that defendant (Miradora Mejia) failed to attend the auction sale despite due notice. Complainant Roxas manifested that plaintiff ROTA, through complainant, was willing to bid ₱2 million. He then advised complainant that should plaintiff ROTA bid at ₱2 million, she will be obligated to refund whatever amount is in excess of the judgment obligation, which complainant was not willing to do.

As there were no other bidders during the auction sale, respondent awarded the winning bid to the complainant in the amount only of the judgment obligation (₱200,539.63) and issued the Certificate of Sale on even date.

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[11] *Id.* at 10.

[12] *Id.* at 11-12.

[13] *Id.* at 13.

[14] *Id.* at 96-97.

On March 3, 2014, complainant filed a letter, amending the amount of her previous bid (to ₱720,000.00). Justifying the sale of the property at ₱200,539.63, respondent stated that the Sheriff must satisfy the judgment obligation based on the decision.

Upon the recommendation[15] of the OCA, the Court issued a Resolution[16] dated December 7, 2015, referring the administrative complaint to the Executive Judge, MTCC, Angeles City, Pampanga for investigation, report and recommendation within 60 days from receipt of the records.

The Investigation Report of Executive Judge Katrina Nora S. Buan Factora

The Report[17] dated April 21, 2016 of Executive Judge Katrina Nora S. Buan Factora,[18] MTCC, Angeles City, Pampanga, summarized the case, thus:

> On September 30, 2010, a Compromise Agreement was entered into by Ricky Dizon (representative of the plaintiff ROTA) and Miradora Mejia (Miradora for short and one of the defendants) x x x. The approval of compromise was set for hearing on November 11, 2010, the Court inquired whether Miradora fully understood that she is the only one bound by the compromise; to which she acceded. On November 12, 2010, [a] Decision based on a Compromise Agreement was issued by the Court. On November 11, 2011, a motion for Issuance of a Writ of Execution was filed by plaintiff thru counsel and it was granted on March 9, 2012; and on March 12, 2012, a writ of execution was issued and received by the Office of the Clerk of Court on March 15, 2012.
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> On October 30, 2012, a Levy on Execution was issued by Sheriff Allen Francisco Sicat on TCT No. 502474-R and which was annotated

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

[16] *Id.* at 27.

[17] *Id.* at 380-396.

[18] Executive Judge Katrina Nora S. Buan Factora was also the Presiding Judge in Civil Case No. 10-826 from which case this administrative complaint arose.

in the memorandum of encumbrance on June 14, 2013. On November 4, 2013, Notice of Sheriff['s] Sale was issue[d] by Sheriff Allen wherein the schedule[d] dates of sale are November 29, 2013 and December 10, 2013; and on same date (November 4, 2013), Certificate of Postings was made by Sheriff Allen and others signed by Angelino Felix, Clerk; Rodrigo Malit, Purok Leader; Hon. Jummel Malonzo, Brgy. Captain; and Ernesto Dionisio, Brgy. Sec. On November 29, 2013, Minutes of the Auction Sale was issued wherein Ricky Dizon was present and lone bidder of the property sold at Php200,539.63 pesos. On record, there are two bid price in the sum of Php2,000,000.00 and Php 720,000.00 the latter offer of bid which was received on March 3, 2014. On January 14, 2014, [a] Certificate of Sale was issued by Sheriff Allen and it was annotated in the Memorandum of Encumbrance on same date with the showing of the assessment form; and thereafter on January 14, 2015, a Certificate of Final Sale was likewise issued.

On March 17, 2014, Ma. Cecilia Fermina T. Roxas wrote to Sheriff Allen regarding the annotation on TCT No. 502474-R on the bid price of Php200,539.63 instead of her offered bid price [of P720,000.00] which to her is damaging and so, the necessary correction should be made. Dissatisfied, on July 1, 2014, complainant Ma. Cecilia wrote to OCA-Legal pertaining to this present incident.

On the Civil Case No. 10-826, on January 29, 2015[,] a Motion for Issuance of an Order Consolidating Title to the plaintiff was filed by plaintiff through counsel Atty. Reydon P. Canlas and thereupon on March 27, 2015[,] another Entry of Appearance with opposition to plaintiff's motion for issuance of an order to Consolidate Title to Plaintiff was filed by Renato Nunag through counsel Atty. Allan Jocson; and thereafter, the said incident was considered withdrawn by both parties in the Order dated April 16, 2015.

On April 6, 2015, Ma. Cecilia wrote again to Sheriff Allen stating, as there was an overlook on defendant Renato Nunag, who is not a signatory on the Compromise Agreement and she, further, requested to lift the Levy on Execution on Nunag's property with TCT No. 502474-R and cancel the mortgage/annotation on the title c/o the Register of Deeds Pampanga. On April 8, 2015, a Notice of Lifting or Discharge of Levy on Execution Certificate of Sale was issued by Sheriff Allen and the same was annotated on the Memorandum on Encumbrance on April 10, 2015.[19]

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[19] *Rollo,* pp. 380-382. (Citations omitted)

Investigating Judge Factora found that respondent failed to follow the steps for the proper implementation of the writ of execution, since there was (1) no estimate of expenses; (2) no return on the writ of execution; hence, there was no copy of the sheriff's report furnished to the defendants involved; (3) no liquidation of sums received; (4) no notice given to the judgment obligor on the sale of the property; and (5) no filing system of the publication and other documentation. In regard to the auction sale, there are discrepancies on the date and circumstances of the auction sale showing a simulated auction sale. Moreover, the discharge of levy on the subject property was without proper motion or court order.[20]

Investigating Judge Factora discussed her findings, thus:

A. The Implementation of the Writ of Execution

In the Order[21] dated March 9, 2012 in Civil Case No. 10-826, MTCC Judge Katrina Nora S. Buan-Factora (also the Investigating Judge) granted the issuance of a writ of execution against the defendants to enforce the decision dated November 12, 2010 and directed the Sheriff of the OCC-MTCC, Angeles City "to submit an estimate of cost for the implementation of the writ of execution to be approved by this Court and such amount, thereafter, shall be deposited/paid by the plaintiff to the Office of the Clerk of Court of the MTCC pursuant to Section 10 of A.M. No. 04-2-04-SC."

However, the Investigating Judge found that no estimate of expenses was submitted to the court for its approval and/or deposited or paid to the Clerk of Court of the OCC-MTCC, despite the ruling in *Francia v. Esguerrra*[22] enumerating the steps to be followed in the payment and disbursement of fees for the execution of a writ, to wit:

> x x x (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses

[20] *Id.* at 394.

[21] *Id.* at 7.

[22] 746 Phil. 423 (2014).

shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the ex-officio sheriff, (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit.[23]

In this case, both complainant and respondent admitted not resorting to the system of submitting a court-approved estimate of expenses to the OCC-MTCC as it is a tedious process, especially for the sheriffs. It has been a practice for ROTA, through Ricky Dizon, to be charged with the expenses without resort to the Sheriff's Trust Fund. Hence, ROTA would issue duly acknowledged Cash Vouchers,[24] signed by respondent Sheriff, to defray the expenses for the implementation of writs and for the purpose of reimbursement from their office. On the other hand, respondent Sheriff would sign and acknowledge the same even though the actual money was handled by Ricky Dizon and, likewise, to help Ricky, who, according to respondent, would be reimbursed by ROTA for expenses he advanced, and who was in dire economic distress. Sheriff Luis Gary V. Rosario and Miradora Mejia corroborated the testimony of respondent that Ricky handled the money and would plead for financial assistance, respectively.[25]

The Investigating Judge stated that the writ of execution was addressed only to Miradora Mejia as the sole defendant who signed the Compromise Agreement. Hence, respondent should have proceeded to implement the writ under Section 9 (a),[26]

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[23] *Id.* at 428.

[24] *Rollo,* pp. 195-198.

[25] *Id.* at 389.

[26] SEC. 9. *Execution of judgments for money, how enforced.*— (a) Immediate payment on demand.— The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check

Rule 39 of the Rules of Court by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and lawful fees. However, the records revealed that this was not actually done as there was no showing of the receipt by Miradora Mejia of the subject writ of execution. The same records would show that there was no return of the writ, which should reflect how the writ was initially implemented. Miradora Mejia categorically denied that she received any document denominated as writ of execution. She, however, recalled that she was informed by her house helpers that Ricky Dizon and respondent visited her to collect the sum of money. She denied having seen or met respondent until the day Renato Nunag, thru his counsel, filed an opposition to the plaintiff's Motion for the Issuance of an Order Consolidating Title to Plaintiff.[27]

The Investigating Judge stated that the allowance of seven months given to defendant Miradora Mejia to pay up her obligation, as relayed by Ricky to respondent, is not within

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payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

[27] *Rollo,* p. 364.

the discretion of respondent to give. As an implementing officer of the Court, respondent should have acted with dispatch so as not to render inutile the effects of the judgment. The nature of a sheriff's duty in the execution of a writ issued by a court is purely ministerial.[28]

Complainant admitted that they thought the approved Compromise Agreement included Renato Nunag based on the original complaint; hence, the property of Nunag was levied upon. However, the Investigating Judge noted that Ricky Dizon was present when the Compromise Agreement was approved by the court; hence, Ricky Dizon acted in bad faith when he presented to respondent Nunag's property to be levied upon as he knew that Nunag was not part of the Compromise Agreement. Nevertheless, as the writ was addressed only to Miradora Mejia, this should have prompted respondent to clarify with the court that issued the writ whether Renato Nunag can be made subject of the implementation of the writ. The return of the writ of execution every 30 days from its issuance could have clarified to respondent the involvement of Ricky Dizon and Miradora Mejia or Renato Nunag. However, respondent failed to submit a report in accordance with Section 14,[29] Rule 39 of the Rules of Court.

B. Levy and Sale of Property on Execution

Prescinding from the mistaken belief that Renato Nunag was a judgment debtor, respondent Sheriff failed to follow the steps

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[28] *Id.* at 389, citing *OCA v. Macusi*, *Jr.,* 717 Phil. 562, 573 (2013).

[29] Sec. 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

for the proper levy and sale of property on execution under Section 15,[30] Rule 39 of the Rules of Court.

The Investigating Judge found that: (1) there was no publication of the notice of sale; (2) there was no raffle for the selection of the newspaper that would publish the notice of sale; (3) the judgment obligor was not given a notice of the sale; and (4) there is a discrepancy in the actual date of the sale of the property and circumstances thereof pointing to a simulated sale.

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[30] Section 15. *Notice of sale of property on execution.* — Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three (3) public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

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(c) In case of real property, by posting for twenty (20) days in the three (3) public places abovementioned a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand (₱50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city;

(d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13.

The notice shall specify the place, date and exact time of the sale which should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon. The place of the sale may be agreed upon by the parties. In the absence of such agreement, the sale of real property or personal property not capable of manual delivery shall be held in the office of the clerk of court of the Regional Trial Court or the Municipal Trial Court which issued the writ of or which was designated by the appellate court. In the case of personal property capable of manual delivery, the sale shall be held in the place where the property is located.

On October 30, 2012, a Levy on Execution/Attachment Replevin[31] was issued by respondent Sheriff without the same being addressed to the Register of Deeds and no copy was furnished to defendant Miradora Mejia or defendant Renato Nunag, whose property was being attached. The Notice of Levy on Execution was annotated on the memorandum of encumbrance of the title on June 14, 2013, about eight (8) months thereafter. From the time of the issuance of the writ of execution to levy, if defendants were given a copy of the writs issued then, they could have properly registered their objection/opposition to the same. Respondent worked under the belief that Renato Nunag was a judgment debtor until Ricky Dizon admitted to him that Nunag was not a signatory in the Compromise Agreement, which admission annoyed respondent.

The Investigating Judge found that there was evidence[32] of posting of the Notice of Sheriff's Sale, but there was no evidence of the publication thereof. Complainant and respondent, however, testified that there was publication.[33] Moreover, ROTA's Cash Voucher[34] dated October 9, 2013 in the amount of ₱12,000.00 showed that the amount was paid directly to Mr. Abner Y. San Pedro (of Angeles Monday Mail) for the publication of the Notice of Sheriff's Sale. However, the records do not show the raffle for the selection of the accredited publishing company that should publish the Notice of Sheriff's Sale. The Investigating Judge noted that the levy on execution was made on October 30, 2012, while the disbursement for the publication was made on October 9, 2013, almost one (1) year after the levy.

On the Notice of Sheriff's Sale dated November 4, 2013, there appeared two dates of auction: November 29, 2013 and December 10, 2013. Respondent explained that there was a

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[31] *Rollo*, p. 92.

[32] *Id.* at 216-219.

[33] See TSN, February 19, 2016, pp. 5-6; *id.* at 275-276 and TSN, February 22, 2016, pp. 14-15; *id.* at 298-299.

[34] *Rollo,* p. 185.

typographical error in his documents or they were not edited. On the other hand, complainant and her witness, Fermina Roxas, maintained that the November 29, 2013 auction did not push through and was reset on December 10, 2013, as reflected in the Daily Collection Report[35] of Ricky.

The Investigating Judge stated that the apparent discrepancies in the date of the auction sale point to a simulated sale with documentation.

Moreover, respondent failed to give a written notice of the sale to the judgment obligor, because Miradora Mejia denied that she received any document and Renato Nunag opposed the consolidation of title. Due process dictates that proper notices be sent to parties adversely affected by the effects of the writs. Section 17,[36] Rule 39 of the Rules of Court penalizes the officer selling without notice by making him liable to pay ₱5,000.00 to any person injured thereby, in addition to his actual damages.

In addition, there was a Minutes of the Auction Sale[37] dated November 29, 2013, but complainant maintained there was no auction on the said date and no minutes; but Ricky Dizon was made to sign on the minutes belatedly, or sometime in October (2014).[38]

On the offer of bid, complainant submitted two attempts to bid: ₱2 million and ₱720,000.00 (received by respondent on

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[35] *Id.* at 166, 168, 170-171.

[36] Section 17. *Penalty for selling without notice, or removing or defacing notice*. — An officer selling without the notice prescribed by Section 15 of this Rule shall be liable to pay punitive damages in the amount of five thousand (₱5,000.00) pesos to any person injured thereby, in addition to his actual damages, both to be recovered by motion in the same action; and a person willfully removing or defacing the notice posted, if done before the sale, or before the satisfaction of the judgment if it be satisfied before the sale, shall be liable to pay five thousand (₱5,000.00) pesos to any person injured by reason thereof, in addition to his actual damages, to be recovered by motion in the same action.

[37] *Rollo,* p. 220.

[38] *Id.* at 392; see TSN, February 17, 2016, p. 23; *id.* at 260.

March 3, 2014). However, both bids were refused because respondent had to stick to the value or amount due in the Compromise Agreement, which is ₱200,539.63.[39] Respondent maintained that even if he would entertain the said bids, complainant was unwilling to pay for the excess; hence, he stuck to the price of the Compromise Agreement. The Investigating Judge stated that Section 19,[40] Rule 39 of the Rules of Court provides for the effects of bidding and the amount bid whether exact or in excess; and, therefore, respondent should not have refused the offered bid of complainant.

The Certificate of Sale, with an auction date of November 4, 2013, was issued and annotated on the title on January 14, 2014. Complainant, thru her counsel, wrote respondent the letter[41] dated March 17, 2014, expressing dissatisfaction as the Certificate of Sale showed the sale price of only ₱200,539.63 instead of the second bid price of ₱720,000.00, allegedly resulting in plaintiff's loss of more than ₱500,000.00. Thereafter, complainant wrote the letter-complaint to the OCA.

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[39] *Rollo,* p. 14.

[40] Section 19. *How property sold on execution; who may direct manner and order of sale*. — All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. **After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court.** When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (Emphasis supplied)

[41] *Rollo,* p. 14.

The Certificate of Final Sale[42] with an auction date of November 4, 2013 was issued on January 14, 2015, but it was not annotated on the title in view of Renato Nunag's opposition (that his property could not be levied upon because he was not a party to the Compromise Agreement). Upon realizing the mistake of attaching the property of Renato Nunag, selling it at public auction and annotating the sale on the title of Renato Nunag, complainant wrote a letter[43] dated April 6, 2015, requesting respondent to lift the Levy on Execution on Nunag's property and to cancel the annotation on the title through the Register of Deeds for Pampanga. On April 8, 2015, respondent issued a Notice [to Lift] or Discharge of Levy on Execution[44] addressed to the Register of Deeds of Angeles City. The Investigating Judge observed that the same did not pass through court motion with due proceedings in order that the proper discharge would have been noted.

Further, the Investigating Judge found that the charges of loitering and laziness was not substantiated by substantial evidence.

The Investigating Judge also found that per Section 1,[45] Canon III of the Code of Conduct for Court Personnel, there was no

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[42] *Id.* at 96-97.

[43] *Id.* at 226.

[44] *Id.* at 227.

[45] SECTION 1. Court personnel shall avoid conflicts of interest in performing official duties. Every court personnel is required to exercise utmost diligence in being aware of conflicts of interest, disclosing conflicts of interest to the designated authority, and terminating them as they arise. (a) A conflict of interest exists when: (i) the court personnel's objective ability or independence of judgment in performing official duties is impaired or may reasonably appear to be impaired; or (ii) the court personnel, the personnel's immediate family, or the personnel's business or other financial interest would derive financial gain because of the personnel's official act. (b) No conflict of interest exists if any benefit accrues to the court personnel as a member of a profession, business, or group to the same extent as any other member of such profession, business, or group who does not hold a position in the Judiciary. (c) The term "immediate family" shall include

conflict of interest when respondent uttered that he was interested to redeem the subject property. Respondent also denied such interest as it was just done in jest and he has no capacity to purchase the subject resort.

The Investigating Judge stated that respondent pleaded that the case against him be dismissed on account of complainant's letter dated April 6, 2015, requesting him to lift the Levy on Execution on Nunag's property and to have the annotation on the title cancelled by the Register of Deeds, and the levy was already lifted and the parties themselves are no longer interested to pursue the case.

The Investigating Judge noted that respondent's infraction is not the first time, as an administrative case had been filed against respondent and resolved in A.M. No. P-00-1423 promulgated on December 10, 2004.

The Investigating Judge recommended that this administrative complaint be re-docketed as a regular administrative matter and that respondent be dismissed from the service for gross inefficiency.

On June 20, 2016, the Court issued a Resolution[46] referring the Investigation Report of Executive Judge Factora and the Report of Executive Judge Omar T. Viola to the OCA for evaluation, report and recommendation.

The Report of the Office of the Court Administrator

In its Memorandum[47] dated October 6, 2016, the OCA found respondent Sheriff Sicat guilty of gross neglect of duty,

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the following whether related by blood, marriage or adoption: (a) spouse, (b) children, (c) brother, (d) sister, (e) parent, (f) grandparent, (g) grandchildren, (h) father-in-law, (i) mother-in-law, (j) sister-in-law, (k) brother-in-law, (i) son-in-law, (m) daughter-in law, (n) stepfather, (o) stepmother, (p) stepson, (q) stepdaughter, (r) stepbrother, (s) stepsister, (f) half-brother, (u) half-sister.

[46] *Rollo,* pp. 414-415.

[47] *Id.* at 416-428.

misconduct and inefficiency in the performance of official duties and recommended that he be dismissed from the service.

The OCA stated that respondent should be held administratively liable for his failure to follow the procedures in the proper implementation of the writ, particularly: (1) to submit estimate of expenses; (2) to submit a liquidation report; (3) to submit Sheriff's Return of Writ/Report; (4) to give notices to the judgment obligor; and (5) to publish a copy of the notice of sale of property on execution. Respondent should also be held administratively liable for the irregularities in the conduct of the auction sale, particularly: (1) discrepancies in the dates of the auction sale and other circumstances of the sale; (2) simulated auction sale; and for the unilateral discharge of levy without proper court order.

The OCA found, thus:

> The records do not show that respondent Sheriff Sicat submitted an estimate of expenses to the trial court for its approval. Also, no amount was deposited to the OCC-MTCC by plaintiff ROTA for the implementation of the writ. Instead, the parties admitted that they did not follow the procedure of submitting a court-approved estimate of expenses to the OCC-MTCC as they found it tedious. Through Ricky Dizon, respondent Sheriff Sicat signed cash vouchers to defray the expenses incurred in the implementation of the writ.
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> x x x [Respondent] received sums of money from plaintiff ROTA, through its representative, to defray his expenses in the implementation of the writ. The records also do not show that he advised plaintiff ROTA that the sheriff's expenses approved by the trial court should be deposited with the clerk of court and *ex-officio* sheriff. Furthermore, he never submitted a liquidation report to the OCC-MTCC.[48]

The OCA reiterated the findings of the Investigating Judge that respondent belatedly implemented the writ of execution, upon the advice of Ricky Dizon,[49] on the property of the defendant

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[48] *Id.* at 422.

[49] TSN of testimony of Francisco Allen S. Sicat, February 22, 2016, p. 6, *rollo*, p. 290.

Renato Nunag (who was, however, not bound by the Compromise Agreement). Moreover, the records do not show that the writ was properly served and no sheriff's report was executed to show that it was enforced against defendant Miradora Mejia.[50] The fact that defendant Mejia denied that respondent Sheriff Sicat tried to collect the debt from her,[51] it can be presumed that the writ was not actually served/implemented against her. Further, the grace period given to defendant Mejia to pay her obligation was not within the discretion of respondent to allow. The OCA reiterated that the sheriff exercises no discretion as to the manner of executing a final judgment. Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.[52]

The OCA reiterated that respondent Sheriff Sicat implemented the writ without considering that it was directed only against defendant Mejia. Any uncertainty on his part should have prompted him to seek clarification from the trial court if indeed the writ could be enforced against defendant Renato Nunag.

Anent procedural lapses, the records show that respondent Sheriff Sicat issued the Notice of Levy on Execution/Attachment Replevin dated October 30, 2012 against the property of defendant Nunag without furnishing a copy to the Register of Deeds and to defendants Mejia and Nunag. The Notice of Levy of Execution/Attachment was annotated on Nunag's title of the property only on June 14, 2014 or eight (8) months after its issuance.[53] Had defendant Nunag been earlier informed or given a copy of the writ, he could have immediately registered his objection/opposition prior to the annotation of the notice on the title. Instead, it was only in January 2015, after a Certificate of Final Sale[54] was issued by respondent Sheriff Sicat and plaintiff

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[50] *Id.* at 24; *id.* at 308.

[51] TSN, March 9, 2016, *rollo*, p. 340.

[52] *Rollo,* p. 389, citing *OCA v. Macusi, Jr., supra* note 28.

[53] *Rollo,* p. 44.

[54] *Id.* at 96-97.

ROTA filed a Motion for the Issuance of an Order Consolidating Title to Plaintiff[55] that defendant Nunag was notified that the title of his property would be transferred to ROTA.[56] Thus, he filed an opposition[57] to plaintiff's motion.

Moreover, the OCA reiterated the findings of the Investigating Judge that both parties failed to present proof that there was publication of the notice of sale. However, a Cash Voucher dated October 9, 2013 in the amount of ₱12,000.00, as publication fee, was paid by ROTA to one Abner Y. San Pedro (of *Angeles Monday Mail*).[58] The OCA noted that the cash voucher for publication was issued one year after the Notice of Levy on Execution was released on October 30, 2012. There was also no proof of any raffle among the accredited publishing companies.

In regard to the alleged irregularity in the conduct of the auction sale, in the Notices of Sheriff's Sale, both dated November 4, 2013, there appeared two (2) schedules of auction sale: November 29, 2013 and December 10, 2013.[59] Respondent asserted that it was a mere typographical error and he could not recall that there was an auction sale held on December 10, 2013. Complainant maintained that the November 29, 2013 auction sale did not push through and was reset to December 10, 2013 and that no minutes of the auction proceedings held on November 29, 2013 was made by respondent. However, when respondent Sheriff Sicat learned about the filing of this administrative complaint, he belatedly prepared the minutes and asked Ricky Dizon to sign the same sometime in October 2014.[60] To support her allegation, complainant presented the

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[55] *Id.* at 364.

[56] TSN, March 9, 2016, pp. 10-11; *id. at* 345-346.

[57] *Rollo,* p. 369.

[58] *Id.* at 185.

[59] *Id.* at 11-12.

[60] TSN, February 17, 2016, p. 23; *id.* at 260.

Daily Collection Report[61] prepared by Ricky Dizon, which report shows the following:

Nov. 13, 2013 – At the OCC-MTCC Sheriff Sicat re-scheduled the bidding on Dec. 10, 2013. Gave me a new copy of the Notice of Sheriff Sale;
Dec. 10, 2013 – At the OCC-MTCC Sheriff Sicat advised me to come back by Friday for the Certificate of Sale;
Jan. 7, 2014 – Sheriff Sicat advised me to come back tomorrow to get a copy of the Cert. of Sale (Nunag property)
Jan. 13, 2014 – At OCC-MTCC get [from] Sheriff Sicat Cert. of Sale TCT # of Renato Nunag.[62]

From the foregoing, the OCA deduced that the November 29, 2013-auction sale was cancelled. When Ricky Dizon went to respondent's office on November 13, 2013, respondent advised Ricky Dizon of the cancellation and gave him a new notice of sheriff's sale setting the auction sale on December 10, 2013 by editing the original notice, but respondent Sheriff Sicat failed to change the date of the notice. Be that as it may, there is a glaring irregularity because no minutes of an auction conducted on December 10, 2013 was submitted by respondent. Instead, the records contain minutes[63] [dated November 29, 2013] of an auction, while the auction sale was actually held on November 4, 2013 as appearing in the undated Certificate of Sale and Certificate of Final Sale dated January 14, 2015.

As pointed out by Executive Judge Factora, the parties could have entered into a simulated sale of property. Records show that no notices were sent to defendants Mejia and Nunag regarding the auction sale that resulted in the issuance of the Certificate of Sale. A Certificate of' Sale was issued without conducting a formal auction sale that was supposedly set on December 10, 2013. Instead, an undated Certificate of Sale was issued stating that the auction sale was held on November 4, 2013.

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[61] *Rollo,* pp. 166, 168, 170-171.

[62] *Id.*

[63] *Id.* at 220.

Moreover, when the parties realized the mistake in levying against the property of defendant Renato Nunag, complainant wrote respondent to correct the situation and to lift the levy against the property of Renato Nunag. Respondent took matters into his own hands by issuing a Notice [to Lift] or Discharge of Levy on Execution[64] dated April 8, 2015 addressed to the Register of Deeds of Angeles City, Pampanga, without first submitting the matter to the trial court for proper disposition. The *ex parte* motion to lift levy or attachment is a contentious motion that needs to comply with the required notice, hearing, and service to the adverse party as mandated by Rule 15 of the Rules of Court.

The OCA stated that for failure to perform his ministerial duty in the implementation of the writ, respondent should be held administratively liable for gross neglect and gross inefficiency in the performance of official duties. *Anico v. Pilipiña*[65] held that the failure of the sheriff to carry out what was a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports constituted gross neglect and gross inefficiency in the performance of official duties.

The OCA stated that respondent should likewise be held administratively liable for misconduct for the irregularities in the conduct of the auction sale and his circumvention of the established rule on motions.

Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service classifies gross neglect of duty and grave misconduct as grave offenses punishable by dismissal from the service for the first offense. This is not the first time that respondent Sheriff Sicat has been administratively held liable. In A.M. No. P-00-1423,[66] dated December 10, 2004, respondent Sheriff Sicat was found guilty of misconduct and

[64] *Id.* at 227.

[65] 670 Phil. 460, 470 (2011).

[66] *Deang v. Sheriff Sicat,* 487 Phil. 246 (2004).

suspended for six (6) months. In the said case, respondent Sheriff Sicat implemented a writ that was not addressed to him. He also failed to observe Section 10, Rule 39 of the Rules of Court. Thus, in this instance, the ultimate penalty of dismissal is warranted.

The OCA recommended that the instant administrative complaint against respondent Sheriff Sicat be re-docketed as a regular administrative matter and that respondent be found guilty of gross neglect of duty, misconduct and inefficiency in the performance of official duties, and be dismissed from the service with forfeiture of all his retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The OCA found the charge of conflict of interest, exhibited by respondent for expressing his interest to purchase the attached property, to be dismissible for lack of evidence. It also recommended that the charges of absenteeism, tardiness, and loitering be dismissed for lack of evidence.

The Ruling of the Court

The Court adopts the findings and recommendation of the OCA. A careful review of the records shows that respondent failed to follow the procedures laid down by Section 14 of Rule 39 and Section 10 of Rule 141 of the Rules of Court in the proper implementation of the writ of execution as discussed by Investigating Judge Factora and the OCA. Such failure makes respondent liable for gross neglect of duty and inefficiency in the performance of official duties.

Section 10, Rule 141 of the Rules of Court provides the duties of sheriffs in the implementation of writ, thus:

Sec. 10. *Sheriffs, process servers and other persons serving processes.*

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With regard to sheriffs expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property

levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to approval of the court**. **Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit.** A full report shall be submitted by the deputy sheriff assigned with his return, the sheriffs expenses shall be taxed as cost against the judgment debtor.[67]

The rule above enumerates the steps to be followed in the payment and disbursement of fees for the execution of a writ: (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the *ex-officio* sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit.[68] It is clear from the enumeration that sheriffs are not authorized to receive direct payments from a winning party.[69]

In this case, respondent did not submit an estimate of the expenses he would incur in the execution of the writ to the trial court for its approval. Instead, he received money from the plaintiff to defray his expenses in the implementation of the writ. Moreover, he did not submit a liquidation report to the OCC-MTCC. *Francia v. Esguerra*[70] pronounced:

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[67] Emphasis supplied.

[68] *Francia v. Esguerra, supra* note 22, at 428.

[69] *Id.*

[70] *Supra* note 22.

We held in *Bernabe v. Eguid* that acceptance of any other amount is improper, even if it were to be applied for lawful purposes. Good faith on the part of the sheriff, or lack of it, in proceeding to properly execute its mandate would be of no moment, for he is chargeable with the knowledge that being the officer of the court tasked therefor, it behooves him to make due compliances. In the implementation of the writ of execution, only the payment of sheriff's fees may be received by sheriffs. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming arguendo that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. In fact, even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section 10, Rule 141 of the Rules of Court has been clearly ignored.

The rules on sheriff's expenses are clear-cut and do not provide procedural shortcuts. A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps otherwise, it would amount to dishonesty and extortion. And any amount received in violation of Section 10, Rule 141 of the Rules of Court constitutes unauthorized fees.[71]

Moreover, the Investigating Judge reported[72] that respondent never made a return of the writ in violation of Section 14, Rule 39 of the Rules of Court:

SEC. 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within whic the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

[71] *Id.* at 429.

[72] *Rollo,* p. 390.

The Rules clearly provide that it is mandatory for sheriffs to execute and make a return on the writ of execution within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or its effectivity expires.[73] Even if the writs are unsatisfied or only partially satisfied, sheriffs must still file the reports so that the court, as well as the litigants, may be informed of the proceedings undertaken to implement the writ.[74] Periodic reporting also provides the court insights on the efficiency of court processes after promulgation of judgment.[75] Overall, the purpose of periodic reporting is to ensure the speedy execution of decisions.[76]

The Court agrees with the Investigating Judge and the OCA that since the writ was only addressed to defendant Miradora Mejia, it should have prompted respondent to clarify with the court that issued the writ whether defendant Renato Nunag could be made subject of the implementation of the writ. The Investigating Judge correctly noted that if respondent submitted a report to the court regarding the non-implementation of the writ within 30 days from its issuance and then reported every 30 days thereafter on the proceedings taken thereon until the judgment was satisfied, respondent could have been clarified about the involvement of Ricky Dizon and Miradora Mejia or Renato Nunag in the Compromise Agreement, or whether Nunag's property could be subject of levy.

Moreover, irregularities were found in the conduct and documentation of the auction sale. Respondent insisted that the auction sale was conducted on November 29, 2013, while the Daily Collection Report[77] of Ricky Dizon showed that the

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[73] *Anico v. Pilipina, supra* note 65, at 469.

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Rollo,* pp. 166, 168, 170-171.

auction sale was conducted on December 10, 2013, but the undated Certificate of Sale and Certificate of Final Sale dated January 14, 2015 stated that the auction sale was conducted on November 4, 2013. Further, respondent failed to give the judgment debtor a notice on the sale of the property; there was no proof of publication of the notice and of the raffle among the accredited publishing companies for the selection of the newspaper that would publish the notice of sale of property. All of the foregoing are in disregard of Section 15, Rule 39 of the Rules of Court, thus:

Section 15. *Notice of sale of property on execution.* — Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three (3) public places, preferably in conspicuous areas of the municipal or city hail, post office and public market in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

x x x x x x x x x

(c) **In case of real property**, by posting for twenty (20) days in the three (3) public places abovementioned a similar notice particularly describing the property and stating where the property is to be sold, and **if the assessed value of the property exceeds fifty thousand (₱50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle**, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city;

(d) **In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale**, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by section 6 of Rule 13.[78]

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[78] Emphasis supplied.

Further, respondent discharged the wrongful levy on the property of Renato Nunag without proper court order.

Based on the foregoing, respondent is guilty of gross neglect of duty and inefficiency in the performance of official duties and for misconduct for the irregularities in the conduct of the auction sale and his circumvention of the established rule on motions.

The Court held in *Anico v. Pilipiña*:[79]

Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.

We will reiterate that a sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not x x x Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible. x x x

x x x The long delay in the execution of the judgments and the failure to accomplish the required periodic reports demonstrate respondent sheriff's gross neglect and gross inefficiency in the performance of his official duties. Likewise, respondent sheriff's receipt of the money in his official capacity and his failure to turn over the amount to the clerk of court is an act of misappropriation of funds amounting to dishonesty. x x x

Time and again, this Court has pointed out the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of the public faith. They should, therefore, be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of responsibility, competence and efficiency, and they must

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[79] *Supra* note 65.

discharge their duties with due care and utmost diligence, since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[80]

Section 46, Rule 10, of the Revised Rules on Administrative Cases in the Civil Service classifies gross neglect of duty and grave misconduct as grave offenses punishable by dismissal from the service for the first offense.

The Court notes that respondent was previously administratively charged in A.M. No. P-00-1423,[81] and was found guilty of misconduct for implementing a writ that was not addressed to him and for non-observance of Section 10, Rule 39 of the Rules of Court. Respondent was penalized with suspension for six (6) months without pay with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

WHEREFORE, respondent Allen Francisco S. Sicat, Sheriff III, Office of the Clerk of Court, Municipal Trial Court in Cities, Angeles City, Pampanga, is found **GUILTY** of gross neglect of duty, inefficiency in the performance of official duties and misconduct and is **ORDERED DISMISSED** from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Caguioa and *Martires, JJ.,* on leave.

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[80] *Id*. at 470-471.

[81] *Supra* note 66.

EN BANC

[G.R. No. 219683. January 23, 2018]

HON. JONATHAN A. DELA CRUZ and HON. GUSTAVO S. TAMBUNTING, as MEMBERS OF THE HOUSE OF REPRESENTATIVES and as Taxpayers, *petitioners, vs.* **HON. PAQUITO N. OCHOA JR., in his capacity as the EXECUTIVE SECRETARY; HON. JOSEPH EMILIO A. ABAYA, in his capacity as the SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; HON. FLORENCIO B. ABAD, in his capacity as the SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; and HON. ROSALIA V. DE LEON, in her capacity as the NATIONAL TREASURER,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE USE OF AN APPROPRIATION UNDER THE GENERAL APPROPRIATIONS ACT OF 2014 (2014 GAA); THERE WAS AN APPROPRIATION FOR THE MOTOR VEHICLE LICENSE PLATE STANDARDIZATION PROGRAM (MVPSP) OF THE LAND TRANSPORTATION OFFICE (LTO) UNDER THE 2014 GAA; THE DECISION IN *JACOMILLE V. ABAYA* CONSTITUTED *STARE DECISIS*.—** In *Jacomille v. Abaya*, the Court, upholding the legality of the procurement of the MVPSP, opined that whatever defects had attended its procurement were "cured" by the appropriation for the full amount of the project under the 2014 GAA. x x x Even if G.R. No. 212381 (Jacomille) focused on the legality of the procurement of the MVPSP because of the inadequacy of the funding for the project under the 2013 GAA, the Court nonetheless determined and declared therein that the 2014 GAA contained an appropriation for the MVPSP, and held that the MVPSP could be validly implemented using the funds appropriated under the 2014 GAA. With G.R. No. 212381

(Jacomille) having thus fully examined and definitively ruled upon the existence of sufficient funding for the MVPSP, both for procurement and implementation, the pronouncement therein on the applicability of the appropriation under the 2014 GAA for the MVPSP – a question of law – now constituted *stare decisis* that precluded further contention on the same matter.

2. **ID.; ID.; ID.; THE USE OF THE APPROPRIATION UNDER THE 2014 GAA FOR THE IMPLEMENTATION OF MVPSP WAS CONSTITUTIONAL; IT WAS PROPERLY FUNDED UNDER THE APPROPRIATION FOR *MOTOR VEHICLE REGISTRATION AND DRIVER'S LICENSING REGULATORY SERVICES*, HENCE NO UNCONSTITUTIONAL TRANSFER OF FUNDS TOOK PLACE.—** Considering that Congress appropriated ₱4,843,753,000.00 for the MFO2 (inclusive of the requested increase of ₱2,489,600,100.00) for the purpose of funding the LTO's MVPSP, the inescapable conclusion is that the 2014 GAA itself contained the direct appropriation necessary to implement the MVPSP. Under the circumstances, there was no unconstitutional transfer of funds because no transfer of funds was made to augment the item ***Motor Vehicle Registration and Driver's Licensing Regulatory Services*** to include the funding for the MVPSP.

3. **ID.; ID.; ID.; ID.; THE ITEM *MOTOR VEHICLE REGISTRATION AND DRIVER'S LICENSING REGULATORY SERVICES* DID NOT CONSTITUTE A LUMP-SUM APPROPRIATION.—** The petitioners' contention that the MFO2 constituted a lump-sum appropriation had no basis. The specific appropriations of money were still found under ***Details of the FY 2014 Budget*** which was attached to the 2014 GAA. They specified and contained the authorized budgetary programs and projects under the GAA[.] x x x As gleaned from the ***Details of the FY 2014 Budget***, the MFOs constituted the expense category or class; while the last and indivisible purpose of each program under the MFOs were enumerated under the ***Details of the FY 2014 Budget***. In particular, the specific purpose provided under the MFO2 was an appropriation for a ***Motor vehicle registration system***. Such specific purpose satisfied the requirement of a valid line-item that the President could discernibly veto.

APPEARANCES OF COUNSEL

Leo C. Romero for petitioners.
The Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

In this special civil action for *certiorari* and prohibition, the petitioners, as Members of the House of Representatives and as taxpayers, assail the implementation of the Motor Vehicle License Plate Standardization Program (MVPSP) of the Land Transportation Office (LTO)[1] by using funds appropriated under Republic Act No. 10633 (*General Appropriations Act of 2014*), hereinafter referred to as the 2014 GAA.[2]

This case was preceded by the ruling in *Jacomille v. Abaya*,[3] which involved the procurement for the MVPSP. On May 19, 2014, Reynaldo M. Jacomille (Jacomille) filed in this Court a petition for *certiorari* and prohibition assailing the legality of the procurement under the MVPSP. He insisted therein that the MVPSP contract was void for lack of adequate budgetary appropriations in the *General Appropriations Act of 2013* (2013 GAA) as well as for the failure of the procuring entity to obtain the required Multi-Year Obligational Authority (MYOA) from the Department of Budget and Management (DBM).[4]

In the decision promulgated on April 22, 2015, the Court dismissed Jacomille's petition for having been rendered moot and academic by the passage of the 2014 GAA that already

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[1] The acronym MVLPSP is also used interchangeably with the acronym MVPSP in referring to the Motor Vehicle License Plate Standardization Program.

[2] *Rollo,* pp. 3-56.

[3] *Jacomille v. Abaya,* G.R. No. 212381, April 22, 2015, 757 SCRA 273, 277-280.

[4] *Rollo,* Vol. II, pp. 769-770.

included the full appropriation necessary to fund the MVPSP. Nonetheless, the Court expressly observed therein that the appropriation made in the 2013 GAA had been insufficient for the MVPSP; and that the procurement process had been tainted with irregularities, to wit:

> x x x [T]he project did not have the adequate appropriation when its procurement was commenced on February 20, 2013, contrary to the provisions of Sections 5a, 7 and 20 of R.A. No. 9184. The DOTC and the LTO likewise failed to secure the MYOA before the start of the procurement process even though MVPSP is MYP [Multi-Year Project] involving MYC [Multi-Year Contract]. All these irregularities tainted the earlier procurement process and rendered it null and void.
>
> At the outset, however, the Court has stated that the present petition has been rendered moot and academic by the appropriation for the full amount of the project fund in GAA 2014. Said appropriation "cured" whatever defect the process had.[5]

Jacomille moved for reconsideration but the Court, denying his motion on July 25, 2016,[6] reiterated that:

> x x x Congress had appropriated the amount of ₱4,843,753,000.00 for the MVPSP project. **Consequently, the Court deemed it proper not to question the wisdom of the legislative department in appropriating the full budget of the MVPSP in the GAA 2014. As the MVPSP was adequately funded by law when it was signed by the contracting parties, the petition became moot and academic. With that, the duty of the Court in the present petition was discharged**. (Bold underscoring supplied for emphasis)[7]

Antecedents

Given the intimate connection between this case and *Jacomille v. Abaya*, *supra*, we adopt and reiterate the summary of the

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[5] *Supra* note 3, at 310.

[6] *Rollo,* Vol. I, pp. 525-527. Entry of judgment has not yet been made to date because the Judicial Records Office is still waiting for notice from the post office as to the date when the copy of the Resolution has been received by the parties.

[7] *Id*. at 527.

factual antecedents rendered in *Jacomille v. Abaya* for the sake of consistency, as follows:

> The Department of Transportation and Communications (*DOTC*) is the primary policy, planning, programming, coordinating, implementing, regulating, and administrative entity of the Executive Branch of the government in the promotion, development and regulation of dependable and coordinated networks of transportation and communications systems as well as in the fast, safe, efficient, and reliable postal, transportation and communication services. One of its line agencies is the Land Transportation Office (*LTO*) which is tasked, among others, to register motor vehicles and regulate their operation.
>
> In accordance with its mandate, the LTO is required to issue motor vehicle license plates which serve to identify the registered vehicles as they ply the roads. These plates should at all times be conspicuously displayed on the front and rear portions of the registered vehicles to assure quick and expedient identification should there be a need, as in the case of motor vehicle accidents or infraction of traffic rules.
>
> Recently, the LTO formulated the Motor Vehicle License Plate Standardization Program (*MVPSP*) to supply the new license plates for both old and new vehicle registrants. On February 20, 2013, the DOTC published in newspapers of general circulation the Invitation To Bid for the supply and delivery of motor vehicle license plates for the MVPSP, to wit:
>
> > The Department of Transportation and Communications (DOTC)/Land Transportation Office (LTO) are inviting bids for its LTO MV Plate Standardization Program which involves the procurement, supply and delivery of Motor Vehicle License Plates. The program shall run from July 2013 until June 2018 when the supply and delivery of the Motor Vehicle License Plates of the LTO MV Plate Standardization program is completed.
> >
> > The LTO, through the General Appropriations Act, intends to apply the sum of Three Billion Eight Hundred Fifty One Million Six Hundred Thousand One Hundred Pesos (Php 3,851,600,100.00) being the Approved Budget for the Contract (ABC), for payment of approximately [₱]5,236,439 for Motor Vehicles (MV) and approximately [₱]9,968,017 for motorcycles (MC), under the contract for the Supply and Delivery of Motor

Vehicle License Plate for the Land Transportation Office Motor Vehicle License Plate Standardization Program or the "LTO MV Plate Standardization Program".

On February 25, 2013, the DOTC Bids and Awards Committee (*BAC*) issued BAC General Bid Bulletin No. 002-2013 setting the Submission and Opening of Bids on March 25, 2013. On February 28, 2013, the first Pre-Bid Conference was held at the offices of the BAC.

On March 6, 2013, BAC General Bid Bulletin No. 003-2013 was issued, amending paragraph 1 of the Invitation to Bid, to wit:

> The Department of Transportation and Communication (DOTC)/Land Transportation Office (LTO), through the General Appropriations Act, intends to apply the sum of Three Billion Eight Hundred Fifty One Million Six Hundred Thousand One Hundred Pesos (Php 3,851,600,100.00) being the Approved Budget for the Contract (ABC), to payments for:
>
> a. Lot 1 - Motor Vehicle License Plates (MV): 5,236,439 pairs for MV amounting to Two Billion Three Hundred Fifty Six Million Three Hundred Ninety Seven Thousand Five Hundred Fifty Pesos (Php 2,356,397,550.00)
>
> b. Lot 2 - Motorcycles Plates (MC): 9,968,017 pieces for MC amounting to One Billion Four Hundred Ninety Five Million Two Hundred Two Thousand Five Hundred Fifty Pesos (Php 1,495,202,550.00) under the contract for the Supply and Delivery of Motor Vehicle License Plate for the Land Transportation Office Motor Vehicle License Plate Standardization Program (herein after the "LTO MV Plate Standardization Program").

On March 7, 2013, the second Pre-Bid Conference was held at the office of the BAC. On March 8, 2013, BAC General Bid Bulletin No. 005-2013 extended the submission and opening of bids to April 8, 2013 to give the prospective bidders ample time to prepare their bidding documents. On April 22, 2013, the BAC again rescheduled the submission and opening of bids to May 6, 2013.

On May 6 and 7, 2013, the BAC proceeded with the opening of bids. After examining the eligibility documents and technical proposals submitted by eight (8) interested groups, only two (2) were found eligible by the DOTC, to wit:

a. The joint venture of the Netherlands' J. Knieriem B.V. Goes and local company Power Plates Development Concepts, Inc. (*JKG-Power Plates*); and

b. The joint venture of Spain's Industrias Samar't and local company Datatrail Corporation (*Industrias Samar't-Datatrial*).

As the only eligible bidders, their financial proposals were then opened to reveal that JKG-Power Plates made the lowest offers. For Lot 1, JKG-Power Plates proposed to supply the MV License Plates for a total of P1.98 Billion, while Industrias Samar't-Datatrial offered it at P2.03 Billion. On the other hand, for Lot 2, JKG-Power Plates aimed to supply the MC License Plates for a total of ₱1.196 Billion, while Industrias Samar't-Datatrial's offer was at ₱1.275 Billion.

On July 22, 2013, the DOTC issued the Notice of Award to JKG-Power Plates.[2] It was only on August 8, 2013[,] however, when JKG-Power Plates signified its *conforme* on the Notice of Award.[3] On August 12, 2013, the Notice of Award was posted in the DOTC website; while the Award Notice Abstract was posted in the Philippine Government Electronic Procurement System (*PhilGEPS*) website on even date.

Despite the notice of award, the contract signing of the project was not immediately undertaken. On February 17, 2014, the DOTC issued the Notice to Proceed[4] to JKG-Power Plates and directed it to commence delivery of the items within seven (7) calendar days from the date of the issuance of the said notice.

On February 21, 2014, the contract for MVPSP was finally signed by Jose Perpetuo M. Lotilla, as DOTC Undersecretary for Legal Affairs, and by Christian S. Calalang, as Chief Executive Officer of JKG-Power Plates. It was approved by public respondent Joseph Emilio A. Abaya (*Secretary Abaya*), as DOTC Secretary.

On March 11, 2014, the Senate Committee on Public Services, pursuant to Resolution No. 31, conducted an inquiry in aid of legislation on the reported delays in the release of motor vehicle license plates, stickers and tags by the LTO. On April 4, 2014, JKG-Power Plates delivered the first batch of plates to the DOTC/LTO.[8]

The Commission on Audit (COA) issued three Audit Observation Memoranda (AOM) to the LTO, namely: AOM

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[8] *Supra* note 3, at 277-280.

No. 14-013 dated September 2, 2014; AOM No. 14-014 dated November 17, 2014; and AOM No. 15-004 dated March 5, 2015. The COA later on issued Notice of Suspension No. 15-002-101-(14) dated April 10, 2015.[9]

The COA ultimately issued Notice of Disallowance No. 2015-001-101-(14) dated July 13, 2015 stating therein that it had disallowed the advance payment of ₱477,901,329.00 to JKG Power Plates for the supply and delivery of motor vehicle plates on the ground that the transaction had been irregular and illegal for being in violation of Sections 46(1) and 47, Book V of the *Administrative Code of 1987*; Sections 85(1) and 86 of the *Government Auditing Code of the Philippines*; DBM Circular Letter No. 2004-12 dated October 27, 2004; and the implementing rules of the *Government Procurement Reform Act.*[10]

On September 1, 2015, the petitioners instituted this special civil action. Initially, the Court consolidated this case with G.R. No. 212381 (Jacomille).[11] However, the cases were deconsolidated and treated separately[12] because G.R. No. 212381 raised legal issues centering on the procurement of the MVPSP but this case raised issues referring to the implementation of the MVPSP.

To be clear, the petitioners herein do not seek the review of the COA's issuance of Notice of Disallowance No. 2015-001-101-(14). They only assail the constitutionality of the implementation of the MVPSP using funds appropriated under the 2014 GAA, arguing that:

> A. The transfer of the appropriation for the Motor Vehicle Registration and Driver's Licensing Regulatory Services under the GAA 2014 and the application and implementation of said transferred appropriation to the LTO-MVPSP is unconstitutional.

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[9] *Rollo,* Vol. I, p. 18.

[10] *Id*. at 80-89.

[11] *Id*. at 100.

[12] *Id*. at 129.

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B. The fact that LTO-MVPSP does not appear as an item under the Motor Vehicle Registration and Driver's Licensing Regulatory Services in effect deprives the President of its veto powers under Section 27.(2) of Article VI of the Constitution and must be declared as unconstitutional.

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C. The public expenditure in the amount of [₱]3,186,008,860 for the LTO-MVPSP in the absence of an appropriation under the GAA 2013 and GAA 2014 is unconstitutional.[13]

On June 14, 2016, the Court issued a temporary restraining order enjoining the release and distribution of the license plates for both motor vehicles and motorcycles.[14]

The Office of the Solicitor General (OSG) filed its *Manifestation and Motion in Lieu of Comment*,[15] whereby it affirmed that the 2014 GAA did not contain an appropriation for the MVPSP, a fact that was known to the DOTC; that the transfer of funds allotted for ***Motor Vehicle Registration and Driver's Licensing Regulatory Services*** under the 2014 GAA to the MVPSP was contrary to the Constitution because the DOTC Secretary lacked the authority to transfer funds, and because the timing of the transfer belied the existence of savings; and that without a valid transfer or realignment, the release of funds for the MVPSP violated Section 29, Article VI of the Constitution.

In its own *Comment and Opposition-in-Intervention*,[16] JKG-Power Plates contended that the legality of the MVPSP had been settled by the Court in its decision and resolution in G.R. No. 212381 (Jacomille); and that the Court could not yet rule

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[13] *Id*. at 20-31.

[14] *Id*. at 161-164.

[15] *Id*. at 217-270.

[16] *Id*. at 480-490.

on the propriety of Notice of Disallowance No. 2015-001-101-(14) because it was still pending review by the COA.

On his part, respondent Joseph Emilio Abaya (Abaya), the former Secretary of the Department of Transportation and Communication (DOTC),[17] submitted his own *Consolidated Comment* vis-a-vis the petition and the OSG's *Manifestation and Motion in Lieu of Comment*.[18] He represented therein that *Jacomille v. Abaya* constituted *stare decisis*; that the requisites for judicial review were not present; that the amount of ₱4,483,700,000.00 under the description ***Motor Vehicle Registration and Driver's Licensing Regulatory Services*** in the 2014 GAA included the allocation for the implementation of the MVPSP; and that the use of the amount appropriated under the 2014 GAA to implement the MVPSP did not violate the Constitution.

In their *Reply to the Consolidated Comment*, the petitioners maintained that there was no sufficient appropriation in the 2013 GAA when the public bidding for the MVPSP was conducted; that any discussion on the funding of the MVPSP under the 2014 GAA had no bearing in reality on the MVPSP that was bid in 2013 without sufficient appropriation; and that the principles of *stare decisis* and *res judicata* did not apply because the ruling in G.R. No. 212381 (Jacomille) was still pending reconsideration at the time when this case was commenced.

Issues

The primordial issue is whether or not the 2014 GAA included an appropriation for the implementation of the MVPSP.

The second issue is whether or not the use of the appropriation under 2014 GAA for the implementation of the MVPSP was constitutional.[19]

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[17] Now "Department of Transportation" or "DOTr" pursuant to Republic Act No. 10844, which was signed into law on May 23, 2016.

[18] *Rollo,* Vol. II, pp. 760-828.

[19] *Rollo,* Vol. I, pp. 20-21.

Ruling of the Court

The Court affirms that there was an appropriation for the MVPSP under the 2014 GAA; and that the use of such appropriation for the implementation of the MVPSP was constitutional.

1.
The decision in G.R. No. 212381 (Jacomille) constituted *stare decisis*

In *Jacomille v. Abaya*,[20] the Court, upholding the legality of the procurement of the MVPSP, opined that whatever defects had attended its procurement were "cured" by the appropriation for the full amount of the project under the 2014 GAA. The Court specifically stated that:

> The Court agrees with the OSG that the present controversy has been rendered moot by the passage of GAA 2014. The essence of petitioner's case is that MVPSP was not sufficiently funded under GAA 2013. Because of GAA 2014, however, the amount of ₱4,843,753,000.00 had been appropriated by Congress to MVPSP before the contract was entered into on February 21, 2014.
>
> By appropriating the amount of ₱4,843,753,000.00 for MVPSP, Congress agreed with the DOTC and the LTO that the said project should be funded and implemented. Verily, the Court cannot question the wisdom of the legislative department in appropriating the full budget of MVPSP in GAA 2014.
>
> Thus, it is settled that MVPSP was adequately funded before the contract was signed by the parties. Petitioner even admits, and the Court takes judicial notice, that the new vehicle plates under MVPSP are being distributed by the LTO and released to new vehicle owners.
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>
> ***Conclusion***
>
> The Court concludes that MVPSP did not follow the timelines provided in Sec. 37 of R.A. No. 9184. As earlier recited, the project

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[20] *Supra* note 3.

did not have the adequate appropriation when its procurement was commenced on February 20, 2013, contrary to the provisions of Sections 5a, 7 and 20 of R.A. No. 9184. The DOTC and the LTO likewise failed to secure the MYOA before the start of the procurement process even though MVPSP is MYP involving MYC. All these irregularities tainted the earlier procurement process and rendered it null and void.

At the outset, however, the Court has stated that the present petition has been rendered moot and academic by the appropriation for the full amount of the project fund in GAA 2014. Said appropriation "cured" whatever defect the process had.[21]

The doctrine of *stare decisis et non quieta movere* is fully applicable. The doctrine means –

"[T]o adhere to precedents, and not to unsettle things which are established." Under the doctrine, when this Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same. The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon the judgment, which results therefrom. In this particular sense, *stare decisis* differs from *res judicata*, which is based upon the judgment.

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle

[21] *Id*. at 288-289, 310.

> of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same [issue].[22]

Even if G.R. No. 212381 (Jacomille) focused on the legality of the procurement of the MVPSP because of the inadequacy of the funding for the project under the 2013 GAA, the Court nonetheless determined and declared therein that the 2014 GAA contained an appropriation for the MVPSP, and held that the MVPSP could be validly implemented using the funds appropriated under the 2014 GAA. With G.R. No. 212381 (Jacomille) having thus fully examined and definitively ruled upon the existence of sufficient funding for the MVPSP, both for procurement and implementation, the pronouncement therein on the applicability of the appropriation under the 2104 GAA for the MVPSP – a question of law – now constituted *stare decisis* that precluded further contention on the same matter.

2.
The implementation of the MVPSP was properly funded under the appropriation for *Motor Vehicle Registration and Driver's Licensing Regulatory Services* in the 2014 GAA; hence, no unconstitutional transfer of funds took place

The following discussion will further substantiate the valid implementation of the MVPSP because no funds were unconstitutionally transferred for the purpose.

The DOTC serves as the primary policy, planning, programming, coordinating, implementing, regulating, and administrative entity of the Executive Branch of the Government in the promotion, development and regulation of dependable and coordinated transportation networks as well as fast, safe,

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[22] *Ty v. Banco Filipino Savings and Mortgage Bank,* G.R. No. 188302, June 27, 2012, 675 SCRA 339, 349-350.

efficient, and reliable transportation services.[23] As a line agency of the DOTC, the LTO is tasked, among others, with the registration of motor vehicles,[24] as well as with the preparation and issuance of motor vehicle number plates.[25]

Pursuant to its legal mandate, the LTO formulated and adopted the MVPSP in order to supply new standardized license plates for all motor vehicles. LTO Memorandum Circular No. (MC) VPT-2013-1772[26] outlined the underlying purposes behind the MVPSP, *viz*:

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[23] Title XV, Chapter 1, Sec. 2, Executive Order No. 292.

[24] Republic Act No. 4136 provides:

Sec. 14. *Issuance of Certificates of Registration*. — A properly numbered certificate of registration shall be issued for each separate motor vehicle after due inspection and payment of corresponding registration fees.

[25] Republic Act No. 4136 further provides:

Sec. 17. *Number Plates, Preparation and Issuance of.*— The Bureau of Land Transportation shall cause reflective number plates to be prepared and issued to owners of motor vehicles and trailers registered and recorded in the Bureau of Land Transportation under this Act, as amended, for a reasonable fee: *Provided*, That the fee shall be subject to the approval of the Minister of Transportation and Communications in consultation with the Minister of Finance, and, *Provided, further*, That the identification, numbers and letters of any motor vehicle number plate shall be permanently assigned to such motor vehicle during its lifetime. No motor vehicles shall be exempted from payment of registration fees. Motor vehicles for hire and privately owned motor vehicles shall bear plates of reflective materials so designed and painted with different colors to distinguish one class from another.

The transfer of motor vehicle plates whether temporary or regular, validating tags and/or stickers from one motor vehicle to another without permit from the Bureau of Land Transportation, except security number plates on authorized vehicles, shall be punishable with a fine of not less than Five Thousand Pesos (₱5,000.00) and/or imprisonment of six months at the discretion of the Court.

For purposes of renewal of registration of motor vehicles, the Director or his Deputies shall issue validating tags and stickers indicating the year of registry, charging a reasonable fee: *Provided,* That the fee shall be subject to the approval of the Minister of Transportation and Communications in consultation with the Minister of Finance.

[26] *Rollo,* Vol. I, pp. 325-328.

WHEREAS, there exist nine (9) license plates of various designs, some of which date back to 1981;

WHEREAS, there is a proliferation of dilapidated and illegible license plates and the prevalent practice of not replacing lost license plates by motor vehicle owners;

WHEREAS, there is difficulty in promptly identifying counterfeit license plates;

WHEREAS, the foregoing problems have adversely affected law enforcement and national security;

WHEREAS, in order to aid law enforcement, improve the motor vehicle registration database and enhance the institutional capability of the government, there is a need to replace all existing motor vehicle license plates with standardized license plates.[27]

In this connection, the DOTC was given the following appropriation for 2014:[28]

Operations	Personnel Services	Maintenance and Other Operating Expenses	Capital Outlays	Total
MFO 2: Motor Vehicle Registration and Driver's Licensing Regulatory Services	₱314,981,000	₱4,528,397,000	₱375,000	₱4,843,753,000

[27] *Id.* at 325.

[28] 2014 GAA, Official Gazette, December 27, 2013, p. 589, *http://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2014/DOTC/A.pdf*. Last accessed on November 28, 2017.

According to the petitioners, however, the 2014 GAA appropriated ₱4,843,753,000.00 specifically only for the **Major Final Output 2 (MFO2):** ***Motor Vehicle Registration and Driver's Licensing Regulatory Services***. They argue that considering that ***Motor vehicle plate making project*** did not appear as an item in the 2014 National Expenditure Program (2014 NEP) and the 2014 GAA, unlike in the 2013 GAA, the use of the funds allocated for the **MFO2:** ***Motor Vehicle Registration and Driver's Licensing Regulatory Services*** amounted to an unconstitutional transfer of appropriations prohibited by Article VI, Section 25 (5) of the Constitution.

The petitioners' argument lacks persuasion.

In *Goh v. Bayron*,[29] the Court explained that:

> x x x To be valid, an appropriation must indicate a specific amount and a specific purpose. However, the purpose may be specific even if it is broken down into different related sub-categories of the same nature. For example, the purpose can be to "conduct elections," which even if not expressly spelled out covers regular, special, or recall elections. The purpose of the appropriation is still specific - to fund elections, which naturally and logically include, even if not expressly stated, not only regular but also special or recall elections.[30]

The Court holds that the appropriation for motor vehicle registration naturally and logically included plate-making inasmuch as plate-making was an integral component of the registration process. Plate-making ensured that the LTO fulfilled its function to "aid law enforcement and improve the motor vehicle registration database."

The inclusion of the MVPSP in the line item for the MFO2 was further explained in ***Details of the FY 2014 Budget***: [31]

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[29] G.R. No. 212584, November 25, 2014, 742 SCRA 303.

[30] *Id*. at 335.

[31] *Details of the FY 2014 Budget*, p. 928, *http://www.dbm.gov.ph/wp-content/uploads/Details/DETAILS2014/DOTC/A.pdf.* Last accessed on November 28, 2017.

Operations	Personnel Services	Maintenance and Other Operating Expenses	Capital Outlays	Total
MFO 2: Motor Vehicle Registration and Driver's Licensing Regulatory Services	₱314,981,000	₱2,038,797,000	₱375,000	₱2,354,153,000
Motor vehicle registration system	₱148,236,000	₱1,378,945,000	₱375,000	₱1,527,556,000

Although the ***Details of the FY 2014 Budget*** seemed to present a discrepancy from the main text of the 2014 GAA given that the total allotment indicated for the MFO2 was only ₱2,354,153,000, and a separate allocation of ₱1,527,556,000 appeared for ***Motor vehicle registration system****,* the discrepancy can be easily clarified by referring to the 2014 NEP, and the letter of respondent former DOTC Secretary Joseph Emilio Aguinaldo Abaya.

To explain, the NEP provides the details of spending for each department and agency by program, activity or project (PAP), and is submitted by the President to Congress along with a budget message.[32] Upon the submission of the NEP to Congress, the NEP morphs into the General Appropriation Bill.

Under the 2014 NEP, the MFO2 had the following proposed budget:[33]

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[32] *Araullo v. Aquino III,* G.R. No. 209287, February 3, 2015, 749 SCRA 283.

[33] 2014 NEP, p. 679, *http://www.dbm.gov.ph/wp-content/uploads/NEP2014/XXIII/A.pdf*. Last accessed on November 28, 2017.

Operations by MFO	PS	MOOE	CO	TOTAL
MFO2: Motor vehicle registration and driver's licensing regulatory services	₱314,981,000	₱2,039,297,000	₱375,000	₱2,354,653,000

The proposed budget for the MFO2 stated in the 2014 NEP, which was only ₱2,354,653,000.00, would be inadequate to fund the implementation of the MVPSP. Thus, on September 1, 2013, respondent Secretary Abaya wrote to DBM Secretary Florencio B. Abad to request the modification of the 2014 NEP by way of a realignment to increase the MFO2 budget by ₱2,489,600,100.00 for the LTO Plate Standardization Program, to wit:

x x x x x x x x x

Dear Secretary Abad:

This is to request for modifications in the 2014 National Expenditure Program of the DOTC as follows:

x x x x x x x x x

2. Realignment from LRT 1 Cavite Extension (₱500,000,000). New Bohol (Panglao) International Airport Development Project (₱1,000,000,000) and LRT Line East Extension Project (₱989,600,100) for the LTO Plate Standardization Program under MFO2-Motor Vehicle Registration and Driver's Licensing Regulatory Services (Maintenance & Other Operating Expenses)....(₱2,489,600,100 Operating Expenses)

This will be for the immediate implementation of the Plate Standardization Program.

x x x x x x x x x[34]

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[34] *Rollo*, Vol. II, pp. 918-919.

The same requested increase in the LTO's 2014 budget in order to cover the MVPSP was discussed during the hearings before the Committee on Appropriations of the House of Representatives:

MR. LIMCACO. x x x x

The next slide will show you a bird's eye view of the DOTC's summary of our proposed 2014 budget. **We are proposing a total budget of 46.7 billion pesos** which is 31% higher that last year's budget of 35.7; our program budget is 11.2 billion which is 27% higher than last year, primarily, it is derived from 2.3 billion due to the reclassification of MRT3 operations and maintenance budget from where it used to be four which was project and we are reclassifying it to programs. That's the first and the second is **to increase the Land Transportation Office's MOOE due to the increase requirement of our plate standardization program**.[35]

Likewise, the records of the hearings before the Senate Committee on Finance confirmed that the purpose for the increase in the LTO's 2014 budget was the implementation of the MVPSP:

THE CHAIRMAN (SEN. OSMEÑA). All right. So why don't you present your budget?

We can do it quickly because I've already read it. But you might want just to do it for the record para nasa transcript.

MR. TAN. Yes, Your Honor.

For the year 2014, we have the proposed plans and programs. The LTO IT System, meaning, this intends to be the replacement for the current IT system which expired in February of this year. Second, we have the Motor Vehicle Inspection System. This is a program than intends to privatize the inspection of motor vehicles. It's presently with the PPP Center for the bidding and a transactional advisor. **Third, we have the Motor Vehicle License Plate Standardization Program**. The bidding for this is presently with the DOTC.

x x x x x x x x x

[35] *Id*. at 917; Transcript of the 2 September 2013 Hearing of the Committee on Appropriations of the House of Representatives, p. 5.

For our **MOOE, the increase is mainly due to two factors: the implementation of the our Plate Standardization Program**; as well as our intent to rent impounding areas for violations which require impounding of motor vehicles.[36]

That Congress approved the request for the ₱2,489,600,100.00 increase was indubitable. This is borne out by the fact that the final amount appropriated for MFO2 under the 2014 GAA aggregated to ₱4,843,753,000.00 (*i.e.*, ₱2,489,600,100.00+ ₱2,354,153,000.00). We can see that such final *increased* amount was *almost exactly identical*[37] to the total appearing in ***Details of the FY 2014 Budget***. Indeed, the legislative intent to fund the MVPSP under the 2014 GAA was manifest.

We further remind that the Court, in interpreting the 2014 GAA, should consider the figures appearing in the main text as controlling over the attached details. The general provisions of the 2014 GAA expressly so provided, *viz.*:

Sec. 3. Details of the FY 2014 Budget. The details of the budgetary programs and projects authorized herein, attached as Annex A (Volumes 1 and 2) "Details of the FY 2014 Budget" shall be considered as an integral part of this Act. Said amounts and details should be consistent with those indicated herein. **In case of discrepancy, the amounts provided herein shall be controlling**.[38]

Considering that Congress appropriated ₱4,843,753,000.00 for the MFO2 (inclusive of the requested increase of ₱2,489,600,100.00) for the purpose of funding the LTO's MVPSP, the inescapable conclusion is that the 2014 GAA itself contained the direct appropriation necessary to implement the MVPSP. Under the circumstances, there was no unconstitutional

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[36] *Id*. at 917-918; Transcript of the 23 October 2013 Hearing of the Committee of Finance of the Senate, pp. 2-3.

[37] With the very slight difference of only ₱100.00.

[38] Official Gazette, December 27, 2013, p. 1083; *http://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2014/Provision.pdf*. Last accessed on December 4, 2017.

transfer of funds because no transfer of funds was made to augment the item ***Motor Vehicle Registration and Driver's Licensing Regulatory Services*** to include the funding for the MVPSP.

3.
The item *Motor Vehicle Registration and Driver's Licensing Regulatory Services* did not constitute a lump-sum appropriation

The petitioners contended that the implementation of the MVPSP using the funds allocated under the item **MFO2: *Motor Vehicle Registration and Driver's Licensing Regulatory Services*** was unconstitutional because the item constituted a lump-sum appropriation[39] that undermined the exercise by the President of his veto power under Article VI, Section 27(2)[40] of the Constitution.

The petitioners' contention lacks merit.

Starting in 2014, the National Government adopted the system of "Performance Informed Budgeting"[41] in the preparation and presentation of the National Budget. This adoption is expressed in Section 2 of the general provisions of the 2014 GAA, to wit:

> **Sec. 2. Performance Informed Budgeting**. The amounts appropriated herein considered the physical accomplishments vis-a-vis performance targets of departments, bureaus, offices and instrumentalities of the National Government, including Constitutional Offices enjoying fiscal autonomy, SUCs and GOCCs, formulated in terms of Major Final Outputs (MFOs) and their corresponding

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[39] *Rollo,* Vol. I, p. 29.

[40] Section 27 (2). The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

[41] Performance-budgeting was introduced on June 4, 1954 in Republic Act No. 992 to give importance to functions, projects and activities in terms of expected results. See *Araullo v. Aquino III,* G.R. No. 209287, July 1, 2014, 728 SCRA 1, 86.

Performance Indicators under the Organizational Performance Indicator Framework, the results-based budgeting system being adopted in the whole of government. Accordingly, the budget allocations for the various programs and projects under this Act are informed by, among others, the actual performance of spending units in delivering their MFOs and their impact on the sectoral and societal objectives and priorities set by the National Government. This is consistent with the national policy of orienting the budget towards the achievement of explicit objectives and desire budget outcomes, as well as for greater transparency and accountability in public spending. x x x

Under the system of Performance Informed Budgeting, the PAPS are grouped or aligned into the Major Final Outputs (MFOs). However, the groupings do not mean that there are no longer any line-items. As explained in *Belgica v. Executive Secretary*,[42] line-items under appropriations should be "specific appropriations of money" that will enable the President to discernibly veto the same, to wit:

An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of Bengzon v. Secretary of Justice of the Philippine Islands, the US Supreme Court characterized an item of appropriation as follows:

> "An item of an appropriation bill obviously means an item which, in itself, is a **specific appropriation of money, not some general provision of law** which happens to be put into an appropriation bill."

On this premise, it may be concluded that an appropriation bill, **to ensure that the President may be able to exercise his power of item veto**, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.

Further, it is significant to point out that an item of appropriation must be an item characterized by **singular correspondence** – meaning an allocation of **a specified singular amount for a specified singular purpose**, otherwise known as a "line-item." This treatment not only

[42] G.R. 208566, November 19, 2013, 710 SCRA 1.

allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same.[43]

In *Araullo v. Aquino III*,[44] the Court has expounded the term *item* as the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class, *viz.*:

Indeed, Section 25(5) of the 1987 Constitution mentions of the term *item* that may be the object of augmentation by the President, the Senate President, the Speaker of the House, the Chief Justice, and the heads of the Constitutional Commissions. In *Belgica v. Ochoa*, we said that an item that is the distinct and several part of the appropriation bill, in line with the item-veto power of the President, must contain "specific appropriations of money" and not be only general provisions, x x x

x x x x x x x x x

Accordingly, the *item* referred to by Section 25(5) of the Constitution is the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class. There is no specificity, indeed, either in the Constitution or in the relevant GAAs that the object of augmentation should be the expense category or allotment class. In the same vein, the President cannot exercise his veto power over an expense category; he may only veto the item to which that expense category belongs to.[45]

The petitioners' contention that the MFO2 constituted a lump-sum appropriation[46] had no basis. The specific appropriations of money were still found under ***Details of the FY 2014 Budget*** which was attached to the 2014 GAA. They specified and contained the authorized budgetary programs and projects under the GAA, as follows:

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[43] *Id*. at 126-127.

[44] *Supra* note 32.

[45] *Id*. at 320-322.

[46] *Rollo,* Vol. I, p. 29.

Operations	Personnel Services	Maintenance and Other Operating Expenses	Capital Outlays	Total
MFO 2: Motor Vehicle Registration and Driver's Licensing Regulatory Services	₱314,981,000	₱2,038,797,000	₱375,000	₱2,354,153,000
Motor vehicle registration system[47]	₱148,236,000	₱1,378,945,000	₱375,000	₱1,527,556,000

As gleaned from the ***Details of the FY 2014 Budget***, the MFOs constituted the expense category or class; while the last and indivisible purpose of each program under the MFOs were enumerated under the ***Details of the FY 2014 Budget***. In particular, the specific purpose provided under the MFO2 was an appropriation for a ***Motor vehicle registration system***. Such specific purpose satisfied the requirement of a valid line-item that the President could discernibly veto.

WHEREFORE, the Court **DISMISSES** the petition for *certiorari* and prohibition; and **DECLARES** the use of the appropriation under ***Motor Vehicle Registration and Driver's Licensing Regulatory Services*** in the *General Appropriations Act of 2014* for the implementation of the Motor Vehicle License Plate Standardization Program of the Land Transportation Office of the Department of Transportation as **CONSTITUTIONAL**.

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[47] Aside from the ***Motor vehicle registration system***, other items enumerated under the MFO2 were allotments for ***Law enforcement and adjudication*** as well as the ***Issuance of driver's license and permits***, which are further subdivided for each region and regional office.

The **TEMPORARY RESTRAINING ORDER** issued by the Court on June 14, 2016 is **LIFTED.**

SO ORDERED.

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

Caguioa and *Martires, JJ.,* on leave.

EN BANC

[G.R. No. 221862. January 23, 2018]

GEN. EMMANUEL BAUTISTA, IN HIS CAPACITY AS THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP), GEN. EDUARDO AÑO, IN HIS CAPACITY AS COMMANDING OFFICER OF THE INTELLIGENCE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES (ISAFP), GEN. HERNANDO IRIBERRI, IN HIS CAPACITY AS COMMANDING GENERAL OF THE PHILIPPINE ARMY, GEN. BENITO ANTONIO T. DE LEON, IN HIS CAPACITY AS COMMANDING GENERAL OF THE 5TH INFANTRY DIVISION, AND PC/SUPT. MIGUEL DE MAYO LAUREL, IN HIS CAPACITY AS CHIEF OF THE ISABELA PROVINCIAL POLICE OFFICE, *petitioners, vs.* **ATTY. MARIA CATHERINE DANNUG-SALUCON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; STANDARD OF TOTALITY OF EVIDENCE FOR GRANTING THE PRIVILEGE OF

THE WRIT OF *AMPARO*; RELIANCE ON CIRCUMSTANTIAL EVIDENCE AND HEARSAY TRSTIMONY IN ENFORCED DISAPPEARANCES IS A CASE-TO-CASE BASIS.— In *Razon, Jr. v. Tagitis*, the Court adopted the standard of totality of evidence for granting the privilege of the writ of *amparo* x x x *Razon, Jr. v. Tagitis* cited the ruling in *Velasquez Rodriguez*, wherein the Inter-American Court of Human Rights (IACHR) took note that enforced disappearances could generally be proved only through circumstantial or indirect evidence or by logical inference; and that it would be impossible otherwise to prove that an individual had been made to disappear because of the State's virtual monopoly of access to pertinent evidence, or because the deliberate use of the State's power to destroy pertinent evidence was inherent in the practice of enforced disappearances. Hence, the reliance on circumstantial evidence and hearsay testimony of witnesses is permissible. x x x Under the totality of evidence standard, hearsay testimony may be admitted and appreciated depending on the facts and circumstances unique to each petition for the issuance of the writ of *amparo* provided such hearsay testimony is consistent with the admissible evidence adduced. Yet, such use of the standard does not unquestioningly authorize the automatic admissibility of hearsay evidence in all *amparo* proceedings. The matter of the admissibility of evidence should still depend on the facts and circumstances peculiar to each case. Clearly, the flexibility in the admissibility of evidence adopted and advocated in *Razon, Jr. v. Tagitis* is determined on a case-to-case basis.

2. **ID.; SUMMARY PROCEEDING; THE PETITION FOR THE WRIT OF *AMPARO* REQUIRES ONLY SUBSTANTIAL EVIDENCE TO MAKE THE APPROPRIATE INTERIM AND PERMANENT RELIEFS AVAILABLE TO THE PETITIONER.—** The petition for the writ of *amparo* partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. The *Rules of* Court and jurisprudence have long defined *substantial* evidence as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It is to be always borne in mind that such proceeding is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or to allocate liability for damages based on

preponderance of evidence, or to adjudge administrative responsibility requiring substantial evidence. x x x Verily, proceedings related to the petition for the issuance of the writ of *amparo* should allow not only direct evidence, but also circumstantial evidence. The *Rules of Court* has made no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred. One kind of evidence is not superior to the other, for the trier of facts must weigh the evidence upon admission. Only in the event of a conviction in a criminal case does the *Rules of Court* require that the circumstantial evidence should consist of a combination of several circumstances that "produce a conviction beyond reasonable doubt." Yet, under *Razon, Jr. v. Tagitis*, even hearsay testimony may be considered by the *amparo* court provided such testimony can lead to conclusions *consistent with the admissible evidence adduced*. x x x The purpose and noble objectives of the special rules on the writ of *amparo* may be rendered inutile if the rigid standards of evidence applicable in ordinary judicial proceedings were not tempered with such flexibility.

3. **ID.; ID.; WRIT OF *HABEAS DATA*; IT SEEKS TO PROTECT A PERSON'S RIGHT TO CONTROL INFORMATION REGARDING ONESELF, PARTICULARLY WHEN SUCH INFORMATION IS BEING COLLECTED THROUGH UNLAWFUL MEANS IN ORDER TO ACHIEVE UNLAWFUL ENDS.—** The writ of *habeas data* is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party. It is an independent and summary remedy designed to protect the image, privacy, honor, information, and freedom of information of an individual, and to provide a forum to enforce one's right to the truth and to informational privacy. It seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends.

4. **ID.; RULE ON THE WRIT OF *AMPARO*; IN THE PETITION FOR WRIT OF *AMPARO*, RESPONDENT WHO IS A**

PUBLIC OFFICIAL, MUST PROVE THAT EXTRAORDINARY DILIGENCE WAS OBSERVED.— Section 9 of the *Rule on the Writ of Amparo* requires the *amparo* respondent to state in the return the actions that have been or will still be taken: (a) to verify the identity of the aggrieved party; (b) to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible; (c) to identify witnesses and obtain statements from them concerning the death or disappearance; (d) to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance; (e) to identify and apprehend the person or persons involved in the death or disappearance; and (f) to bring the suspected offenders before a competent court. Section 17 of the *Rule on the Writ of Amparo* ordains the diligence required of a public official or employee who is named as a respondent in the petition for the writ of *amparo*, to wit: Section 17. Burden of Proof and Standard of Diligence Required. x x x **The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty. The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade the responsibility or liability.**

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
National Union of Peoples' Lawyers for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The privilege of the writ of *amparo* may be granted on the basis of the application of the totality of evidence standard. Such application may extend to the use of relevant circumstantial evidence. Hearsay testimony that is consistent with the admissible evidence adduced may also be admitted and appreciated. The

flexibility in the admission of evidence derives from the recognition of the State's often virtual, monopoly of access to pertinent evidence, as well as from the recognition of the deliberate use of the State's power to destroy pertinent evidence being inherent in the practice of enforced disappearances.

The Case

By petition for review on *certiorari*,[1] the petitioners, namely: Gen. Emmanuel Bautista, Gen. Eduardo Año, Gen. Hernando Iriberri, Gen. Benito Antonio T. De Leon, and Chief Supt. Miguel De Mayo Laurel, hereby assail the decision promulgated on March 12, 2015 in CA-G.R. SP No. 00053-W/A,[2] whereby the Court of Appeals (CA) granted the privilege of the writs of *amparo* and *habeas data* in favor of respondent Atty. Maria Catherine Dannug-Salucon (Atty. Salucon), the petitioner thereat, as well as the resolution promulgated on December 2, 2015,[3] whereby the CA denied their motion for reconsideration.

Antecedents

After her admission to the Philippine Bar, Atty. Salucon initially worked for the Public Attorney's Office (PAO) before resigning to become a human rights advocate. She co-founded the National Union of People's Lawyers (NUPL), a national association of human rights advocates, law students and paralegals principally engaged in public interest cases and human rights advocacy. She also established her own law firm, and undertook the defense of several political detainees, most of whom were leaders or members of peasant and other sectoral organizations and people's organizations, including human rights defenders labeled or suspected to be members of the Communist Party of the Philippines (CPP) or the New People's Army (NPA)

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[1] *Rollo*, pp. 3-36.

[2] *Id.* at 44-64; penned by Associate Justice Hakim S. Abdulwahid (retired), with Associate Justice Romeo F. Barza (now Presiding Justice) and Associate Justice Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 67-74; penned by Associate Justice Barza, with Associate Justice Magdangal M. De Leon and Associate Justice Galapate-Laguilles concurring.

who had been harassed with allegedly trumped-up charges by the agents of the Government.

For purposes of this adjudication, we adopt the CA's summary of the factual antecedents derived from Atty. Salucon's petition for the issuance of the writs of *amparo* and *habeas data*, to wit:

On March 24, 2014, [respondent] was at a lunch meeting with the relatives of a detained political prisoner client who was allegedly among several leaders of people's organizations/sectoral organizations who were falsely charged in a murder and frustrated murder case pending before the Regional Trial Court (RTC) of Lagawe, Ifugao. As they were discussing the security risks involved in the handling of the case, William Bugatti, her paralegal who was working with her on said case and who was also an activist and human rights defender, informed her that he had personally observed that surveillance was being conducted on them, including the respondent, especially during hearings for the above case. Thus, he suggested certain security measures for her own protection. [Respondent] realized the significance of Bugatti's advice when he was fatally gunned down later that evening. Parenthetically, [respondent] had asked him (sic) early that very day to identify the names, ranks and addresses of the handler/s of the prosecution witness in the Lagawe case, whom [respondent] suspected of lying on the witness stand.

That same evening, [respondent] was informed by a client x x x working as a civilian asset for the PNP Intelligence Section that the Regional Intelligence of the PNP, through the PNP Isabela Provincial Police Office, had issued a directive to PNP Burgos, Isabela, [respondent's] hometown, to conduct a background investigation on her and to confirm whether she was a "Red Lawyer". She also learned that she was being secretly followed by agents of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and that person looking like military/policemen had been asking people around her office about her whereabouts and routine. Further, respondent's name was reportedly included in the military's Watch List of so-called communist terrorist supporters rendering legal services.

On March 31, 2014, [respondent] again received a call from her confidential informant, confirming that she was indeed the subject of surveillance and that, in fact, he was tailed by ISAFP operatives when he came to [respondent's] office a few nights earlier. The day

before, the confidential informant was allegedly cornered by three ISAFP operatives who interrogated him on the purpose of his visit to respondent's office. They also asked him why respondent was acquainted with known NPA members such as Randy Malayao and Grace Bautista, and why she was always the lawyer of several suspected communist terrorists.

Upon further investigation, respondent discovered the following things:

1) On or about March 12, 19 and 21, 2014, when [respondent] had out-of-town hearings, different individuals riding on motorcycles and appearing to be soldiers approached one of the *buko* and *tupig* vendors in front of [respondent's] office. Each of them similarly questioned the vendors as to where [respondent] went, with whom, what time she usually returned to the office and who stayed behind in the office whenever she left. The vendor was surprised because the questions of the individuals were uniform on all occasions and they did not go into [respondent's] office despite the vendor's advice for them to talk to [respondent's] secretary. The above incidents were narrated to [respondent] by her driver, Regie Lutao Gamongan, who had gotten the information from the vendor.

2) On March 31, 2014, a member of the Criminal Investigation Service (CIS) of the Criminal Investigation Detection Group (CIDG) came to the law office, asking for the [respondent], but without telling her secretary why he was looking for her. Upon learning that she was not there, he left, then returned again in the afternoon. However, he left again upon finding out that [respondent] had decided to stay at the Hall of Justice longer than expected.

3) On the same day, [respondent] received a text message from the Chief Investigator of the CIDG, asking for a copy of the records of a human rights case involving three Bayan Muna members who were allegedly arbitrarily arrested on the basis of trumped up charges for two counts of frustrated murder and tortured in the hands of the 86th Infantry Battalion intelligence operatives. Said case was dismissed by the Office of the Provincial Prosecutor during preliminary investigation. [Respondent] was surprised at the request because it was

the third time that the investigator was requesting for a copy of the records and he could have easily secured the same from the Provincial Prosecutor's Office. Thus, [respondent] ignored the text message.

4) On or about 7:30 AM on April 3, 2014, while [respondent's] driver, Gamongan, was waiting for her in front of her residence at Poblacion, Burgos, Isabela, a red "Wave" motorcycle with its plate number cased inside a tinted plastic cover, making it impossible to read the same, passed by their house. The motorcycle driver, who was of medium height, with dark complexion, a haircut and demeanor of a military/policeman, with a tattoo on his left, wearing a white sando shirt and with a pistol bag slung around his shoulder, looked intently at Gamongan as he passed by, "as if he wanted to do something wrong". After passing by the [respondent's] compound, the motorcycle rider suddenly made a u-turn and stared intently at Gamongan as he passed by. As he headed towards the highway, Gamongan noticed that the man was continually observing him through the side mirror. In relation to this incident, witness Gamongan executed a Judicial Affidavit and testified during the trial proceedings.

5) On or about April 7 and 10, 2013, soldiers came to [respondent's] office in the guise of asking her to notarize documents. Since [respondent] was on out-of-town hearings, her secretary suggested names of other available notaries public. However, instead of leaving right away, the military men asked where [respondent] went and with whom, and insisted on leaving the document and picking it up later on when [respondent] arrived.

6) On April 10, 2014, a known civilian asset of the Military Intelligence Group (MIG) in Isabela, who also happened to be the "close-in" secretary and part-time driver of an uncle who was a municipal circuit judge, came to [respondent's] office, trying to convince her to meet with the head of the MIG Isabela so that the latter could explain why [respondent] was being watched. However, [respondent] declined. The following day, the civilian asset returned and told her that she was being watched by the MIG because of a land dispute which she was handling at a court in Roxas, Isabela. [Respondent] did not believe him because, just a couple of

> days prior to that date, the MIG operatives had talked to the client/confidential informant who had first informed [respondent] of the purported surveillance operations on her, asking for [respondent's] phone number and inviting him to join them as civilian asset in their anti-insurgency operations.[4]

In her petition, thus, [respondent] posited that the above-described acts, taking into consideration previous incidents where human rights lawyers, human rights defenders, political activists and defenders, were killed or abducted after being labeled as "communists" and being subjected to military surveillance, may be interpreted as preliminary acts leading to the abduction and/or killing of [respondent]. Moreover, while [respondent] admitted that the purported military and police operatives who conducted, and were still conducting, surveillance and harassments on [respondent] were still unidentified, she maintained that the same were identified as members of the ISAFP, the Philippine Army and the police, and that there was no doubt that they all acted upon orders of their superiors within the chain of command. [Respondent] reported the incidents to the NUPL and the human rights group KARAPATAN (Alliance for the Advancement of People's Rights), who agreed to help her in filing the instant petition. She also tried reporting the incidents to the National Bureau of Investigation (NBI) in Isabela, but, as of present, no positive report had been made identifying the individuals who conducted the alleged surveillance, although available information specifically pointed to the military and police units as the ones doing the surveillance.[5]

We also adopt the CA's summary of the petitioners' averments, as follows:

[Petitioners] categorically denied [respondent's] allegations that she was ever under surveillance by the military and/or police under the command of [petitioners'] officials. x x x

xxx [Petitioners] also objected to the impleading of other [petitioners] in their official capacities, allegedly under the doctrine of command responsibility. [Petitioners] maintained that the doctrine of command responsibility is a substantive rule that establishes criminal

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[4] *Id*. at 46-48.

[5] *Id*. at 48-49.

or administrative liability that is different from the purpose and approach under the Rule on the Writ of *Amparo*. Thus, it can only be invoked in a full-blown criminal or administrative case and not in a summary *amparo* proceeding.

x x x   x x x   x x x

[Petitioners] [also] alleged that upon receipt of the CA Resolution promulgated on April 22, 2014 x x x, they immediately exerted efforts to conduct an inquiry and to gather information about the purported threats on the life, liberty and security of the [respondent], to wit:

1. [Respondent] Secretary Gazmin maintained that, aside from sweeping allegations of surveillance and gathering of information made by alleged unidentified operatives from the military and the police on [respondent], the latter failed to particularize the instances of [petitioner] Sec. Gazmin's involvement in said surveillance and information gathering that would warrant his inclusion as party [respondent] in the case;

2. Upon receipt of the CA's April 22, 2014 *Resolution*, [petitioner] Gen. Emmanuel T. Bautista issued a directive to the ISAFP Chief and Commander of the 5th Infantry Division to verify the alleged surveillance operations conducted on [respondent]. In addition, he enjoined the concerned unit/s to immediately investigate and/or submit to the Higher Headquarters pertinent investigation results already conducted, if any, relative to the complained acts. Finally, [petitioner] Gen. Bautista affirmed the continuation of efforts to establish the surrounding circumstances of [respondent's] allegations and to bring those responsible, including any military personnel, if shown to have participated or to have had complicity in the commission of the alleged acts, to the court of justice.

3. [Petitioner] Major Gen. Eduardo M. Año denied the ISAFP's involvement in the alleged surveillance operations on and harassment of [respondent], and the inclusion of [petitioner's] name in an alleged watchlist. In fact, petitioner Major Gen. Año claimed that he only came to know of [respondent's] name upon receipt of the *Petition*, which he described as a mere product of a fabricated story intended to discredit him, in particular, and the ISAFP as a whole. Nonetheless, upon

obtaining a copy of the *Petition* from the Judge Advocate General and the AFP Radio Message directing his unit to submit results of the verification and inquiry on the *Petition*, [petitioner] Major Gen. Año immediately instructed the Group Commanders of the MIG 1 and 2 to coordinate closely with the military and the PNP in the area to ensure that no harassment or surveillance will be conducted on [respondent].

4. Upon receipt of [the CA *Resolution*], [petitioner] Lt. Gen. Hernando DCA Iriberri immediately informed the Army Judge Advocate, the legal arm of the Philippine Army, of the same. Having no information on the nature and circumstances surrounding the case, he coordinated with his staff to look into the matter. Even prior to the radio message from the Chief of Staff dated April 25, 2014, directing him to conduct verification on the alleged surveillance on [respondent], [petitioner] Lt. Gen. Iriberri had already taken the initiative to issue a directive to the Commanding General of the 5th Infantry Division in Gamu, lsabela, to verify and inquire into the allegations in the *Petitioner* pertaining to any operation which may have been conducted or which was in anyway (sic) related to the transgression of human rights of [respondent]. Finally, he undertook that, should there be any finding that any army personnel was involved or had committed any of the allegations in the *Petition*, such personnel shall be dealt with accordingly pursuant to existing laws and AFP regulations.

5. [Petitioner] Major Gen. Benito Antonio T. De Leon pointed out that he assumed command of the 5thInfantry (STAR) Division only on April 4, 2014, thus, the alleged surveillance operations would have been conducted prior to his assumption of said office. Since he assumed command of said unit, he had not given any orders to his men to conduct surveillance or "casing" operations against any persons within the unit's area of operation, nor did he receive any similar orders from his superiors. Nonetheless, even prior to the receipt of the directive from the higher headquarters and a copy of the *Petition*, [petitioner] Major Gen. De Leon, on his own volition and upon gaining information through print media of the filing of the *petition*, exerted efforts to verify with the intelligence unit commanders under his command whether

there was any standing instruction or order for them to conduct "casing" or surveillance operations against [respondent], to which the commanders responded in the negative. In addition, he averred that he immediately sent out radio messages to his subordinates to be law-abiding and that human rights violations have no place in the military.

6. [Petitioner] PCSupt. Miguel de Mayo Laurel clarified that he was currently the Acting Regional Director of the Police Regional Office 2, and not the Chief of the Isabela Provincial Police Office, as indicated in the *Petition*. Said *Petition* was only emailed by the Legal Service of Camp Crame to the Office of the Regional Legal Service, which provided [petitioner] PCSupt. Laurel a copy of the same. [Petitioner] PCSupt. Laurel maintained that their Office had no memorandum order relating to [respondent's] allegations, nor are there any documents in their possession concerning [respondent]. Thus, PCSupt. Laurel immediately sent a Memorandum directing the Provincial Director of the Isabela Police Provincial Office and the Chief of the Regional Intelligence Division of Police Regional Office 2, two of the units mentioned in the *Petition* which were under his operational control, to submit their comments and all relevant information and pertinent documents relative to the allegations made by [respondent] and to identify the persons who are responsible for the alleged harassment and threats on [respondent's] life, liberty and security. In response thereto, PSSupt. Ramos, Jr., the Provincial Director of the Isabela Provincial Police Office, reported that no directive was ever issued to PNP Burgos, Isabela, to conduct a background investigation and to confirm [respondent's] alleged status as a "Red Lawyer", or to threaten, intimidate or harass, and conduct continuous surveillance on her. He likewise denied that his office was in possession of any data or information which may or would likely violate [respondent's] right to privacy or be used as a justification to harass or intimidate her. Meanwhile, the Chief of the Regional Intelligence Division likewise denied the existence of any order or directive to conduct a background investigation and to confirm [respondent] as a "Red Lawyer", or that their office was in possession of any data or information on [respondent]. Finally, [petitioner] PCSupt. Laurel ordered the Isabela Provincial

> Police Office and the PSSupt. Ramos, Jr. to investigate the alleged threats on the life, liberty and security of [respondent], and to identify the persons, if any, who are responsible for the same.

[Petitioners] also noted that [respondent's] testimony consisted of mere unverified accounts from an unknown person whose identity [respondent] did not want to reveal. Moreover, [respondent's] allegations against [petitioners] and their respective offices were, at best, mere conclusions on her part, a mere impression that [respondent] had based on the physical appearance of the men looking for her, as described by her staff and according to her own personal assessment of the circumstances. However, [respondent] could not categorically identify and link any of the said individuals to [petitioners], claiming only that they were military-looking men.[6]

In substantiation of her petition, Atty. Salucon and her driver, Reggie Lutao Gamongan, testified. She also submitted documentary evidence consisting of the several criminal informations filed in various courts against her clients who were either political detainees, leaders or members of peasant and other sectoral and people's organizations, human rights defenders or suspected NPA members, and the complainants were either military or police officers and personnel.

On the part of the petitioners, Maj. Gen. De Leon and Sr. Supt. Ramos, Jr. testified. Submitted as additional evidence by the petitioners were relevant memoranda, letters, and radio messages.

On March 12, 2015, the CA rendered the assailed decision granting the privilege of the writs of *amparo* and *habeas data*,[7] disposing thusly:

Considering the foregoing, we find that petitioner has substantially proven by substantial evidence her entitlement to the writs of *amparo* and *habeas data*. Moreover, she was able to substantially establish that respondents PCSupt. Laurel, Lt. Gen. Irriberi, Major Gen. Ano and Gen. Bautista are responsible and accountable for the violation

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

[7] *Supra* note 2.

of respondent's rights to life, liberty and security on the basis of the unjustified surveillance operations and acts of harassment and intimidation committed against petitioner and/or lack of any fair and effective official investigation as to her allegations. On the other hand, while it is true that respondent Major Gen. De Leon assumed his office only after the occurrence of the subject incidents, he is still currently in the best position to conduct the necessary investigation and perform all other responsibilities or obligations required, if any, by the writ of *amparo* and *habeas data*. However, the instant petition should be dismissed as against respondent President Aquino on the ground of immunity from suit, against respondent Secretary Gazmin for lack of merit and against former PNP Dir. Gen. Purisima for being moot and academic.

WHEREFORE, the instant *Petition for the Issuance of the Writs of Amparo and Habeas Data* is **GRANTED**.

Accordingly, respondents PCSupt. Miguel De Mayo Laurel, in his capacity as Acting Regional Director of the Police Regional Office 2; Gen. Hernando Irriberi, in his capacity as the Commanding General of the Philippine Army; Gen. Eduardo Año, in his capacity as the Commanding Officer of the ISAFP; and Gen. Emmanuel Bautista, in his capacity as the Chief of Staff of the AFP, are hereby DIRECTED to exert extraordinary diligence and efforts, not only to protect the life, liberty and security of petitioner Atty. Maria Catherine Dannug-Salucon and the immediate members of her family, but also to conduct further investigation to determine the veracity of the alleged surveillance operation and acts of harassment and intimidation committed against petitioner, as well as to identify and find the person/s responsible for said violations and bring them to competent court. The foregoing respondents are likewise DIRECTED to SUBMIT a quarterly report of their actions to this Court, as a way of PERIODIC REVIEW to enable this Court to monitor the action of respondents.

The above-named respondents are likewise DIRECTED to produce and disclose to this Court any and all facts, information, statements, records, photographs, dossiers, and all other evidence, documentary or otherwise, pertaining to petitioner Atty. Maria Catherine Dannug-Salucon, for possible destruction upon order of this Court.

In the event that herein respondents no longer occupy their respective posts, the directives mandated in this Decision are enforceable against the incumbent officials holding the relevant

positions. Failure to comply with the foregoing shall constitute contempt of court.

Finally, the instant petition is hereby **DISMISSED** with respect to the following respondents: President Benigno Simeon C. Aquino III, on the ground of immunity from suits; Secretary of National Defense Voltaire Gazmin, for lack of merit; and PNP Gen. Alan Purisima, for being moot and academic.

SO ORDERED.[8]

On December 2, 2015, the CA denied the petitioners' motion for reconsideration filed by the Office of the Solicitor General,[9] ruling:

WHEREFORE, the instant Motion for Reconsideration is DENIED.

The undated Manifestation of the Solicitor General is NOTED. Accordingly, let the pleadings, orders and notices be sent to the incumbent officials holding the relevant positions in this case.

SO ORDERED.[10]

Hence, this appeal.

Issues

The petitioners submit in support of their appeal that the issues to be considered and resolved by the Court are the following:

a. Whether or not the CA erred in admitting and considering Atty. Salucon's evidence despite being largely based on hearsay information;

b. Whether or not the CA erred in finding Atty. Salucon's evidence sufficient to justify the granting of the privilege of the writs of *amparo* and *habeas data*;

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

[9] *Supra* note 3.

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

c. Whether or not the CA erred in ruling that the hearsay evidence of Atty. Salucon, assuming its admissibility for the sake of argument, satisfied the requirement of substantial evidence;

d. Whether or not the CA erred in granting the privilege of the writ of *habeas data* despite the failure of Atty. Salucon to produce evidence showing that the petitioners were in possession of facts, information, statements, photographs or documents pertaining to her; and

e. Whether or not the CA erred in directing the petitioners to exert extraordinary diligence and efforts to conduct further investigation in order to determine the veracity of Atty. Salucon's alleged harassment and surveillance.[11]

Ruling of the Court

The appeal lacks merit.

I.
The CA properly admitted Atty. Salucon's proof even if it supposedly consisted of circumstantial evidence and hearsay testimonies

In *Razon, Jr. v. Tagitis*,[12] the Court adopted the standard of totality of evidence for granting the privilege of the writ of *amparo*, explaining:

Not to be forgotten in considering the evidentiary aspects of *Amparo* petitions are the unique difficulties presented by the nature of enforced disappearances, heretofore discussed, which difficulties this Court must frontally meet if the *Amparo* Rule is to be given a chance to achieve its objectives. These evidentiary difficulties compel the Court to adopt standards appropriate and responsive to the circumstances, *without transgressing the due process requirements that underlie every proceeding.*

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[11] *Rollo*, pp. 13-14.

[12] G.R. No. 182498, December 3, 2009, 606 SCRA 598.

The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, **we reduce our rules to the most basic test of reason — *i.e.*, to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.**

We note in this regard that the use of flexibility in the consideration of evidence is not at all novel in the Philippine legal system. In child abuse cases, 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.[13]

Razon, Jr. v. Tagitis cited the ruling in *Velasquez Rodriguez*,[14] wherein the Inter-American Court of Human Rights (IACHR) took note that enforced disappearances could generally be proved only through circumstantial or indirect evidence or by logical inference; and that it would be impossible otherwise to prove that an individual had been made to disappear because of the State's virtual monopoly of access to pertinent evidence, or because the deliberate use of the State's power to destroy pertinent evidence was inherent in the practice of enforced disappearances. Hence, the reliance on circumstantial evidence and hearsay testimony of witnesses is permissible. In this respect, *Razon, Jr. v. Tagitis* observed that *Velasquez Rodriguez* rendered an

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[13] *Id.* at 689-693.

[14] I/A Court H.R. Velasquez Rodriguez Case, Judgment of July 29, 1988, Series C No. 4.

informative discussion on the appreciation of evidence to establish enforced disappearances, to wit:

> *Velasquez* stresses the lesson that flexibility is necessary under the unique circumstances that enforced disappearance cases pose to the courts; to have an effective remedy, the standard of evidence must be responsive to the evidentiary difficulties faced. On the one hand, we cannot be arbitrary in the admission and appreciation of evidence, as arbitrariness entails violation of rights and cannot be used as an effective counter-measure; we only compound the problem if a wrong is addressed by the commission of another wrong. On the other hand, we cannot be very strict in our evidentiary rules and cannot consider evidence the way we do in the usual criminal and civil cases; precisely, the proceedings before us are administrative in nature where, as a rule, technical rules of evidence are not strictly observed. Thus, while we must follow the substantial evidence rule, we must observe flexibility in considering the evidence we shall take into account.[15]

Under the totality of evidence standard, hearsay testimony may be admitted and appreciated depending on the facts and circumstances unique to each petition for the issuance of the writ of *amparo* provided such hearsay testimony is consistent with the admissible evidence adduced. Yet, such use of the standard does not unquestioningly authorize the automatic admissibility of hearsay evidence in all *amparo* proceedings. The matter of the admissibility of evidence should still depend on the facts and circumstances peculiar to each case. Clearly, the flexibility in the admissibility of evidence adopted and advocated in *Razon, Jr. v. Tagitis* is determined on a case-to-case basis.

II.
The respondent presented substantial evidence sufficient to justify the issuance of the writ of *amparo*

The petition for the writ of *amparo* partakes of a summary proceeding that requires only substantial evidence to make the

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[15] *Supra* note 12, at 691-692.

appropriate interim and permanent reliefs available to the petitioner. The *Rules of* Court and jurisprudence have long defined *substantial* evidence as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[16] It is to be always borne in mind that such proceeding is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or to allocate liability for damages based on preponderance of evidence, or to adjudge administrative responsibility requiring substantial evidence.[17]

The facts and circumstances enumerated by the respondent's petition consisted of the following:

a) She was a human rights lawyer who had taken criminal cases in which the accused were political detainees, including human rights defenders or suspected members of the CPP-NPA, and the complainants were military or police officials or personnel;

b) Her paralegal William Bugatti informed her that he had personally observed various individuals conducting surveillance operations of their movements (*i.e.*, the respondent and Bugatti) specially during the trial of a case in Ifugao involving a political detainee who was a leader of a people's or sectoral organization;

c) On the day Bugatti informed her about his observation, and she instructed him to discover the names, ranks, and addresses of the handlers of the Prosecution witness in the Ifugao case, he was fatally gunned down;

d) On the same day Bugatti was gunned down, a client of hers who was working as a civilian asset for the PNP Intelligence Section reported to her that the Regional Intelligence Unit of the PNP, through the PNP Isabela Provincial Office, issued a directive to conduct a background investigation to confirm if she was a "Red Lawyer;"

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[16] Section 5, Rule 133 of the *Rules of Court; Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

[17] *In the Matter of the Petition for the Writ of Amparo and Habeas Data in favor of Noriel Rodriguez*, G.R. No. 191805, 193160, April 16, 2013, 696 SCRA 390, 395-396.

e) Said civilian asset also informed her that she was being secretly followed by ISAFP agents, and that individuals who appeared to be military or police personnel had been asking people around her office regarding her routine and whereabouts;

f) Her secretary informed her that a member of the CIS-CIDG and some purported military personnel had gone to her law office on several occasions inquiring on her whereabouts;

g) On the same day said CIS-CIDG member went to her law office, she received a text message from the Chief Investigator of the CIDG requesting, for the third time, a copy of the records of a case she was handling;

h) Gamongan, her driver who testified in support of the petition, notified her that a vendor outside her law office had told him that several motorcycle-riding personnel of the military had approached said vendor on separate instances asking about her whereabouts and the persons she was with, her routine and schedule, as well as the persons who were left at the law office whenever she went out;

i) Gamongan also testified about an incident that occurred while he was waiting outside her house in which a motorcycle-riding man, who looked like he was military or police based on his haircut and demeanor, had driven by her house twice intently observing him and the house "as if he wanted to do something bad;"

j) A known civilian asset of the Military Intelligence Group (MIG) tried to convince her to have a meeting with MIG Isabela so that he could explain why she was being watched; and

k) Upon her refusal of the invitation to meet, the civilian asset returned the next day telling her that she was being watched by the MIG because of a land dispute case she was then handling for a client.[18]

Upon due consideration of the foregoing, the CA opined that it would be all the more difficult to obtain direct evidence to prove the respondent's entitlement to the privilege of the writ

[18] *Rollo*, pp. 56-58.

of *amparo* because no extrajudicial killing or enforced disappearance had yet occurred. Indeed, her petition referred to acts that merely threatened to violate her rights to life, liberty and security, or that could be appreciated only as preliminary steps to her probable extrajudicial killing or enforced disappearance. Even so, it would be uncharacteristic for the courts, especially this Court, to simply fold their arms and ignore the palpable threats to her life, liberty and security and just wait for the irreversible to happen to her. The direct evidence might not come at all, given the abuse of the State's power to destroy evidence being inherent in enforced disappearances or extrajudicial killings.

There was no question about the relevance of the hearsay testimony with which the respondent sought to establish some of the facts and circumstances she alleged. Flexibility needed to be adopted in the appreciation and consideration of such facts and circumstances despite hearsay being inadmissible under other judicial situations. Such flexibility accorded with the following instruction in *Razon, Jr. v. Tagitis*,[19] to wit:

> x x x In an *Amparo* petition, however, this requirement must be read in light of the nature and purpose of the proceeding, which addresses a situation of uncertainty; the petitioner may not be able to describe with certainty how the victim exactly disappeared, or who actually acted to kidnap, abduct or arrest him or her, or where the victim is detained, because these information may purposely be hidden or covered up by those who caused the disappearance. In this type of situation, to require the level of specificity, detail and precision that the petitioners apparently want to read into the *Amparo* Rule is to make this Rule a *token gesture* of judicial concern for violations of the constitutional rights to life, liberty and security.
>
> To read the Rules of Court requirement on pleadings while addressing the unique *Amparo* situation, the test in reading the petition should be to determine whether it contains the details *available to the petitioner under the circumstances*, while presenting a cause of action showing a violation of the victim's rights to life, liberty and

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[19] *Supra* note 12.

security through State or private party action. The petition should likewise be read in its totality, rather than in terms of its isolated component parts, to determine if the required elements — namely, of the disappearance, the State or private action, and the actual or threatened violations of the rights to life, liberty or security — are present.[20]

Verily, proceedings related to the petition for the issuance of the writ of *amparo* should allow not only direct evidence, but also circumstantial evidence. The *Rules of Court* has made no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred.[21] One kind of evidence is not superior to the other, for the trier of facts must weigh the evidence upon admission. Only in the event of a conviction in a criminal case does the *Rules of Court* require that the circumstantial evidence should consist of a combination of several circumstances that "produce a conviction beyond reasonable doubt."[22] Yet, under *Razon, Jr. v. Tagitis*, even hearsay testimony may be considered by the *amparo* court provided such testimony can lead to conclusions *consistent with the admissible evidence adduced*.[23] What the respondent obviously established is that the threats to her right to life, liberty and security were neither imaginary nor contrived, but real and probable. The gunning down of her paralegal Bugatti after he had relayed to her his observation that they had been under surveillance was the immediate proof of the threat. The purpose and noble objectives of the special rules on the writ of *amparo* may be rendered inutile if the rigid standards of evidence applicable in ordinary judicial proceedings were not tempered with such flexibility.

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[20] *Id*. at 653-654.

[21] *People v. Ramos*, G.R. No. 104497, January 18, 1995, 240 SCRA 191, 199.

[22] Section 4, Rule 133 of the *Rules of Court*.

[23] See also S*aez v. Macapagal-Arroyo*, G.R. No. 183533, September 25, 2012, 681 SCRA 678, 690.

III.
The CA had sufficient basis to issue the writ of *habeas data* at the respondent's behest

The writ of *habeas data* is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.[24] It is an independent and summary remedy designed to protect the image, privacy, honor, information, and freedom of information of an individual, and to provide a forum to enforce one's right to the truth and to informational privacy.[25] It seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends.[26]

In its decision, the CA, issuing the privilege of the writ of *habeas data*, directed the petitioners "*to produce and disclose to this Court any and all facts, information, statements, records, photographs, dossiers, and all other evidence, documentary or otherwise, pertaining to petitioner Atty. Maria Catherine Dannug-Salucon, for possible destruction upon order of this Court*."

The directive was factually and procedurally warranted. There was no question that the civilian asset of the PNP Intelligence Section relayed to the respondent that there was a standing order issued by the PNP Isabela Provincial Police Office to the PNP office in Burgos, Isabela to conduct a background investigation

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[24] Section 1, *Rule on the Writ of Habeas Data*, A.M. No. 08-1-16-SC (February 2, 2008).

[25] *Vivares v. St. Theresa's College,* G.R. No. 202666, September 29, 2014, 737 SCRA 92, 106.

[26] *Gamboa v. Chan*, G.R. No. 193636, July 24, 2012, 677 SCRA 385, 400.

in order to confirm if she was a "Red Lawyer." She was also under actual surveillance by different individuals who looked like they were members of the military or police establishments. The objective of these moves taken against her was unquestionably to establish a pattern of her movements and activities, as well as to obtain the records of the cases she was handling for her various clients. These and other established circumstances fully warranted within the context of the *Rule on the Writ of Habeas Data* the directive of the CA for the handing over and destruction of all information and data on her in order to protect her privacy and security.

IV.
The directive of the CA for the petitioners to exert extraordinary diligence in conducting further investigations was valid and proper

Section 9 of the *Rule on the Writ of Amparo* requires the *amparo* respondent to state in the return the actions that have been or will still be taken: (a) to verify the identity of the aggrieved party; (b) to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible; (c) to identify witnesses and obtain statements from them concerning the death or disappearance; (d) to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance; (e) to identify and apprehend the person or persons involved in the death or disappearance; and (f) to bring the suspected offenders before a competent court.

Section 17 of the *Rule on the Writ of Amparo* ordains the diligence required of a public official or employee who is named as a respondent in the petition for the writ of *amparo*, to wit:

> Section 17. Burden of Proof and Standard of Diligence Required. —The parties shall establish their claims by substantial evidence.
>
> The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade the responsibility or liability.

In *Razon, Jr. v. Tagitis,*[27] the Court spelled out the two-fold burden that the public authorities had to discharge in situations of extrajudicial killings and enforced disappearances, *viz.*:

Our intervention is in determining whether an enforced disappearance has taken place and who is responsible or accountable for this disappearance, and to define and impose the appropriate remedies to address it. The burden for the public authorities to discharge in these situations, under the Rule on the Writ of *Amparo*, is twofold. The *first* is to ensure that all efforts at **disclosure** and **investigation** are undertaken under pain of indirect contempt from this Court when governmental efforts are less than what the individual situations require. The *second* is to address the disappearance, so that the life of the victim is preserved and his or her liberty and security restored. In these senses, our orders and directives relative to the writ are continuing efforts that are not truly terminated until the extrajudicial killing or enforced disappearance is fully addressed by the complete determination of the fate and the whereabouts of the victim, by the production of the disappeared person and the restoration of his or her liberty and security, and, in the proper case, by the commencement of criminal action against the guilty parties.[28]

In *Ladaga v. Mapagu*,[29] the Court precisely indicated that the failure of an *amparo* petitioner to establish by substantial evidence the involvement of military or police forces was not a hindrance to the Court ordering the conduct of further investigations, to wit:

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[27] *Supra* note 12.

[28] *Id.* at 667-668.

[29] G.R. Nos. 189689, 189690 and 189691, November 13, 2012, 685 SCRA 322.

Emphasizing the extraordinary character of the *amparo* remedy, the Court ruled in the cases of Roxas and Razon, Jr. that an *amparo* petitioner's failure to establish by substantial evidence the involvement of government forces in the alleged violation of rights is never a hindrance for the Court to order the conduct of further investigation where it appears that the government did not observe extraordinary diligence in the performance of its duty to investigate the complained abduction and torture or enforced disappearance. The Court directed further investigation in the case of *Roxas* because the modest efforts of police investigators were effectively putting petitioner's right to security in danger with the delay in identifying and apprehending her abductors. In *Razon, Jr*., the Court found it necessary to explicitly order the military and police officials to pursue with extraordinary diligence the investigation into the abduction and disappearance of a known activist because not only did the police investigators conduct an incomplete and one-sided investigation but they blamed their ineffectiveness to the reluctance and unwillingness of the relatives to cooperate with the authorities.[30]

It should not be a surprise at all, therefore, that the CA commanded the petitioners as the *amparo* respondents "*to exert extraordinary diligence and efforts, not only to protect the life, liberty and security of petitioner Atty. Maria Catherine Dannug-Salucon and the immediate members of her family, but also to conduct further investigation to determine the veracity of the alleged surveillance operation and acts of harassment and intimidation committed against petitioner, as well as to identify and find the person/s responsible for said violations and bring them to competent court*." Needless to stress, the directive was unassailable.

The petitioners (and their successors in office), by merely issuing orders to their subordinates under their respective commands and relying on the latter's reports without conducting independent investigations on their own to determine the veracity of the respondent's allegations, did not discharge the two-fold burden. Thereby, they did not exercise extraordinary diligence. They are reminded of the following dictum regarding the conduct

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

of investigations that the Court pronounced in *In the Matter of the Petition for the Writ of Amparo and Habeas Data in favor of Noriel Rodriguez:*[31]

> More importantly, respondents also neglect to address our ruling that *the failure to conduct a fair and effective investigation similarly amounted to a violation of or threat to Rodriguez's rights to life, liberty, and security*. The writ's curative role is an acknowledgment that the violation of the right to life, liberty, and security may be caused not only by a public official's act, but also by his omission. Accountability may attach to respondents who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or *those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance. The duty to investigate must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.[32]

The petitioners' recommendation for the creation of an independent body to investigate both the harassments suffered by the respondent and the surveillance conducted against her is rejected as an act of evasion. The military and police establishments certainly had the competence and resources to conduct such investigation. Although they have predicated the recommendation on what transpired in *Roxas v. Arroyo*,[33] the awkward situation sought to be avoided under *Roxas v. Arroyo* —"wherein the very persons alleged to be involved in an enforced disappearance or extrajudicial killing are, at the same time, the very ones tasked by law to investigate the matter"[34] — did not obtain herein. For one, there was no conclusive proof of the actual authorship of the unauthorized surveillance conducted against the respondent. Thus, it was speculative on the part of the petitioners and their successors in office to simply say that the investigation, if conducted by them, would be biased or

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[31] *Supra* note 17.

[32] *Id*. at 398.

[33] G.R. No. 189155, September 7, 2010, 630 SCRA 211.

[34] *Id*. at p. 241.

one-sided. They could not escape the responsibility of conducting the investigation with extraordinary diligence by deflecting the responsibility to other investigatory agencies of the Government. The duty of extraordinary diligence pertains to them, and to no other. Moreover, their higher ranks or positions in the AFP and PNP hierarchies put them in the best position to obtain or acquire information and to ensure that the investigation to be conducted would quickly yield results in view of the investigation going to focus on their subordinate personnel.

It would be within the context of Section 9 of the *Rule on the Writ of Amparo* if the petitioners and their successors in office should instead exhibit a readiness and willingness to undertake the investigations if only to shed light soon enough on whether or not their subordinates and personnel over whom they exercised authority and control had been involved at all in the surveillance of the respondent and the making of threats against her personal security.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for its lack of merit; **AFFIRMS** the decision and resolution promulgated by the Court of Appeals on March 12, 2015 and December 2, 2015, respectively, in CA-G.R. SP No. 00053-W/A; and **REMANDS** this case to the Court of Appeals for the monitoring of the investigation to be hereafter undertaken in accordance with the decision promulgated by the Court of Appeals on March 12, 2015, and for the validation of the results of the investigation.

SO ORDERED.

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

Jardeleza, J., no part.

Caguioa and *Martires, JJ.*, on leave.

SECOND DIVISION

[A.C. No. 10684. January 24, 2018]

ILUMINADA D. YUZON, *complainant, vs.* **ATTY. ARNULFO M. AGLERON,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; FAILURE TO RETURN CLIENT'S MONEY UPON DEMAND GIVES RISE TO A PRESUMPTION THAT RESPONDENT LAWYER MISAPPROPRIATED IT; THAT HE LENT THE MONEY TO HELP ANOTHER CLIENT CANNOT EXCULPATE HIM FROM LIABILITY.—** Here, there is no question as to whether or not the respondent lawyer misappropriated the amount of money the complainant entrusted to him, since Atty. Agleron already admitted the same, in clear violation of his fiduciary duty to his client. Jurisprudence is instructive that a lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client. Proceeding from the premise that indeed Atty. Agleron merely wanted to help another client who is going through financial woes, he, nevertheless, acted in disregard of his duty as a lawyer with respect to Iluminada. Such act is a gross violation of general morality, as well as of professional ethics.
2. **ID.; ID.; ID.; FAILURE TO RETURN THE MONEY ENTRUSTED BY THE CLIENT CONSTITUTES GROSS MISCONDUCT IN VIOLATION OF SECTION 27, RULE 138 OF THE RULES OF COURT AS WELL AS RULES 16.01 AND 16.03, CANON 16 OF THE CODE OF FROFESSIONAL RESPONSIBILITY; PENALTY.—** [R]espondent also violated Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (*CPR*) when he failed to return upon demand the amount Iluminada entrusted to him[.] x x x Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship

imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. x x x [R]espondent x x x is hereby held **GUILTY** of Gross Misconduct in violation of Section 27, Rule 138 of the Rules of Court, as well as Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of one (1) year, with a **WARNING** that a repetition of the same or similar acts in the future will be dealt with more severely.

D E C I S I O N

PERALTA, *J*.:

This administrative case arose from a Complaint[1] filed by Iluminada Yuzon Vda. de Rodriguez (*Iluminada*) before the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) seeking to disbar Atty. Arnulfo M. Agleron (*Atty. Agleron*), for misappropriating the amount of ₱582,000.00 which the respondent lawyer received in trust from the complainant.

Complainant's Position

Iluminada alleged that sometime on December 23, 2008, she gave Atty. Agleron the amount of Php400,000.00, and on January 12, 2009, the amount of ₱600,000.00 in Managers Check, or the total amount of One Million Pesos (₱1,000,000.00) meant for the purchase of a house and a lot of one Alexander Tenebroso (*Alexander*), situated at Mati, Davao Oriental. However, since the intended purchase did not materialize, Iluminada demanded the return of the aforesaid amounts that she entrusted to Atty. Agleron, which the latter failed to return.

On February 24, 2009, Iluminada, through her lawyer Atty. Vivencio V. Jumamil (*Atty. Vivencio*), through a letter, demanded

[1] *Rollo,* pp. 3-4.

the return of the amount of ₱750,000.00. On March 2, 2009, Atty. Agleron replied through a letter and explained that he already returned the amount of ₱418,000.00, and that the remaining balance is only ₱582,000.00 which shall be paid upon payment of his client who borrowed the said amount for his emergency operation after an accident which took place on January 13, 2009.

Iluminada also alleged that she filed an Estafa case under Article 315, paragraph 1(B) of the Revised Penal Code against Atty. Agleron.

Respondent's Position

Atty. Agleron, among others, claims that the amount of One Million Pesos (₱1,000,000.00) was delivered to him at the Office of the Metropolitan Bank and Trust Co., Davao City upon the maturity of two (2) postdated checks issued by Reverend Pastor Apollo Quiboloy (*Rev. Quiboloy*); that the amount of ₱600,000.00 was delivered on December 15, 2008, and the other check which matured on January 15, 2009, in the amount of ₱400,000.00, were all deposited with the Philippine National Bank, Mati Branch for safekeeping, while awaiting for the finalization of the transaction with Alexander regarding the acquisition of the house subject of Civil Case No. 2287-7-2007, then pending in the Municipal Trial Court of Mati, Davao Oriental; and that the total amount of ₱438,000.00 was delivered to herein Iluminada on different occasions, as per her request, and that the balance of ₱582,000.00 was never misappropriated and/or converted to the personal use and benefit of Atty. Agleron as the said amount was borrowed for the emergency operation of a client who, at that time has nobody to turn to for help. Thus, Atty. Agleron's infraction should not warrant the imposition of the supreme penalty of disbarment. Atty. Agleron prayed that, if he be found guilty, the lesser penalty of fine should be imposed considering he rendered almost fifty (50) years of service in the government, and he is also an Officer and Member of the IBP, Davao Oriental Chapter.

Report and Recommendation

After the mandatory conference on January 17, 2012 and upon a thorough evaluation of the evidence presented by the parties in their respective position papers, the IBP-CBD submitted its Report and Recommendation, dated March 30, 2012, finding Atty. Agleron to have violated Section 27,[2] Rule 138 of the Rules of Court. Thus, the IBP Investigating Commissioner found Atty. Agleron administratively liable and recommended that he be meted the penalty of suspension from the practice of law for one (1) year. This ruling is based on Atty. Agleron's admission that he is still in possession of the amount of ₱582,000.00.

Thus, the Investigating Commissioner is convinced that Atty. Agleron is guilty of Gross Misconduct under Section 27, Rule 138 for violating his duty to his client by converting and using his client's money. Accordingly, the penalty of suspension of one (1) year from the practice of law in any court was imposed on Atty. Agleron. The various mitigating factors: that Atty. Agleron has been a Member and Officer of the IBP Davao Oriental Chapter; that he has been in the practice of law, as Assistant and later on as Provincial Fiscal; and, that he was able to retire from the government service for a span of almost fifty (50) years *sans* any disciplinary records were taken into consideration. The Commissioner also recommended the return to Iluminada of the amount of ₱582,000.00 with legal interest of twelve percent (12%) from May 5, 2010, with warning that a repetition of similar act shall be dealt with more severely.

In a Resolution[3] dated August 31, 2013, the IBP Board of Governors adopted and approved the aforesaid Report and

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[2] Sec. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court or for corruptly or willfully appearing as an attorney for a party without authority to do so.

[3] *Rollo,* pp. 147-148.

Recommendation. Atty. Agleron moved for reconsideration,[4] whereas Iluminada moved for a partial reconsideration[5] explaining that the penalty meted on Atty. Agleron dilutes the very essence of the offense charged. However, both were denied by the IBP Board of Governors through a Notice of Resolution No. XXI-2014-329[6] dated May 4, 2014.

Atty. Agleron filed with this Court an Urgent Motion for the Immediate Lifting of the Order of Suspension dated August 31, 2013,[7] and affirmed by Resolution No. XXI-2014-329[8] dated May 4, 2014, of the IBP Board of Governors. Thus, this Court issued a Resolution[9] dated January 18, 2016 referring to the Office of the Bar Confidant (*OBC*) Atty. Agleron's Urgent Motion for the Immediate Lifting of the Order of Suspension.

The Obc's Report and Recommendation

The OBC recommended that the merit of this case be finally resolved by this Court for the proper determination of the order of suspension imposed on Atty. Agleron. The OBC further recommended that Atty. Agleron's Urgent Motion for the Immediate Lifting of the Order of Suspension issued by the IBP on August 31, 2013, be denied.

The Issue before the Court

The basic issue, in this case, is the effectivity of the order of suspension imposed on Atty. Agleron.

The Court's Ruling

The Court resolves to adopt the findings of fact of the IBP.

Here, there is no question as to whether or not the respondent lawyer misappropriated the amount of money the complainant

[4] *Id.* at 152-155.

[5] *Id.* at 159-165.

[6] *Id.* at 198-199.

[7] *Id.* at 210-211.

[8] *Id.* at 198-199.

[9] *Id.* at 218-219.

entrusted to him, since Atty. Agleron already admitted the same, in clear violation of his fiduciary duty to his client. Jurisprudence is instructive that a lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client.[10]

Proceeding from the premise that indeed Atty. Agleron merely wanted to help another client who is going through financial woes, he, nevertheless, acted in disregard of his duty as a lawyer with respect to Iluminada. Such act is a gross violation of general morality, as well as of professional ethics.[11]

It is of no moment as well that Atty. Agleron's property has been subjected to a levy;[12] thus, his claim in his Urgent Motion for the Immediate Lifting of the Order of Suspension[13] that with such levy he has even overpaid Iluminada, considering that the total value of his property is ₱2,912,000.00 is bereft of merit. Levy is defined as the act or acts by which an officer of the law and court sets apart or appropriates a part or the whole of the loser's (judgment debtor's) property for the purpose of eventually conducting an execution sale to the end that the writ of execution may be satisfied, and the judgment debt, paid.[14] Thus, there must be an execution sale first before he can claim that he already complied with his legal obligation.

Further, respondent also violated Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (*CPR*) when he failed to return upon demand the amount Iluminada entrusted to him, *viz.*:

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[10] *Punla v. Maravilla-Ona,* A.C. No. 11149, August 15, 2017.

[11] *Egger v. Duran*, A.C. No. 11323, September 14, 2016, 802 SCRA 571, 579.

[12] Annex B.

[13] *Rollo*, pp. 210-211.

[14] *Dagooc v. Erlina*, 493 Phil. 563, 567 (2005).

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONIES AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

x x x x x x x x x

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. x x x[15]

Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client.[16] Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client.[17]

As to the issue on when is the effectivity of the order of suspension, the OBC aptly explained in its Report and Recommendation dated February 16, 2016, that the Court merely noted the IBP's Notice of Resolution which suspended Atty. Agleron from the practice of law and that such act does not imply the approval of the same. Here, this Court is yet to finally resolve first the merit of this administrative case. Thus, the effectivity of the order of suspension has not actually commenced and it is erroneous on Atty. Agleron's part to claim in his Motion[18] dated August 6, 2015, that he has already served the one (1) year suspension from the date of the issuance of the IBP Notice of Resolution on August 31, 2013, to August 31, 2014, is bereft of merit.

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[15] *Supra* note 3.

[16] *Navarro v. Atty. Solidum, Jr.,* 725 Phil. 358, 368 (2014).

[17] *Adrimisin v. Atty. Javier*, 532 Phil. 639, 645-646 (2006).

[18] *Rollo,* pp. 210-211.

Jurisprudence is instructive that as guardian of the legal profession, this Court has the ultimate disciplinary power over members of the Bar to ensure that the highest standards of competence, honesty and fair dealing are maintained.[19] Verily, this Court has the final say on imposition of sanctions to be imposed on errant members of both bench and bar, this Court has the prerogative of making its own findings and rendering judgment on the basis thereof rather than that of the IBP, OSG, or any lower court to whom an administrative complaint has been referred to for investigation and report.[20]

Section 12 of Rule 139-B reads:

Section 12. Review and Decision by the Board of Governors. —

x x x x x x x x x

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

WHEREFORE, respondent Atty. Arnulfo M. Agleron is hereby held **GUILTY** of Gross Misconduct in violation of Section 27, Rule 138 of the Rules of Court, as well as Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of one (1) year, with a **WARNING** that a repetition of the same or similar acts in the future will be dealt with more severely. Respondent is also **ORDERED** to **PAY** complainant the amount of Five Hundred Eighty-Two Thousand Pesos (₱582,000.00), with twelve percent (12%) interest from the date of demand until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until full payment.[21]

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[19] *Natanauan v. Tolentino*, A.C. No. 4269, October 11, 2016, 805 SCRA 571, 584-585.

[20] *Dumadag v. Atty. Lumaya*, 390 Phil. 1, 7-8 (2008).

[21] *Nacar v. Gallery Frames,* 716 Phil. 267, 283 (2013).

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of respondent; the Integrated Bar of the Philippines; and the Office of the Court Administrator, for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-17-3771. January 24, 2018]
(Formerly OCA IPI No. 11-3689-P)

JUDGE DENNIS B. CASTILLA, *complainant, vs.* **MARIA LUZ A. DUNCANO, CLERK OF COURT IV, OFFICE OF THE CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, BUTUAN, AGUSAN DEL SUR,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; DEMANDING AND RECEIVING MONEY FROM THE RELATIVES OF AN ACCUSED AND FAILURE TO ACCOUNT FOR THE COURT'S PROPERTY CONSTITUTE CONDUCT UNBECOMING OF A COURT EMPLOYEE; TWO MONTHS SUSPENSION, IMPOSED.— [I]t is immaterial whether Mrs. Duncano received the money directly from the Lamostes or indirectly through Mrs. Lebios; and whether she

returned the cash bail bond to the Lamostes. What is material is that from the circumstances of the case, Mrs. Duncano demanded, collected and received from the Lamostes the amount of PhP7,000 purportedly to be applied to Nathaniel's bail bond. x x x [A]nent the lost EPSON printer, Mrs. Duncano was not able to account for it. x x x [R]espondent x x x is declared guilty for conduct unbecoming of a court employee and is hereby **SUSPENDED** for two months.

2. **ID.; ID.; ID.; ID.; DUTIES AND IMPORTANCE OF THE POSITION OF A CLERK OF COURT, REITERATED.—** Mrs. Duncano should be reminded that the position of a clerk of court is an essential and ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice. A clerk of court's office is the nucleus of activities both adjudicative and administrative, performing, among others, the functions of keeping the records and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records.

APPEARANCES OF COUNSEL

Dionisio D. Lua for respondent.

D E C I S I O N

TIJAM, *J.*:

For the Court's resolution is an administrative complaint for Conduct Unbecoming of a Court Employee, Dishonesty, Gross Negligence, and Violation of Section 7(d) of Republic Act (RA) No. 6713,[1] against Maria Luz A. Duncano (Mrs. Duncano), Clerk of Court IV of the Municipal Trial Court in Cities (MTCC), Butuan City, Agusan del Norte.

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[1] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations thereof and for Other Purposes. [February 20, 1989.]

The Factual Antecedents

On June 22, 2011, Hon. Dennis B. Castilla (Judge Castilla), Executive Judge of the MTCC, Butuan City, Agusan del Norte, sent a letter-report[2] to the Supreme Court Deputy Court Administrator, Hon. Raul Bautista-Villanueva, reporting alleged infractions committed by Mrs. Duncano amounting to dishonesty, deceit and neglect of duty.

In his letter-report, Judge Castilla made the following allegations:

(1) Anita Lamoste (Anita) and Anniesel Lamoste (Anniesel), the mother and sister respectively of Nathaniel Lamoste (Nathaniel), aired their grievances to Judge Castilla concerning the actuations of Mrs. Duncano. They relayed to Judge Castilla that on June 10, 2011, when Criminal Case No. 43863 (for Resistance and Disobedience, Article 151 of the Revised Penal Code) against Nathaniel was still undergoing inquest proceedings, Mrs. Duncano personally and privately but under the pretext of performing her official duties, demanded and collected from them, the amount of PhP7,000 for his bail bond.

Although Mrs. Duncano eventually returned the amount to the Lamostes on June 17, 2011, she first made them beg for the return of said amount and at the same time, gave them false hopes for the release of Nathaniel.

(2) Mrs. Duncano, then MTCC Branch Clerk of Court/ Custodian, deliberately caused (probably for personal benefit or gain); or allowed (through gross negligence) the loss or continued unavailability of a Supreme Court EPSON Computer Printer (EPSON printer) having serial number DCAY 101692 JDF-2005-571-108.

(3) Mrs. Duncano, in her capacity as MTCC Clerk of Court, acted dishonestly, when she submitted a letter-explanation with a job/repair receipt thereto attached, stating that the lost printer was brought to Columbia Computer Shop in Butuan for repair

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[2] *Rollo,* pp. 19-22.

when she actually knew, or should have known, that said receipt was not for the lost printer, but was in fact that of a computer CPU which had long been brought back to MTCC.

For failing to issue an official receipt for the money she received from Anniesel and for lying about the loss of the EPSON printer, Judge Castilla averred that Mrs. Duncano failed to meet the high ethical standards expected of court employees.[3]

To substantiate his claims, Judge Castilla submitted, among others, the following documents: (1.) Affidavit of Recantation[4] dated September 21, 2011 executed, signed and thumb-marked by Anita and Anniesel; and (2.) Affidavit[5] dated September 30, 2011 executed and signed by Lanie Lebios, (Mrs. Lebios) Clerk of the Warrant Section of the Butuan City Police Station.

In their September 21, 2011 Affidavit, Anita and Anniesel recanted the Affidavit dated August 25, 2011,[6] which they allegedly signed. The truth of the matter was that they gave the amount of PhP7,000 to Mrs. Duncano, through Mrs. Lebios, for Nathaniel's provisional release. Upon learning from Prosecutor Benjamin Uy (Pros. Uy) that no bail was required, they went back to Mrs. Duncano and demanded the return of the PhP7,000. But for reasons only known to her, Mrs. Duncano did not immediately return the amount despite the repeated demands by Anniesel. She only returned the said amount when Pros. Uy's resolution was approved by City Prosecutor Guiritan.[7]

In her affidavit, Mrs. Lebios narrated that after she handed the amount of PhP7,000 to Mrs. Duncano for the posting of Nathaniel's cash bond, she had left. She neither talked to Mrs. Duncano nor followed-up the case.[8]

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[3] *Id*. at 130-134.

[4] *Id*. at 84-89.

[5] *Id*. at 90-91.

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

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

[8] *Id*. at 90.

In her comment,[9] Mrs. Duncano vehemently denied the accusations leveled against her. She claimed that she did not demand any amount of money from Anita or Anniesel, but merely advised them to file a Motion to Post Bail. She said that the amount of PhP7,000 was given by the Lamostes to Mrs. Lebios and not to her directly. Nonetheless, she claimed that she returned the PhP7,000 to Nathaniel after the trial court ordered his release without bail.[10] She further claimed that she could not have accepted money for the bailbond of Nathaniel considering that the court did not require the posting of bail for illegal gambling, which is a simple misdemeanor.[11] She contended that this issue was bloated out of proportion by the intervention and insistence of a certain Sheriff Agileo D. Demata (Sheriff Demata).

With respect to the EPSON printer, Mrs. Duncano averred that it was not lost, but rather, had been found within the premises of the MTCC of Butuan City,[12] and was declared unserviceable. She likewise averred that the EPSON printer had long been returned to the Property Division of the Supreme Court. She pointed out that Sheriff Demata twisted the facts as to the serial number[13] of the printer in order to hold her accountable.

The Report and Recommendation of the Office of the Court Administrator (OCA)

On December 19, 2012, the OCA acted on (1.) the June 22, 2011 letter-report; (2.) the September 1, 2011 Comment of Mrs. Duncano; (3.) the October 6, 2011 Reply of Judge Castilla;[14] and (4.) the October 17, 2011 Rejoinder of Mrs. Duncano.[15] Considering the serious allegations in the complaint and the

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[9] *Id*. at 25-38.

[10] *Id*. at 151.

[11] *Id*. at 133.

[12] *Id*. at 152-153.

[13] *Id*. at 154.

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

[15] *Id*. at 119-128.

counter-arguments which necessitated a thorough investigation, the OCA recommended that the complaint be referred to the Executive Judge of the Regional Trial Court (RTC), Butuan City, Agusan del Norte for investigation, report, recommendation within a period of 60 days from receipt of the records.

On May 2, 2013, Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino sent a letter[16] to Executive Judge Francisco F. Maclang (Judge Maclang) of the RTC of Butuan City, informing the latter to investigate the case pursuant to this Court's March 20, 2013 Resolution.[17]

The Report and Recommendation of the Investigating Judge

On September 16, 2013, Judge Maclang found Mrs. Duncano administratively liable for conduct unbecoming of a court employee, and accordingly, recommended that she be meted the penalty of suspension for two months.[18]

The Ruling of the Court

We affirm the Report and Recommendation of the Investigating Judge.

It must be remembered that public office is a public trust. As this Court held in *Marasigan v. Buena:*[19]

> Public officers and employees are at all times accountable to the people; must serve them with utmost responsibility, integrity, loyalty and efficiency; and must lead modest lives. [R.A. No. 6713] additionally provides that every public servant shall uphold public interest over his or her personal interest at all times. Court personnel, from the presiding judge to the lowliest clerk, are further required

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[16] *Id.* at 137.

[17] *Id.* at 135.

[18] *Rollo*, p.183.

[19] 348 Phil. 1 (1998) citing *RTC Makati Movement Against Anti-Graft and Corruption v. Dumlao*, A.M. No. P-93-820, August 9, 1995, 247 SCRA 108, 117.

to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary. Indeed, "(t)he nature and responsibilities of public officers enshrined in the 1987 Constitution and oft-repeated in our case law are not mere rhetorical words. Not to be taken as idealistic sentiments but as working standards and attainable goals that should be matched with actual deeds."[20]

With this principle in mind, We find that Mrs. Duncano has transgressed the established norm of conduct for court employees, and, thus, is administratively guilty of the offense charged.

Substantial evidence is the quantum of proof in administrative proceedings. As thoroughly explained in *Exec. Judge Eduarte v. Ibay:*[21]

> In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Substantial evidence, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the erring employee. The standard of substantial evidence is satisfied where the employer, in this case the Court, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position.[22]

The following amply established the allegations of the complainant by substantial evidence:

First, the contents of Judge Castilla's letter-report, coupled with the affidavits of Annie, Anniesel and Mrs. Lebios, point to one conclusion, *i.e.*, Mrs. Duncano demanded from Annie and Anniesel the amount of PhP7,000 for Nathaniel's cash bail bond.

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[20] *Id.* at 10.

[21] *Exec. Judge Eduarte v. Ibay*, 721 Phil. 1, 8 (2013) citing *Re*: (1) *Lost checks Issued to the Late Melliza, Former Clerk II, MCTC, Zaragga, Iloilo;* and *(2) Dropping from the Rolls of Andres*, 537 Phil. 634 (2006).

[22] *Id.* at 8.

Specifically, in his letter-report, Judge Castilla echoed the complaint of Annie and Anniesel regarding Mrs. Duncano's act of demanding and collecting from them the amount of PhP7,000 for Nathaniel's cash bail bond. According to Anita and Anniesel, they stated in their affidavit that they gave PhP7,000 to Mrs. Duncano, through Mrs. Lebios. For her part, Mrs. Lebios confirmed that she handed the said amount to Mrs. Duncano.

Against these statements, Mrs. Duncano's rebuttal was merely in the form of a denial. Although she denied that she personally received the amount of PhP7,000, Mrs. Duncano said that the cash bail bond was returned to the Lamostes only after the court ordered the release of Nathaniel. In fact, Anita maintained that Anniesel repeatedly followed-up with Mrs. Duncano the release of Nathaniel and the return of the money. Anniesel even went to Mrs. Duncano's house, but the latter simply told her to "*keep on waiting*."[23] Mrs. Duncano likewise told the Lamostes that "*she cannot as yet release the said money considering that the resolution of [Pros. Uy] has no approval yet of City Pros. Guiritan*."[24] Curiously, Mrs. Duncano failed to rebut these statements. If it was true that she did not have the PhP7,000 in her possession, Mrs. Duncano could have easily told the Lamostes such fact. But she did not give any explanation at all.

Even so, it is illogical to believe that Mrs. Duncano did not receive the cash bail bond, and yet, she was the one who returned the same. In practice, the proper procedure in the handling of cash submitted or given to the municipal court as bail bond is for the court to formally direct the clerk of court to officially receive the cash and to immediately deposit it with the persons with whom a cash bail bond may be deposited namely: the collector of internal revenue, or the provincial, city or municipal treasurer.[25]

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[23] *Rollo*, p. 86.

[24] *Id.*

[25] *Agulan, Jr. v. Judge Fernandez,* 408 Phil. 256, 265 (2001).

Thus, being the clerk of court, Mrs. Duncano had the duty to immediately deposit with authorized government depositories the cash bail bond she had collected, because she is not authorized to keep funds in her custody.[26] Unfortunately, the records are bereft of any showing that Mrs. Duncano deposited the cash bail bond. Apparently, she kept the amount for herself since she admitted that she was the one who personally returned it to the Lamostes. In her desperate attempt to exonerate herself, Mrs. Duncano could only impute malicious motive to a certain Sheriff Demata, averring that he was the one who blew this issue out of proportion.

In view of Mrs. Duncano's acts, she clearly violated the provision of Sec. 7 (d) of R.A. No. 6713, which reads, in part:

> Section 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
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> x x x x x x x x x
>
> (d) Solicitation or acceptance of gifts. - ***Public officials and employees shall not solicit or accept***, ***directly or indirectly***, any gift, gratuity, favor, entertainment, loan or ***anything of monetary value from any person in the course of their official duties*** or in connection with any operation being regulated by, ***or any transaction which may be affected by the functions of their office***. [Emphasis Supplied.]

As can be gleaned from the prohibition in Sec. 7(d), it is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated.[27] Therefore, it is immaterial whether Mrs. Duncano received the money directly from the Lamostes or indirectly through Mrs. Lebios; and whether she returned the cash bail bond to the Lamostes. What is material is that from the circumstances of the case, Mrs. Duncano demanded, collected

[26] *Office of the Court Administrator v. Gesultura*, 707 Phil. 318 (2013).

[27] *Martinez v. Villanueva*, 669 Phil. 14, 30 (2011).

and received from the Lamostes the amount of PhP7,000 purportedly to be applied to Nathaniel's bail bond.

Second, anent the lost EPSON printer, Mrs. Duncano was not able to account for it. What she attached in one of her pleadings is a photo of a printer with serial number DCAV 101692.[28] But this is not the serial number of the printer which is the subject of Judge Castilla's complaint. Instead of explaining the whereabouts of the lost printer, Mrs. Duncano blamed Sheriff Demata again. She claimed that Sheriff Demata "*twisted the fact and made an issue as to the serial number of the computer printer … the insidious sheriff made it appear as DCAV 101692 when he personally reported it to the complainant*."[29] It has been held that the conduct of court personnel, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court.[30] This conduct, Mrs. Duncano failed to observe.

Finally, Mrs. Duncano should be reminded that the position of a clerk of court is an essential and ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice. A clerk of court's office is the nucleus of activities both adjudicative and administrative, performing, among others, the functions of keeping the records and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records.[31]

As aptly explained by the Court in the case of *Atty. Reyes-Domingo v. Morales,* as thus:

"Owing to the delicate position occupied by clerks of court in the judicial system, they are required to be persons of competence, honesty

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[28] *Rollo*, p. 56.

[29] *Id.* at 154.

[30] *Sabijon, et al. v. De Juan*, 752 Phil. 110, 122 (2015).

[31] *Atty. Reyes-Domingo v. Morales*, 396 Phil. 150, 161 (2000).

and probity since they are specifically imbued with the mandate of safeguarding the integrity of the court and its proceedings, to earn and preserve respect therefor, to maintain loyalty thereto and to the judge as superior officer, to maintain the authenticity and correctness of court records and to uphold the confidence of the public in the administration of justice."[32]

WHEREFORE, based on the evidence on record, We hereby **ADOPT** the findings and recommendations of the Executive Judge Francisco F. Maclang, to the effect that respondent Mrs. Maria Luz A. Duncano is declared guilty for conduct unbecoming of a court employee and is hereby **SUSPENDED** for two months.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 188243. January 24, 2018]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **RAUL T. MANZANO, JOSE R. JUGO, RAMON H. MANZANO, and HEIRS of PILAR T. MANZANO, namely: RICARDO T. MANZANO, JR., RENATO T. MANZANO, JR., RAMON T. MANZANO, JR., RAUL T. MANZANO, RAFAEL T. MANZANO, ROBERTO T. MANZANO, and REGINA T. MANZANO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; A PARTY CANNOT INVOKE

[32] *Id.* at 161.

DEPRIVATION OF DUE PROCESS IF HE IS GIVEN THE OPPORTUNITY OF A HEARING, THROUGH EITHER ORAL ARGUMENTS OR PLEADINGS.— Petitioner submitted before the commissioners its position paper and dispensed with the need for further hearing. Its position paper contained its own valuations, comments, and objections to respondents' position paper. After the commissioners submitted their findings to the Regional Trial Court, petitioner filed its Comment to the Consolidated Commissioners' Report and objected to the recommendation made. During the hearing set by the Regional Trial Court, petitioner opted to present documentary evidence that was already incorporated in its position paper. Thus, it would have been unnecessary and repetitive for the trial court to receive the same pieces of evidence. A party cannot invoke deprivation of due process if he or she was given the opportunity of a hearing, through either oral arguments or pleadings. The hearing does not have to be a trial-type proceeding in all situations.

2. **POLITICAL LAW; INHERENT POWERS OF THE STATE; EXPROPRIATION; JUST COMPENSATION; THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION.—** The Regional Trial Court has the full discretion to make a binding decision on the value of the properties. x x x The final determination of the Regional Trial Court sitting as a Special Agrarian Court must be respected. The determination of just compensation is a judicial function which cannot be curtailed or limited by legislation, much less by an administrative rule. x x x Republic Act No. 6657, Section 57 gives to the Special Agrarian Courts the "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." In Republic Act No. 6657, Section 16(f)[,] x x x [t]he use of the word "final" in the statute should not be construed to mean that the Special Agrarian Court serves as an appellate court that must wait for the administrative agencies to finish their valuation. There is no need to exhaust administrative remedies through the Provincial Agrarian Reform Adjudicator, Regional Agrarian Reform Adjudicator, or the Department of Agrarian Reform Adjudication Board before a party can go to the Special Agrarian Court for determination of just compensation. The final decision on the value of just compensation lies solely on the Special Agrarian Court. Any

attempt to convert its original jurisdiction into an appellate jurisdiction is contrary to the explicit provisions of the law. x x x Thus, aggrieved landowners can go directly to the Special Agrarian Court that is legally mandated to determine just compensation, even when no administrative proceeding was conducted before DAR.

3. **ID.; ID.; ID.; ID.; MUST BE DETERMINED BASED ON THE FAIR MARKET VALUE OF THE PROPERTY AT THE TIME OF THE TAKING.—** Article III, Section 9 of the 1987 Constitution provides that "private property shall not be taken for public use without just compensation." This rings true for agrarian reform cases where private lands are taken by the State to be distributed to farmers who serve as beneficiaries of these lands. The amount of just compensation must be determined based on the fair market value of the property at the time of the taking. x x x The Special Agrarian Court must ensure that the amount determined at the end of the proceedings is equivalent to the fair market value of the property at the time of the taking, and not based on a strict adherence to a particular set or series of rules imposed by agricultural reform laws or administrative orders. x x x In *Apo Fruits Corporation v. Land Bank*, this Court ruled that Republic Act No. 6657, Section 17 merely provides for guideposts in ascertaining the valuations for the properties, but the courts are not precluded from considering other factors. x x x Thus, while Section 17 requires due consideration of the formula prescribed by DAR, the determination of just compensation is still subject to the final decision of the proper court.

4. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION PENDING APPEAL; MAY BE ALLOWED FOR REASONS OF EQUITY, JUSTICE AND FAIR PLAY.—** Under Rule 39, Section 2(a), a judgment appealed before the Court of Appeals may still be executed by the Regional Trial Court, provided there are good reasons for the judgment's execution. The Regional Trial Court found that respondents have been deprived of their land since 1999. They were dispossessed of the beneficial use, fruits, and income of their properties, which were taken from them 19 years ago without compensation. Thus, the denial of the execution pending appeal will infringe on their constitutional right against taking

of private property without compensation. Moreover, the just compensation for respondents' properties is not wholly payable in cash. Sixty-five percent (65%) of the payment is in bonds, which will mature only after 10 years. By then, the monetary value of the properties would no longer be the same. Denying the execution pending appeal can also stall the payment of respondents' properties through the filing of frivolous motions and appeals. x x x Thus, this Court agrees with the Regional Trial Court that "[f]or reasons of equity, justice and fair play, [respondents] should be paid to enable them to cope up with the loss they sustained as a result of the taking and for their economic survival."

5. **POLITICAL LAW; INHERENT POWERS OF THE STATE; EXPROPRIATION; JUST COMPENSATION; IMPOSITION OF LEGAL INTEREST ON JUST COMPENSATION; GRANTED BY WAY OF DAMAGES WHEN THERE IS DELAY IN THE PAYMENT OF JUST COMPENSATION.—** In *Land Bank of the Philippines v. Wycoco*, this Court held that the imposition of legal interest per annum on the just compensation due to the landowner was "in the nature of damages for delay in payment[.]" x x x In this case, the records show that petitioner already gave provisional compensation in the form of cash and bonds, based on an initial valuation of the properties. Respondents acknowledged the deposit of these amounts and later withdrew them. However, while "the deposits might have been sufficient for purposes of the immediate taking of the landholdings[, these deposits] cannot be claimed as amounts that would excuse . . . the payment of interest on the unpaid balance of the compensation due." *Wycoco* held that interest should be awarded to the landowner if there is no "prompt and valid payment." There is no prompt payment if the payment is only partial. This is consistent with this Court's ruling on the matter of interest in expropriating private property for a public use. x x x Petitioner's delay in payment makes it liable for legal interest by way of damages. The legal interest must be applied "on the unpaid balance of the compensation due." Therefore, the amount already received by respondents should be subtracted from the total judgment, and the rate of legal interest should be calculated from that amount. In view of this Court's ruling in *Nacar v. Gallery Frames*, this Court modifies the rate of legal interest to 12% per annum from the

time of taking until June 30, 2013, and 6% per annum from July 1, 2013 until fully paid.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Pejo Aquino & Associates for respondents.

D E C I S I O N

LEONEN, *J.*:

The final determination of just compensation is strictly within the original and exclusive jurisdiction of the Special Agrarian Court. In expropriation cases, a party cannot allege lack of due process when he or she was given every reasonable opportunity to present his or her case before the courts. A judgment may be executed pending appeal for good reasons, such as where the government belatedly pays the just compensation for properties taken under the Comprehensive Agrarian Reform Program. The delay in payment likewise requires the imposition of legal interest by way of damages.

This resolves a Petition for Review[1] of the Land Bank of the Philippines (Landbank) seeking to reverse and set aside the Court of Appeals May 29, 2009 Decision[2] in CA-G.R. SP No. 77295-MIN, which affirmed the Regional Trial Court June 27, 2003 Order.[3] These assailed judgments upheld the Special Agrarian Court's determination of the just compensation to be paid.

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[1] *Rollo*, pp. 11-71.

[2] *Id.* at 72-95. The Decision was penned by Associate Justice Ruben C. Ayson and concurred in by Associate Justices Edgardo A. Camello and Michael P. Elbinias of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

[3] *Id.* at 239-248. The Order was penned by Presiding Judge Reinerio (Abraham) B. Ramas of Branch 18 of the Regional Trial Court, Pagadian City.

Landbank is a government financial institution created by Republic Act No. 3844. It is one of the implementing agencies and the duly designated financial intermediary of the Comprehensive Agrarian Reform Program, and the custodian of the Agrarian Reform Fund.[4]

The Department of Agrarian Reform (DAR) is the lead agency that implements the government's agrarian reform program.[5] Republic Act No. 6657, Section 49 gives DAR "the power to issue rules and regulations," such as administrative orders and memorandum circulars, to implement the statutory provisions.

The Heirs of Pilar T. Manzano[6] (Heirs of Pilar), Raul T. Manzano (Raul), Ramon H. Manzano (Ramon), and Jose R. Jugo (Jugo) (collectively, respondents) were the owners of four (4) parcels of agricultural land[7] planted with rubber trees.[8] The lot of the Heirs of Pilar (Lot No. 426-B) measured 20.9506 hectares, Raul's lot (Lot No. 426-C) was at 22.1179 hectares, Jugo's parcel (Lot No. 426-D) was at 23.5788 hectares, and Ramon's parcel (Lot No. 426-A) was at 21.9194 hectares.[9] Situated at (Latuan) Baluno, Isabela, Basilan Province,[10] these agricultural lands had a total land area of 88.5667 hectares.

The enactment of Republic Act No. 6657, or the Comprehensive Agrarian Reform Law, has placed suitable agricultural lands under the coverage of the Comprehensive Agrarian Reform Program.[11] Under Republic Act No. 6657,

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[4] *Id*. at 14.

[5] Rep. Act No. 6657, Sec. 49.

[6] The heirs of Pilar T. Manzano are Ricardo T. Manzano, Jr., Renato T. Manzano, Jr., Ramon T. Manzano, Jr., Raul T. Manzano, Rafael T. Manzano, Roberto T. Manzano, and Regina T. Manzano. *See rollo*, p. 3.

[7] *Rollo*, p. 122, Provincial Agrarian Reform Adjudicator Decision.

[8] *Id*. at 16.

[9] *Id*. at 123, Provincial Agrarian Reform Adjudicator Decision.

[10] *Id.* at 122.

[11] *Id*. at 73.

Section 2, this government program aims to promote social justice and industrialization:

> Section 2. Declaration of Principles and Policies. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.

On January 12, 1998, respondents voluntarily offered their landholdings for agrarian reform, proposing the selling price of ₱100,000.00 per hectare to the government. They later lowered their offer to ₱83,346.76 per hectare.[12]

On April 15, 1998, DAR issued Administrative Order No. 05-98 to implement and fill in the details of Republic Act No. 6657.[13] Administrative Order No. 05-98 provides for the formula in computing just compensation for rubber lands under Republic Act No. 6657, taking into consideration the factors laid down in Section 17 of Republic Act No. 6657.[14]

DAR endorsed the matter of land valuation to Landbank.[15] According to Landbank, respondents' lands were planted with more than 30-year-old rubber trees that were no longer productive.[16] Thus, Landbank gave a lower counteroffer to respondents, ranging from ₱26,412.61 to ₱66,118.06 per hectare, as follows:[17]

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[12] *Id*.

[13] See *Land Bank of the Philippines v. Celada*, 515 Phil. 467-484 (2006) [Per *J.* Ynares-Santiago, First Division].

[14] *Rollo*, pp. 37-38.

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

[16] *Id*. at 16.

[17] *Id*. at 74.

Landowner	Description	Land Area	LBP Valuation (land area sought)	LBP Valuation (offer price)
Ramon H. Manzano	Lot No. 426-A (OCT No. P-4747)	21.9194 hectares	**20.1694 hectares**	**₱1,333,561.59** (₱66,118.06 per hectare)
Pilar T. Manzano	Lot No. 426-B (OCT No. P-4748)	20.9506 hectares	**20.8506 hectares**	**₱631,784.00** (₱30,300.52 per hectare)
Raul T. Manzano	Lot No. 426-C (OCT No. P-4750)	22.1179 hectares	**21.1627 hectares**	**₱558,962.17** (₱26,412.61 per hectare)
Jose R. Jugo	Lot No. 426-D (OCT No. P-4749)	23.5788 hectares	**22.1975 hectares**	**₱672,449.78** (₱30,293.94 per hectare)
Total		88.5667 hectares	**84.3802**	**₱3,196,757.54**

Respondents refused to accept Landbank's counteroffer.[18] On March 4, 1999, the matter of land valuation was referred to the Department of Agrarian Reform Adjudication Board for preliminary determination of just compensation.[19]

On April 15, 1999, DAR and Landbank issued Joint Memorandum Circular No. 07-99 (Revised Valuation Guidelines for Rubber Plantations) for all concerned officials and personnel of these two (2) agencies. Joint Memorandum Circular No. 07-99 provides for different valuation procedures for lands planted with rubber trees.

In view of the deadlock on the purchase price, administrative cases for land valuation were filed by respondents against

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[18] *Id.* at 123.

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

Landbank and DAR.[20] These cases were endorsed to the Provincial Agrarian Reform Adjudicator of Isabela, Basilan Province for summary administrative proceedings.[21]

During the summary administrative proceedings, respondents moved for the revaluation of their properties. The Provincial Agrarian Reform Adjudicator found merit in their motion and directed Landbank to conduct a revaluation survey.[22]

Landbank recomputed the value of the lands based on the factors provided by "the latest guidelines on land valuation."[23] Landbank's revaluation survey yielded an increase in the valuation of Lot Nos. 426-B, 426-C, and 426-D, and a decrease in that of Lot No. 426-A.[24]

The total land value, however, posted a net decrease from ₱3,196,757.54 to only ₱2,943,797.26 as follows:[25]

Landowner	**Land Area**	**LBP First Valuation**	**LBP Revaluation**
Ramon H. Manzano (Lot No. 426-A)	20.1694 hectares	₱1,333,561.59	**₱1,026,857.55**
Pilar T. Manzano (Lot No. 426-B)	20.8506 hectares	₱631,784.00	**₱646,947.32**
Raul T. Manzano (Lot No. 426-C)	21.1627 hectares	₱558,962.17	**₱591,572.25**
Jose R. Jugo (Lot No. 426-D)	22.1975 hectares	₱672,449.78	**₱678,420.14**
	Total:	**₱3,196,757.54**	**₱2,943,797.26**

[20] *Rollo*, p. 122. The cases were docketed as DARAB Case Nos. 074, 075, 076, and 077.

[21] *Id*.

[22] *Id*. at 75.

[23] *See* Revised Valuation Guidelines For Rubber Plantations (1999).

[24] *Rollo,* p. 124.

[25] *Id*. The CA Decision misquoted the Landbank revaluation value for Lot No. 426-A as ₱1,027,857.55 instead of ₱1,026,857.55. *See rollo*, p. 75.

Respondents rejected the new valuation for being "too low and unreasonable."[26] On July 22, 1999, the Provincial Agrarian Reform Adjudication Board directed the parties to submit their position papers and supporting documents.[27]

In its September 15, 1999 Decision,[28] the Provincial Agrarian Reform Adjudication Board adopted Landbank and DAR's revaluation, stating that this was done in accordance with the relevant administrative issuances on land valuations.[29] According to the Board, respondents did not present contrary evidence to reject the revaluation.[30] Thus, it fixed the aggregate amount of ₱2,944,797.26 as just compensation for the four (4) properties.[31]

The dispositive portion of the Provincial Agrarian Reform Adjudication Board September 15, 1999 Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered adopting the above latest or new valuation made by respondent [Land Bank of the Philippines] as the just compensation of the subject property, as follows:
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> ₱646,947.32 for Lot No. 426-B, OCT No. 4748;
> ₱1,027,857.55 for Lot No. 426-A, OCT No. 4747;

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[26] *Id*. at 123.

[27] *Id*. at 124.

[28] *Id*. at 122-125. The Decision was penned by Provincial Adjudicator Alfonso V. Quimiging of the Department of Agrarian Reform Provincial Adjudication Board in Isabela City, Basilan Province.

[29] *Id*. at 124. These administrative issuances are Administrative Order No. 06-92 (Rules and Regulations Amending the Valuation of Lands Voluntarily Offered and Compulsorily Acquired as Provided for Under Administrative Order No. 17, Series of 1989, As Amended, Issued Pursuant to Republic Act No. 6657 dated October 30, 1992), as amended by Administrative Order No. 11-94 (Revising the Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired as Embodied in Administrative Order No. 06, series of 1992 dated September 13, 1994), and the latest guidelines on land valuations such as Administrative Order No. 05-98 and Joint Memorandum Circular No. 07-99.

[30] *Id*. at 125.

[31] *Id*. at 76.

₱678,420.14 for Lot No. 426-D, OCT No. 4749;
₱591,572.25 for Lot No. 426-C, OCT No. 4750.

and ordering the Land Bank of the Philippines Land Valuation and Landowners Compensation Office to pay the herein landowners individually the amount corresponding to the value of their/his/her property indicated above after said landowner/landowners shall have submitted the required documents/papers in connection therewith.

No costs.

SO ORDERED.[32]

The Provincial Agrarian Reform Adjudication Board ruled that should respondents disagree with its findings, they may bring the matter to the Regional Trial Court designated as the Special Agrarian Court.[33]

On November 25, 1999, respondents filed separate complaints[34] for judicial determination and payment of just

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[32] *Id.* at 125.

[33] *Id. See* Rep. Act No. 6657, Sec. 16(f) which provides:

Section 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed

. . . .

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

See also 1994 NEW RULES OF PROCEDURE OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD, Rule XIII, Sec. 11:

Section 11. Land Valuation and Preliminary Determination and Payment of Just Compensation. — The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

[34] *Id.* at 156-160, Raul T. Manzano's Complaint, docketed as Civil Case Nos. 4192-99; *rollo*, pp. 161-165, Jose R. Jugo's Complaint, docketed as Civil Case Nos. 4193-99; *rollo*, pp. 166-170, the Heirs of Pilar T. Manzano's Complaint, docketed as Civil Case No. 4194-4199; and *rollo*, pp. 171-175, Ramon H. Manzano's Complaint, docketed as Civil Case No. 4195-99.

compensation before the Regional Trial Court sitting as Special Agrarian Court. They argued that the just compensation should not be less than ₱2,000,000.00 for each of the properties.[35]

The following is a comparative chart of the parties' respective claims:

Landowner	**Land Area**	**LBP First Valuation**	**LBP Revaluation**	**Landowners' Complaints**
Ramon H. Manzano (Lot No. 426-A)	20.1694 hectares	₱1,333,561.59	₱1,026,857.55	Not less than ₱2 million[36] (Civil Case No. 4195-99)
Pilar T. Manzano (Lot No. 426-B)	20.8506 hectares	₱631,784.00	₱646,947.32	Not less than ₱2 million[37] (Civil Case No. 4194-99)
Raul T. Manzano (Lot No. 426-C)	21.1627 hectares	₱558,962.17	₱591,572.25	Not less than ₱2 million[38] (Civil Case No. 4192-99)
Jose R. Jugo (Lot No. 426-D)	22.1975 hectares	₱672,449.78	₱678,420.14	Not less than ₱2 million[39] (Civil Case No. 4193-99)
	Total:	**₱3,196,757.54**	**₱2,943,797.26**	**Not less than ₱8 million**

The Regional Trial Court consolidated the complaints and, pursuant to Republic Act No. 6657, Section 58, appointed three

[35] *Id*. at 76.

[36] *Id*. at 174.

[37] *Id*. at 169.

[38] *Id*. at 159.

[39] *Id*. at 163.

(3) commissioners[40] to examine and ascertain the valuation of the properties.[41]

Meanwhile, Landbank deposited the judgment award, through cash and Landbank bonds, as provisional compensation for the acquired properties.[42] On January 24, 2000, Jugo received cash worth ₱262,764.39 and bonds worth ₱415,655.75,[43] while Ramon, Raul, and the Heirs of Pilar received a total of ₱966,388.67,[44] ₱93,044.71,[45] and ₱615,894.49,[46] respectively, in cash and bonds on August 22, 2001. Respondents later withdrew these amounts.[47]

On October 22, 2001, the commissioners conducted an ocular inspection of the area and interviewed some of its occupants and tenants. The tenants and tillers said that the landholdings may be sold from ₱180,000.00 to ₱200,000.00 per hectare if the rubber trees were young and productive, while the less productive land with mature rubber trees may range from ₱90,000.00 to ₱120,000.00 per hectare. The Office of the City Assessor in Isabela City, Basilan stated that the average selling price was ₱57,520.00 per hectare.[48]

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[40] *Id.* at 221. Chairman Roque C. Tan and Commissioners Buhaidin Jaafar and Sean Collantes.

[41] *Id.* at 77.

[42] *Id.* at 76.

[43] *Id.* at 127, Acknowledgement Receipt.

[44] The Acknowledgement Receipts show that Ramon H. Manzano received the following: ₱354,185.37 in cash and bonds (*Rollo*, p. 136), ₱35,418.54 in cash and bonds (*Rollo,* p. 140); ₱571,031.97 in cash and bonds (*Rollo*, p. 129); ₱5,229.81 in bonds (*Rollo*, p. 137); and ₱522.98 in bonds (*Rollo,* p. 141). The total amount is ₱966,388.67.

[45] The Acknowledgement Receipts show that Raul T. Manzano received the following: ₱57,103.19 in cash and bonds (*Rollo*, p. 131), ₱35,418.54 in cash and bonds (*Rollo*, p. 142); and ₱522.98 in bonds (*Rollo*, p. 143). The total amount is ₱93,044.71.

[46] *Rollo*, pp. 128, 130, 132-135, 138-141, 144-151, 153, 155, Acknowledgement Receipts. The total amount is ₱615,894.49.

[47] *Id.* at 76.

[48] *Id.* at 213, Consolidated Commissioners' Report.

The commissioners set the matter of land valuation for hearing on December 6, 2001. Landbank moved to reset the hearing on January 14, 2002, which the commissioners granted. The commissioners directed the parties to submit their position papers on a new scheduled hearing date.[49]

During the hearing, however, only respondents submitted their position papers. Landbank and DAR moved for a 10-day extension of time and to be allowed to incorporate in their position papers "their objections and/or comments to [respondents'] position papers."[50] The Regional Trial Court granted the motion.[51] Landbank submitted its position paper accordingly, and its computation was adopted in DAR's position paper.[52]

The parties then agreed to dispense with the need for further hearing and to submit the case for resolution, based on their position papers and supporting documents.[53]

In a Consolidated Report[54] dated June 2002, the commissioners found that the parties differed on the appraised value, the number and ages of existing trees, the total land area planted with rubber trees, the vacant spaces in the area, and the area of the land that formed part of the provincial or plantation road.[55] Their position papers show the following figures, among others:

Property	**Owner's Position**	**Landbank's Position**
Ramon H. Manzano Lot No. 426-A 20.5844 hectares	₱2,344,000.00	₱1,333,561.59

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[49] *Id*. at 84.

[50] *Id.*

[51] *Id*.

[52] *Id*. at 215, Consolidated Commissioners' Report.

[53] *Id*. at 214, Consolidated Commissioners' Report.

[54] *Id*. at 212-221.

[55] *Id*. at 214-215.

Heirs of Pilar Manzano Lot No. 426-B 20.9506 hectares	₱2,229,000.00	₱646,947.32
Raul T. Manzano Lot No. 426-C 19.7155 hectares	₱2,066,000.00	₱591,572.25
Jose R. Jugo Lot No. 426-D 22.1978 hectares	₱2,410,000.00	₱678,420.14[56]

Faced with varying data, the commissioners conducted another ocular inspection. They were joined by the Isabela City Assessor's Office Assessment Operations Officer and respondents' two (2) representatives.[57] Together, they counted "the rubber trees, determined the size of the road [and] the vacant or unplanted areas[,] and estimated the ages of the rubber trees planted in the four (4) landholdings."[58]

On January 19, 2002, the commissioners interviewed more people and other owners of rubber lands in the neighboring areas, including the chairman of Bgy. Begang, Isabela City, who was a member of the Filipino-Chinese Chamber of Commerce of Isabela City, to verify the declarations of the tenants and tillers on their first inspection.[59]

From these interviews, the commissioners gathered that rubber lands in Isabela City generally ranged from ₱120,000.00 to ₱150,000.00 per hectare if the rubber trees were productive, and ₱80,000.00 to ₱110,000.00 per hectare if the rubber trees were unproductive.[60] According to the commissioners, the figures were more or less the same fair market value derived from the persons interviewed on the first ocular inspection and from the findings of Cuervo Appraisers, Inc.,[61] a private real estate appraisal company which respondents had commissioned.[62]

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[56] *Rollo*, pp. 214-215, Consolidated Commissioners' Report.

[57] *Id*. at 215.

[58] *Id*. at 216.

[59] *Id*.

[60] *Id*.

[61] *Id*.

[62] *Id*. at 330.

Meanwhile, the commissioners stated that the recorded sales from the City Assessor's Office "normally [did] not reflect the true consideration or purchase price of the land[,]"[63] and that Landbank's valuation "[did] not represent the fair market value . . . of [the] properties."[64]

Thus, the commissioners gave the following recommendation for the payment of just compensation:

For Ramon's property, covered by Lot No. 426-A with 20.1694 hectares, the amount of ₱2,218,634.00 was to be paid,[65] as against Landbank's assessed value of ₱1,333,561.59.[66] Among the four (4) lands, Lot No. 426-A had the most number of rubber trees, around 4,050.[67] A plantation or provincial road also traversed Lot No. 426-A, providing it with consequential benefits such as ease of access.[68]

For the Heirs of Pilar's property, covered by Lot No. 426-B with 20.9506 hectares, the amount of ₱2,262,664.00 was to be paid, as against Landbank's assessed value of ₱646,947.37. The recommended amount was the prevailing market price for a land with mature rubber trees in the locality and was comparable to the prices gathered from the investigation. The commissioners disregarded respondents' new asking price of ₱200,000.00 per hectare, or a total of ₱4,190,120.00, as the rubber trees were no longer productive.[69]

For Raul's property, covered by Lot No. 426-C with 21.1627 hectares, the amount of ₱2,222,083.00 was to be paid,[70] as against

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[63] *Id*. at 218.

[64] *Id.*

[65] *Id.* at 219.

[66] *Id.* at 215.

[67] *Id*. at 219.

[68] *Id*. at 220.

[69] *Id*. at 219.

[70] *Id*. at 216.

Landbank's valuation of ₱591,572.25.[71] This value assessed by Landbank was way below the market value of ₱847,610.00, based on the 1998 tax assessment. Lot No. 426-C had 2,136 mature rubber trees that could be sold at ₱500.00 per tree, or for a total income of ₱1,068,000.00.[72] The land was also traversed by a plantation road that is now used as a national highway. The commissioners brushed aside respondents' new asking price of ₱200,000.00 per hectare or a total of ₱4,232,540.00, considering it unrealistic.[73]

For Jugo's property, covered by Lot No. 426-D with 22.1975 hectares, the amount of ₱2,397,330.00 was to be paid, as against Landbank's valuation of ₱678,420.14. The 3,061 mature rubber trees could yield an estimated income of ₱1,500,000.00 if used as substitutes for good lumber and sold at a higher price. The improvements in the property were worth ₱903,460.00, as shown in the 1998 tax declaration. Moreover, traversed by a plantation road that doubled as a provincial road, the land was only eight (8) kilometers away from Isabela City.[74]

Finally, the commissioners recommended that the amount of just compensation be reckoned from the date the properties were transferred to the Republic of the Philippines, until fully paid, and that DAR and Landbank pay all legal fees and costs of the case.[75]

Opposing the recommendations, Landbank filed its Comment to the Consolidated Commissioners' Report, in accordance with Rule 67, Section 7[76] of the Rules of

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[71] *Id*. at 217.

[72] The Consolidated Commissioners' Report erroneously computed the amount at ₱1,065,000.00 instead of ₱1,068,000.00.

[73] *Rollo*, p. 217.

[74] *Id*. at 218.

[75] *Id*. at 220.

[76] RULES OF COURT, Rule 67, Sec. 7 provides:

Section 7. Report by commissioners and judgment thereupon. — The court may order the commissioners to report when any particular portion of the real estate shall have been passed upon by them, and may render

Court.[77] Landbank argued that the just compensation "should not be more than [respondents'] sworn valuation, as shown in their tax declarations."[78] The Regional Trial Court set the matter for hearing on November 12, 2002, which was reset on January 21, 2003[79] and then on January 28, 2003.[80]

During the hearing, Landbank admitted that it intended to present all documentary evidence which it had already incorporated in its Comment to the Consolidated Commissioners' Report.[81] Thus, in its January 28, 2003 Order, the Regional Trial Court dispensed with the presentation for witnesses and considered the Consolidated Commissioners' Report submitted for resolution.[82]

In its February 12, 2003 Order,[83] the Regional Trial Court substantially adopted the Consolidated Commissioners' Report. The dispositive portion of this Order read:

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judgment upon such partial report, and direct the commissioners to proceed with their work as to subsequent portions of the property sought to be expropriated, and may from time to time so deal with such property. The commissioners shall make a full and accurate report to the court of all their proceedings, and such proceedings shall not be effectual until the court shall have accepted their report and rendered judgment in accordance with their recommendations. Except as otherwise expressly ordered by the court, such report shall be filed within sixty (60) days from the date the commissioners were notified of their appointment, which time may be extended in the discretion of the court. Upon the filing of such report, the clerk of the court shall serve copies thereof on all interested parties, with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire.

[77] *Rollo*, p. 80.

[78] *Id*. at 85.

[79] *Id*. at 80.

[80] *Id.* at 329, Reply.

[81] *Id*. at 85.

[82] *Id.* at 222. The Order was penned by Presiding Judge Reinerio (Abraham) B. Ramas of Branch 18, Regional Trial Court, Pagadian City.

[83] *Id*. at 232-235. The Order was penned by Presiding Judge Reinerio (Abraham) B. Ramas of Branch 18, Regional Trial Court, Pagadian City.

WHEREFORE, based on the foregoing, the Court exercising its discretion hereby adopts the Consolidated Commissioners' Report and Orders that just compensation of the properties of the [respondents] be paid as follows:

a) Two Million Two Hundred [Twenty-]Two Thousand and Eighty[-]Three Pesos (Php 2,222[,]083.00) for the property covered by Original Certificate of Title No. P-4750 registered in the name of the herein petitioner, Mr. Raul T. Manzano for the total acquired area consisting of 21[.]1627 hectares;

b) Two Million Three Hundred Ninety-Seven Thousand Three Hundred Thirty Pesos (Php 2,397,330.00) for the property covered by Original Certificate of Title No. P-4749 registered in the name of petitioner Jose R. Jugo, for the total acquired area consisting of 22[.]1975 hectares;

c) Two Million Two Hundred Sixty-Two Thousand Six Hundred Sixty[-]Four Pesos (Php 2,262,664.00) for the property covered by Original Certificate of Title No. P-4748 registered in the name of Pilar Manzano, for the total acquired area consisting of 20.9506 hectares; and

d) Two Million Two hundred Eighteen Thousand Six Hundred Thirty-Four Pesos (Php 2,218,634.00) for the property covered by Original Certificate of Title No. P-4747 registered in the name of Ramon Manzano for the total acquired area consisting of 20.1694 hectares[,]

or a total of Nine Million One Hundred Thousand Seven Hundred Eleven Pesos (Php 9,100,711.00) covering the just compensation or value of the four (4) properties of the [respondents].

NO COSTS.

SO ORDERED. [84]

On June 3, 2003, Landbank filed a Petition for Review before the Court of Appeals, seeking for the reversal of the Regional Trial Court February 12, 2003 Order.[85] Meanwhile, on May 9,

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[84] *Id.* at 234-235.

[85] *Id.* at 81.

2003, respondents filed a motion for execution pending appeal, pursuant to Rule 39, Section 2(a)[86] of the Rules of Court.[87]

While the petition was pending before the Court of Appeals, the Regional Trial Court issued an Order[88] dated June 27, 2003 granting the motion for execution pending appeal.[89] The Regional Trial Court found good reasons for granting the motion, as follows:

As borne out from the records and likewise admitted by respondent [Landbank] during the hearing, the ownership and possession of [respondents'] propert[ies] subject of these cases were already transferred to the government in 1999. Subsequently, the government thru respondent Department of Agrarian Reform (DAR) distributed and awarded the land to the tenant-beneficiaries of the Comprehensive Agrarian Reform Program (CARP). Consequently, petitioners were virtually *deprived not only of the beneficial use and enjoyment of the property but also of the fruits and income thereof since the land was taken in 1999*. While payment had already been made as claimed by Land Bank of the Philippines and admitted by the movants . . . [it] was nothing but only initial or preliminary in character . . .

This [c]ourt likewise takes judicial notice that payment of just compensation of properties acquired under CARP is *not* wholly payable

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[86] RULES OF COURT, Rule 39, Sec. 2 provides:

Section 2. Discretionary execution. —(a) Execution of a judgment or final order pending appeal. — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

[87] *Id*. at 240.

[88] *Id*. at 239-248. The Order was penned by Presiding Judge Reinerio (Abraham) B. Ramas of Branch 18, Regional Trial Court, Pagadian City.

[89] *Id*. at 81.

in cash compared to other expropriation cases. In this case, petitioners are to be paid partly in cash and [in Landbank] bonds as provided for under Section 18 of [Republic Act No.] 6657[,] in the proportion of thirty[-]five percent (35%) cash and sixty[-]five percent (65%) bonds. The bond has a maturity period of ten (10) years which matures annually until the tenth (10th) year.

A denial of [respondents'] Motion for Execution Pending Appeal is an infringement of their constitutional rights which in effect states that "no private property shall be taken for public use without payment of just compensation." As mentioned earlier, [the landowners'] properties were taken in 1999 or for almost four (4) years without having been justly compensated. They have since ceased to enjoy the land and its fruits considering that the tenant-beneficiaries to whom the land have been awarded are the ones enjoying their properties since 1999.

Likewise, to disallow [respondents'] Motion for Execution Pending Appeal would be prejudicial and injurious to their interest. Payment of the just compensation, which the law entitles them, can simply be stalled by frivolous appeals and other dilatory tactics causing an unwarranted delay in the payment of the just compensation. That delay may take a decade or even more[,] knowing for a fact that sixty[-]five percent (65%) of the just compensation payment shall be paid by a 10-year bond. If we add up the time difference from the period of this judgment to the date when the issue of just compensation shall have been decided with finality by the appellate courts, the delay would probably take more than one decade or so before payment can be received by petitioners. Certainly, the monetary value of [respondents'] properties as fixed by this court will no longer be the same if they are to be paid several years from the date their properties have been taken. To afford [the landowners] the true meaning and full essence of justice[,] such foreseen delay should not be allowed to take its toll at their expense and prejudice. As the saying goes: "justice delayed is justice denied."[90] (Emphasis supplied)

In the same Order, the Regional Trial Court amended the dispositive portion by adding the payment of 6% legal interest reckoned from the date of judgment or order until fully paid,[91] thus:

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[90] *Id.* at 244-246.

[91] *Id.* at 82.

WHEREFORE, let a Writ of Execution Pending Appeal be issued for the satisfaction of the awards rendered in the judgment hereof, as follows:

a) Two Million Two Hundred [Twenty-]Two Thousand and Eighty[-]Three Pesos (Php 2,2[2]2,083.00) for the property covered by the Original Certificate of Title No. P-[4]750 registered in the name of the herein petitioner, Mr. Raul T. Manzano for the total acquired area consisting of 21[.]1623 hectares;

b) Two Million Three Hundred Ninety[-]Seven Thousand Three Hundred Thirty Pesos (Php 2,397,330.00) for the property covered by the Original Certificate of Title No. P-4749 registered in the name of petitioner, Jose R. Jugo, for the total acquired area consisting of 22.1975 hectares;

c) Two Million Two Hundred Sixty[-]Two Thousand Six Hundred Sixty[-]Four Pesos (Php 2,262,664.00) for the property covered by Original Certificate of Title No. P-4748 registered in the name of Pilar Manzano, for the total acquired area of 20.9506 hectares; and

d) Two Million Two Hundred Eighteen Thousand Six Hundred Thirty[-]Four Pesos (Php 2,218,634.00) for the property covered by Original Certificate of Title No. P-4747 registered in the name of Ramon Manzano for the total acquired area consisting of 20.1694 hectares,

or a total of Nine Million One Hundred Thousand Seven Hundred Eleven Pesos (Php 9,100,711.00) covering the just compensation or value of the four (4) properties of the [respondents].

e) All the aforesaid are to be paid jointly and severally by Respondents Land Bank of the Philippines and the Department of Agrarian Reform with six percent (6%) legal interest reckoned from the date of judgment/order until paid, which award or satisfaction of judgment shall be deposited with the Clerk of Court . . . which shall in turn be turned over to [respondents].

SO ORDERED. [92]

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[92] *Id*. at 247-248.

Landbank moved to reconsider the June 27, 2003 Order but was denied.[93]

On October 17, 2003, Landbank filed an Urgent Verified Motion/Application for the Issuance of Temporary Restraining Order/Preliminary Injunction[94] (Urgent Motion) before the Court of Appeals. Landbank argued that the Regional Trial Court June 27, 2003 Order violated judicial courtesy, in light of the Court of Appeals' assumption of jurisdiction over the petition.[95]

On January 14, 2004, the Court of Appeals resolved[96] to deny Landbank's Urgent Motion. Landbank did not appeal the Court of Appeals January 14, 2004 Resolution before this Court.

Meanwhile, on October 28, 2005, the Regional Trial Court found[97] Landbank liable for indirect contempt for failing to comply with the writ of execution pending appeal. The Regional Trial Court maintained that it had the residual authority to resolve an incident that was perfected before the appeal was given due course.[98] The dispositive portion of the October 28, 2005 Order read:

> WHEREFORE, guided by the aforegoing findings and disquisitions, defendant Land Bank of the Philippines is found Guilty of Indirect Contempt and its President Gilda Pico, is held liable for defendant[']s Corporate Acts is hereby Sentenced to Imprisonment until Compliance [with] the Writ of Execution issued by the Court.
>
> For purposes of the enforcement of the order[,] the NATIONAL BUREAU OF INVESTIGATION (NBI) is directed to coordinate and assist the sheriff of this court in enforcing the order.

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[93] *Id*. at 82.

[94] *Id.* at 249-262.

[95] *Id.* at 250.

[96] *Id*. at 263-264. The Resolution, docketed as CA-G.R. SP No. 77295, was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam of the Third Division, Court of Appeals, Manila.

[97] *Id*. at 280-282. The Order was penned by Presiding Judge Reinerio (Abraham) B. Ramas of Branch 18, Regional Trial Court, Pagadian City.

[98] *Id*. at 280.

SO ORDERED.[99]

Landbank moved for reconsideration, which the Regional Trial Court denied[100] on March 15, 2006. The Regional Trial Court stated that "there is no legal impediment to enforce the Writ of Execution Pending Appeal and [that the] refusal by Land Bank of the Philippines . . . to obey Court processes . . . is sanctioned by the Rules on Contempt."[101]

In its May 29, 2009 Decision, the Court of Appeals denied[102] Landbank's appeal and affirmed the ruling of the Regional Trial Court. It held that Landbank was given a full and fair opportunity to be heard.[103] Moreover, the Consolidated Commissioners' Report was a mere recommendation, which the trial court may adopt, modify, or disregard.[104] Thus, the Court of Appeals agreed with the Regional Trial Court that there was no need to conduct further hearing.[105]

For the Court of Appeals, the factual findings of the commissioners, having specialized skills and knowledge, as well as those of the Regional Trial Court, having conducted its own investigation, must not be disturbed as Landbank failed to effectively rebut their findings.[106]

According to the Court of Appeals:

Clearly, the Commissioner's Report was representative of the true value of just compensation, namely: range of prices of like properties; the value of recorded sales of rubber lands per record . . . of the City

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[99] *Id.* at 282, Regional Trial Court Order dated October 28, 2005.

[100] *Id.* at 285. The Order was penned by Presiding Judge Reinerio (Abraham) B. Ramas of Branch 18, Regional Trial Court, Pagadian City.

[101] *Id.*

[102] *Id.* at 72-95.

[103] *Id.* at 84.

[104] *Id.* at 222, Regional Trial Court Order dated January 28, 2003.

[105] *Id.* at 80.

[106] *Id.* at 93-95.

Assessor's Office of Isabela averaging at ₱57,520.00/hectare; the Cuervo's appraisal which reveals that the average selling price of agricultural lands with unproductive rubber trees ranges from ₱ 102,000.00 to ₱108,000.00/hectare using different approaches to valuation (₱102,000.00/hectare using the Market Data Approach, ₱ 108,000.00/hectare using the Income Approach, or ₱104,804.76/ hectare using the Residual Value Approach) and the nature and actual use of the land. Moreover, Commissioners considered the number of mature rubber trees planted, which could easily be sold at P 500.00/ tree, aside from the fact that the property is traversed by a plantation road which is now used as a national highway.[107]

Landbank elevated the case before this Court.[108]

Petitioner Landbank alleges that the Court of Appeals erred in accepting the commissioners' recommendation without conducting a hearing,[109] in directing DAR and Landbank to pay 6% legal interest,[110] and in granting the motion for execution pending appeal without good reasons.[111] It also argues that the commissioners disregarded the applicability of Republic Act No. 6657, Administrative Order No. 05-98, and Joint Memorandum Circular No. 07-99.[112] Thus, it avers that the Court of Appeals should not have sustained the Regional Trial Court February 12, 2003 Order, which adopted the Consolidated Commissioners' Report.[113]

On the other hand, respondents assert[114] that "petitioner was given the opportunity to ventilate [its] objections"[115] to the Consolidated Commissioners' Report. First, it was allowed to

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[107] *Id*. at 90.

[108] *Id*. at 11-71.

[109] *Id*. at 28.

[110] *Id.* at 29.

[111] *Id*. at 30.

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

[113] *Id*. at 41.

[114] *Id*. at 304-312.

[115] *Id*. at 306.

submit its position paper and incorporate its comments or objections to respondents' position paper.[116] Second, petitioner was able to file its Comment to the Consolidated Commissioner's Report, part of which was documentary evidence that it admittedly intended to present.[117] The Consolidated Commissioners' Report also considered the factors mentioned by Republic Act No. 6657 in relation to Administrative Order No. 05-98.[118]

Respondents add that the Regional Trial Court June 27, 2003 Order directing the payment of 6% legal interest and granting execution pending appeal was already resolved by the Court of Appeals. Before this Court, Landbank fails to appeal this Order within the reglementary period; thus, it has become final and executory.[119]

In its Reply,[120] petitioner reiterates that there was no hearing on the Consolidated Commissioners' Report, which would have allowed it to cross-examine the commissioners and verify the correctness of just compensation.[121] Petitioner also argues that the Regional Trial Court committed grave abuse of discretion in issuing the June 27, 2003 Order, considering that an appeal was already pending before the Court of Appeals.[122]

This Court resolves the following issues:

First, whether or not petitioner Land Bank of the Philippines was afforded due process;

Second, in determining just compensation, whether or not the Regional Trial Court can simply adopt the Consolidated

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[116] *Id*. at 84.

[117] *Id*. at 85.

[118] *Id.* at 306-307.

[119] *Id*. at 311.

[120] *Id*. at 326-346.

[121] *Id*. at 332.

[122] *Id*. at 339.

Commissioners' Report, and whether or not it is mandated to follow the formula prescribed under Republic Act No. 6657, Section 17 in relation to Administrative Order No. 05-98 and Joint Memorandum Circular No. 07-99;

Third, whether or not there may be execution pending appeal; and

Finally, whether or not the 6% legal interest should be imposed.

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Petitioner was not deprived of due process since it was given every reasonable opportunity to ventilate its claims and objections.

Petitioner submitted before the commissioners its position paper and dispensed with the need for further hearing. Its position paper contained its own valuations, comments, and objections to respondents' position paper.[123]

After the commissioners submitted their findings to the Regional Trial Court, petitioner filed its Comment to the Consolidated Commissioners' Report and objected to the recommendations made.[124]

During the hearing set by the Regional Trial Court, petitioner opted to present documentary evidence that was already incorporated in its position paper. Thus, it would have been unnecessary and repetitive for the trial court to receive the same pieces of evidence.[125]

A party cannot invoke deprivation of due process if he or she was given the opportunity of a hearing, through either oral arguments or pleadings.[126] The hearing does not have to be a

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[123] *Id*. at 84.

[124] *Id*. at 85.

[125] *Id*.

[126] *Alauya Jr. v. Commission on Elections*, 443 Phil. 893, 902 (2003) [Per *J*. Carpio, *En Banc*].

trial-type proceeding in all situations.[127] In *National Power Corporation v. Spouses Chiong*:[128]

> A formal hearing or trial was not required for the petitioner to avail of its opportunity to object and oppose the majority report. Petitioner could have filed a motion raising all possible grounds for objecting to the findings and recommendations of the commissioners. It could have moved the trial court to remand the report to the commissioners for additional facts. Or it could have moved to expunge the majority report, for reasons petitioner could muster. Petitioner, however, failed to seize the opportunity to register its opposition or objections before the trial court. It is a bit too late in the day now to be asking for a hearing on the pretext that it had not been afforded due process.[129]

II.A

The Regional Trial Court has the full discretion to make a binding decision on the value of the properties.[130]

Under Rule 67, Section 8 of the Rules of Court, the Regional Trial Court may accept the Consolidated Commissioners' Report, recommit it to the same commissioners for further report, set it aside and appoint new commissioners, or accept only a part of it and reject the other parts.

The final determination of the Regional Trial Court sitting as a Special Agrarian Court must be respected.

The determination of just compensation is a judicial function which cannot be curtailed or limited by legislation,[131] much less by an administrative rule. In *Export Processing Zone Authority v. Dulay*:[132]

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[127] *Republic v. Sandiganbayan*, 461 Phil. 598, 613 (2003) [Per *J*. Corona, *En Banc*].

[128] 452 Phil. 649 (2003) [Per *J*. Quisumbing, Second Division].

[129] *Id*. at 659.

[130] *Rollo*, p. 91.

[131] *National Power Corporation v. Spouses Zabala*, 702 Phil. 491, 499-501 (2013) [Per *J*. Castillo, Second Division].

[132] 233 Phil. 313 (1987) [Per *J*. Gutierrez, Jr., *En Banc*].

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, *no* statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[133]

Republic Act No. 6657, Section 57 gives to the Special Agrarian Courts the "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." In Republic Act No. 6657, Section 16(f):

Section 16. *Procedure for Acquisition and Distribution of Private Lands*. – For purposes of acquisition of private lands, the following procedures shall be followed:

. . . .

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for *final determination* of just compensation. (Emphasis supplied)

The use of the word "final" in the statute should not be construed to mean that the Special Agrarian Court serves as an appellate court that must wait for the administrative agencies to finish their valuation.[134]

There is no need to exhaust administrative remedies through the Provincial Agrarian Reform Adjudicator, Regional Agrarian Reform Adjudicator, or the Department of Agrarian Reform Adjudication Board before a party can go to the Special Agrarian Court for determination of just compensation.[135]

The final decision on the value of just compensation lies solely on the Special Agrarian Court. Any attempt to convert

[133] *Id*. at 326.

[134] *Land Bank of the Philippines v. Montalvan*, 689 Phil. 641, 653-654 (2012) [Per *J*. Sereno, Second Division].

[135] *Id*. at 650-652.

its original jurisdiction into an appellate jurisdiction is contrary to the explicit provisions of the law.[136] In *Land Bank of the Philippines v. Montalvan*:[137]

It is clear from Sec. 57 that the [Regional Trial Court], sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the [Regional Trial Court] would be undermined if the [Department of Agrarian Reform] would vest in administrative officials original jurisdiction in compensation cases and make the [Regional Trial Court] an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the [Regional Trial Courts] sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the [Regional Trial Courts]. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the [Regional Trial Courts] into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the [Special Agrarian Court] by private respondent is valid.[138]

Thus, aggrieved landowners can go directly to the Special Agrarian Court that is legally mandated to determine just compensation, even when no administrative proceeding was conducted before DAR.[139]

This Court now takes this opportunity to ascertain, re-examine, and clarify the application of the rationale in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*:[140]

The determination made by the [Department of Agrarian Reform] is only preliminary unless accepted by all parties concerned. Otherwise,

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[136] *Id.* at 656-657.

[137] 689 Phil. 641 (2012) [Per *J.* Sereno, Second Division].

[138] *Id.* at 652.

[139] *Land Bank of the Philippines. v. Wycoco*, 464 Phil. 83, 96 (2004) [Per *J.* Ynares-Santiago, First Division].

[140] 256 Phil. 777 (1989) [Per *J.* Cruz, *En Banc*].

the courts of justice will still have the right to review with finality the said determination in the exercise of what is admittedly a judicial function.[141]

An interpretation that Special Agrarian Courts merely review the decisions of DAR, and that DAR must first make a valuation of the property before the parties may seek judicial recourse for just compensation defeats the provisions of Republic Act No. 6657.

What the law contemplates that the trial court should undertake is not a review of the determination made by DAR, but an original determination as a lawful exercise of its original and exclusive jurisdiction.

The volume of agrarian reform cases pending before this Court is a testament to the need to speed up the process by which just compensation is determined. In clarifying the doctrine in *Association of Small Landowners,* this Court seeks to expedite the resolution of agrarian reform disputes.

II.B

Article III, Section 9 of the 1987 Constitution provides that "private property shall not be taken for public use without just compensation." This rings true for agrarian reform cases where private lands are taken by the State to be distributed to farmers who serve as beneficiaries of these lands.

The amount of just compensation must be determined based on the fair market value of the property at the time of the taking. In *National Power Corporation v. Spouses Ileto*,[142] this Court defined fair market value:

> [T]he full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby

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[141] *Id*. at 815.

[142] 690 Phil. 453 (2012) [Per *J*. Brion, Second Division].

> the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.
>
> In eminent domain or expropriation proceedings, the just compensation to which the owner of a condemned property is entitled is generally the market value. Market value is "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor." [The market value] is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee. However, these values may serve as factors to be considered in the judicial valuation of the property.

To determine the just compensation to be paid to the landowner, the nature and character of the land at the time of its taking is the principal criterion.[143] (Citation omitted)

The Special Agrarian Court must ensure that the amount determined at the end of the proceedings is equivalent to the fair market value of the property at the time of the taking, and not based on a strict adherence to a particular set or series of rules imposed by agricultural reform laws or administrative orders.

Petitioner invokes[144] *Land Bank of the Philippines v. Banal*,[145] *Land Bank of the Philippines v. Lim*,[146] and *Land Bank of the Philippines v. Kumassie*[147] to argue that in determining just compensation, the Special Agrarian Court is mandated to apply the factors laid down in Republic Act No. 6657, Section 17 in relation to Administrative Order No. 05-98 and Joint Memorandum Circular No. 07-99.[148]

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[143] *Id*. at 476-477.

[144] *Rollo*, p. 335, Reply.

[145] 478 Phil. 701 (2004) [Per *J*. Sandoval-Gutierrez].

[146] 555 Phil. 831 (2007) [Per *J*. Carpio Morales, *En Banc*].

[147] 608 Phil. 523 (2009) [Per *J*. Chico-Nazario, Third Division].

[148] *Rollo*, pp. 34-35.

Petitioner seems to be imposing a double standard, as it has not shown compliance with Republic Act No. 6657, Section 17 itself. According to the Court of Appeals, petitioner "merely considered the value as appearing in the tax declaration of the properties, together with salvage values of the rubber trees but it failed to consider other factors cited under Sec. 17 of the law."[149] These factors include the current value of the properties, its nature, actual use and income, and sworn valuation by the owner, among others. [150]

In any event, the factual antecedents of the cases that petitioner cited are not on all fours with this case. There is a glaring lack of any ascertainable standard by which the Regional Trial Court arrived at a compensation that is truly just.

In *Banal*, the Special Agrarian Court relied solely on the submitted memoranda and took judicial notice of the average production figures in *another* case pending before it, without the consent of the parties. Moreover, there were no commissioners appointed in that case, or any notice, hearing, or participation from all the parties concerned.[151]

In *Lim*, the Special Agrarian Court set as just compensation the price which petitioner previously paid for the land of respondent's brother. Such valuation can only be considered as random and arbitrary.[152]

In *Kumassie*, the Special Agrarian Court ignored Republic Act No. 6675; instead:

> It merely cited the location of the subject land, nature of the trees planted thereon, and [commissioner Oliver A.] Morales' appraisal report, as bases for fixing the value of the subject land at ₱100,000.00

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[149] *Id*. at 90.

[150] Rep. Act No. 6657, Section 17.

[151] See *Land Bank of the Philippines v. Spouses Banal*, 478 Phil. 701 (2004) [Per *J.* Sandoval-Gutierrez].

[152] See *Land Bank of the Philippines v. Lim*, 555 Phil. 831 (2007) [Per *J.* Carpio Morales, *En Banc*].

per hectare; which are not among the factors mentioned in Section 17 of Republic Act No. 6657.[153]

This Court's ruling in *Lim* is crucial: the Special Agrarian Court is "required to consider" the factors in Republic Act No. 6657 and the formula in the administrative issuances.[154] This must be construed to mean that the Special Agrarian Court is legally mandated to take due consideration of these legislative and administrative guidelines to arrive at the amount of just compensation. Consideration of these guidelines, however, does *not* mean that these are the sole bases for arriving at the just compensation.

In *Apo Fruits Corporation v. Land Bank*,[155] this Court ruled that Republic Act No. 6657, Section 17 merely provides for guideposts in ascertaining the valuations for the properties, but the courts are not precluded from considering other factors.[156]

In *Land Bank of the Philippines v. Obias*:[157]

[A]dministrative issuances or orders, though they enjoy the presumption of legalities, are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. *While rules and regulations issued by the administrative bodies have the force and effect of law and are entitled to great respect, courts interpret administrative regulations in harmony with the law that authorized them and avoid as much as possible any construction that would annul them as invalid exercise of legislative power.*[158] (Emphasis supplied, citation omitted)

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[153] See *Land Bank of the Philippines v. Kumassie Plantation Co., Inc.*, 608 Phil. 523 (2009) [Per *J.* Chico-Nazario, Third Division].

[154] *Land Bank of the Philippines v. Lim*, 555 Phil. 831, 837 (2007) [Per *J*. Carpio Morales, *En Banc*].

[155] 647 Phil. 251 (2010) [Per *J*. Brion, *En Banc*].

[156] *Id*. at 287-288.

[157] 684 Phil. 296 (2012) [Per *J*. Perez, Second Division].

[158] *Id*. at 302.

Thus, while Section 17 requires due consideration of the formula prescribed by DAR, the determination of just compensation is still subject to the final decision of the proper court. In the recent case of *Alfonso v. Land Bank*,[159] this Court reiterated:

Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, *courts of law possess the power to make a final determination of just compensation.*[160] (Emphasis supplied, citation omitted)

Taking into consideration the totality of these principles, this Court rules that the Court of Appeals correctly affirmed the findings of the Special Agrarian Court. Petitioner's argument on mandatory adherence to the provisions of the law and the administrative orders must fail. The Regional Trial Court's judgment must be given due credence as an exercise of its legal duty to arrive at a final determination of just compensation.

This Court does not deem it necessary to question the findings of the Special Agrarian Court regarding the expanse of the area subject to the coverage. The issue on whether portions of the subject land may be subject to coverage is a question of fact that this Court cannot entertain or answer, absent any compelling

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[159] G.R. Nos. 181912 & 183347, November 29, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/181912.pdf> [Per *J.* Jardeleza, *En Banc*].

[160] *Id.* at 53-54 citing *Association of Small Landowners v. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per *J.* Cruz, *En Banc*] and *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, 634 Phil. 9 (2010) [Per *J.* Carpio, Second Division].

circumstance or reason to do so. It requires an examination of the evidence on record, and is best left to the determination of the Special Agrarian Court as guided by the appropriate laws and administrative orders.

III

The Court of Appeals properly upheld the Regional Trial Court's issuance of a writ of execution pending appeal.

Under Rule 39, Section 2(a), a judgment appealed before the Court of Appeals may still be executed by the Regional Trial Court, provided there are good reasons for the judgment's execution.

The Regional Trial Court found that respondents have been deprived of their land since 1999.[161] They were dispossessed of the beneficial use, fruits, and income of their properties, which were taken from them 19 years ago without compensation. Thus, the denial of the execution pending appeal will infringe on their constitutional right against taking of private property without compensation.[162]

Moreover, the just compensation for respondents' properties is not wholly payable in cash. Sixty-five percent (65%) of the payment is in bonds, which will mature only after 10 years.[163] By then, the monetary value of the properties would no longer be the same.[164] Denying the execution pending appeal can also stall the payment of respondents' properties through the filing of frivolous motions and appeals.[165]

In their motion for execution pending appeal, respondents "indicated [their] willingness to return any amount in the event that the just compensation fixed by [the Regional Trial Court]

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[161] *Rollo*, p. 244.

[162] *Id*. at 245.

[163] *Id*.

[164] *Id*. at 246.

[165] *Id*. at 245.

is modified by the appellate court."[166] This addresses petitioner's sole objection against execution pending appeal.[167]

In *Land Bank of the Philippines v. Spouses Orilla*:[168]

[The following are] the good reasons cited by the [Special Agrarian Court], as affirmed by the Court of Appeals, namely: "(1) that execution pending appeal would be in consonance with justice, fairness, and equity considering that the land had long been taken by the [Department of Agrarian Reform and] (2) that suspending the payment of compensation will prolong the agony that respondents have been suffering by reason of the deprivation of their property . . .

Execution of a judgment pending appeal is governed by Section 2 (a) of Rule 39 of the Rules of Court, to wit:

SEC. 2. *Discretionary execution. –*

(a) *Execution of a judgment or a final order pending appeal.* — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

. . . .

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

As provided above, execution of the judgment or final order pending appeal is discretionary. As an exception to the rule that only a final judgment may be executed, it must be strictly construed. Thus, execution pending appeal should not be granted routinely but only in extraordinary circumstances.

The Rules of Court does not enumerate the circumstances which would justify the execution of the judgment or decision pending appeal. However, we have held that "good reasons" consist of compelling

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[166] *Id.* at 247.

[167] *Id.* at 246-247.

[168] 578 Phil. 663 (2008) [Per *J.* Nachura, Third Division].

or superior circumstances demanding urgency which will outweigh the injury or damages suffered should the losing party secure a reversal of the judgment or final order. The existence of good reasons is what confers discretionary power on a court to issue a writ of execution pending appeal. These reasons must be stated in the order granting the same. Unless they are divulged, it would be difficult to determine whether judicial discretion has been properly exercised.

In this case, do good reasons exist to justify the grant by the [Special Agrarian Court] of the motion for execution pending appeal? The answer is a resounding YES.

The expropriation of private property under R.A. 6657 is a revolutionary kind of expropriation, being a means to obtain social justice by distributing land to the farmers, envisioning freedom from the bondage to the land they actually till. As an exercise of police power, it puts the landowner, not the government, in a situation where the odds are practically against him. He cannot resist it. His only consolation is that he can negotiate for the amount of compensation to be paid for the property taken by the government. As expected, the landowner will exercise this right to the hilt, subject to the limitation that he can only be entitled to "just compensation". Clearly therefore, by rejecting and disputing the valuation of the [Department of Agrarian Reform], the landowner is merely exercising his right to seek just compensation.[169] (Citations omitted)

Thus, this Court agrees with the Regional Trial Court that "[f]or reasons of equity, justice and fair play, [respondents] should be paid to enable them to cope up with the loss they sustained as a result of the taking and for their economic survival."[170]

IV

The Regional Trial Court June 27, 2003 Order, as affirmed by the Court of Appeals, correctly imposed the payment of legal interest on the just compensation award.

In *Land Bank of the Philippines v. Lajom*:[171]

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[169] *Id*. at 672-674.

[170] *Rollo*, p. 247.

[171] 741 Phil. 655 (2014) [Per *J*. Perlas-Bernabe, Second Division].

With respect to the commonly raised issue on interest, the RTC may impose the same on the just compensation award as may be justified by the circumstances of the case and in accordance with prevailing jurisprudence. The Court has previously allowed the grant of legal interest in expropriation cases where there was delay in the payment of just compensation, deeming the same to be an effective forbearance on the part of the State. To clarify, this incremental interest is not granted on the computed just compensation; rather, it is a penalty imposed for damages incurred by the landowner due to the delay in its payment.

Thus, legal interest shall be pegged at the rate of 12% [per annum] from the time of taking until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, just compensation shall earn interest at the new legal rate of 6% [per annum], conformably with the modification on the rules respecting interest rates introduced by Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.[172] (Citations omitted)

In *Land Bank of the Philippines v. Spouses Orilla:*[173]

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.

Put differently, while prompt payment of just compensation requires the immediate deposit and release to the landowner of the provisional compensation as determined by the [Department of Agrarian Reform], it does not end there. Verily, *it also encompasses the payment in full of the just compensation to the landholders as finally determined by the courts*. Thus, it cannot be said that there is already prompt payment of just compensation when there is only a partial payment thereof, as in this case.[174] (Emphasis supplied, citation omitted)

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[172] *Id*. at 667-668.

[173] 578 Phil. 663 (2008) [Per *J*. Nachura, Third Division].

[174] *Id*. at 677.

In *Land Bank of the Philippines v. Wycoco*,[175] this Court held that the imposition of legal interest per annum on the just compensation due to the landowner was "in the nature of damages for delay in payment[.]"[176] In *Apo Fruits v. Land Bank of the Philippines*:[177]

The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property**.** *If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.*

In the context of this case, when the [Landbank] took the petitioners' landholdings without the corresponding full payment, it became liable to the petitioners for the income the landholdings would have earned had they not immediately been taken from the petitioners. What is interesting in this interplay, under the developments of this case, is that the [Landbank], by taking landholdings without full payment while holding on at the same time to the interest that it should have paid, effectively used or retained funds that should go to the landowners and thereby took advantage of these funds for its own account.[178] (Emphasis supplied)

In this case, the records show that petitioner already gave provisional compensation in the form of cash and bonds, based on an initial valuation of the properties. Respondents

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[175] 464 Phil. 83 (2004) [Per *J.* Ynares-Santiago, First Division].

[176] *Id.* at 100.

[177] 647 Phil. 251 (2010) [Per *J.* Brion, *En Banc*].

[178] *Id.* at 276-277.

acknowledged the deposit of these amounts and later withdrew them.[179]

However, while "the deposits might have been sufficient for purposes of the immediate taking of the landholdings[, these deposits] cannot be claimed as amounts that would excuse . . . the payment of interest on the unpaid balance of the compensation due."[180]

Wycoco held that interest should be awarded to the landowner if there is no "prompt and valid payment."[181] There is no prompt payment if the payment is only partial.[182]

This is consistent with this Court's ruling[183] on the matter of interest in expropriating private property for a public use. In *Republic v. Court of Appeals*:[184]

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell [it,] fixed at the time of the actual taking by the government. Thus, *if property is taken for public use before compensation is deposited with the court having jurisdiction over*

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[179] *Rollo*, p. 76.

[180] *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251, 272 (2010) [Per *J.* Brion, *En Banc*].

[181] See *Land Bank of the Philippines v. Wycoco*, 464 Phil. 83 (2004) [Per *J.* Ynares-Santiago, First Division].

[182] See *Land Bank of the Philippines v. Spouses Orilla*, 578 Phil. 663 (2008) [Per *J.* Nachura, Third Division].

[183] See *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251 (2010) [Per *J.* Brion, *En Banc*]; *Land Bank of the Philippines v. Imperial*, 544 Phil. 378 (2007) [Per *J.* Quisumbing, Second Division]; *Spouses Curata v. Philippine Ports Authority*, 608 Phil. 9 (2009) [Per *J.* Velasco Jr., *En Banc*]; *Philippine Ports Authority v. Rosales-Bondoc*, 557 Phil. 737 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

[184] *Republic v. Court of Appeals*, 433 Phil. 106 (2002) [Per *J.* Vitug, First Division].

the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.[185] (Emphasis supplied, citations omitted)

Petitioner's delay[186] in payment makes it liable for legal interest by way of damages. The legal interest must be applied "on the unpaid balance of the compensation due."[187] Therefore, the amount already received by respondents should be subtracted from the total judgment, and the rate of legal interest should be calculated from that amount.

In view of this Court's ruling in *Nacar v. Gallery Frames*,[188] this Court modifies the rate of legal interest to 12% per annum from the time of taking until June 30, 2013, and 6% per annum from July 1, 2013 until fully paid.

In sum, the power of the State to expropriate property for public use is without question. In eminent domain proceedings, courts have the power to decide on the final amount of just compensation. This is especially true in cases of agrarian reform.

Since the determination of just compensation is an inherently judicial function, it cannot be curtailed or limited by legislation.[189] The various agrarian reform laws and the other administrative issuances are merely recommendatory to the trial court in determining just compensation.[190] Thus, there is a need for

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

[186] *Rollo*, p. 76.

[187] *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251, 272 (2010) [Per *J*. Brion, *En Banc*].

[188] 716 Phil. 267 (2013) [Per *J*. Peralta, *En Banc*].

[189] See *National Power Corporation v. Spouses Zabala*, 702 Phil. 491 (2013) [Per *J*. Castillo, Second Division].

[190] See *Land Bank of the Philippines v. Obias*, 684 Phil. 296 (2012) [Per *J*. Perez, Second Division].

each case to be approached by the trial court with particular sensitivity to the local market where the subject is to be found.

This Court, as the final arbiter of law and justice, has the power to rule and provide a definitive legal standard by which a court that is acting as a Special Agrarian Court may rely upon to arrive at an amount that will compensate landowners and fulfill the intention of agrarian reform.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals May 29, 2009 Decision in CA-G.R. SP No. 77295-MIN is **AFFIRMED** with **MODIFICATION** in that the rate of legal interest shall be twelve percent (12%) per annum from the time of taking until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until fully paid.

Moreover, the amounts already withdrawn by respondents must be subtracted from the final amount in the judgment on which the legal interest should be imposed.

SO ORDERED.

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

Martires,[*] *J.,* on official leave.

SECOND DIVISION

[G.R. No. 199081. January 24, 2018]

ASIGA MINING CORPORATION, *petitioner, vs.* **MANILA MINING CORPORATION and BASIANA MINING EXPLORATION CORPORATION**, *respondents.*

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[*] On official leave as per letter dated January 18, 2018.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAWS; MINES AND MINING; "PROOF OF ANNUAL WORK OBLIGATIONS" AS WRITTEN IN THE MINERAL RESOURCES DEVELOPMENT DECREE OF 1974, P.D. NO. 1385, AND P.D. NO. 1677 *VIS-À-VIS* "ANNUAL WORK OBLIGATIONS" UNDER P.D. NO. 1902, CONSTRUED; IT IS THE FAILURE TO PERFORM ACTUAL WORK OBLIGATIONS THAT WOULD GIVE RISE TO ABANDONMENT OF MINING CLAIMS.—** The title of Section 27 was changed in the latest amendment from "Proof of Annual Work Obligations" as written in the Mineral Resources Development Decree of 1974, P.D. No. 1385, and P.D. No. 1677 to "Annual Work Obligations" under P.D. No. 1902. The latest version indicates that there is focus on the annual work obligations imposed upon claim owners or lessees, and not merely on the submission of proof to this requirement. Indeed, as ruled in *Santiago*, the essence of this provision is to exact compliance of the obligations imposed upon claim owners or lessees who are granted the privilege of exploring and/or exploiting the Philippines' natural resources. Thus, when Section 27 included the phrase "failure of the claimowner to comply therewith," the phrase was referring to the actual work obligations required of the claim owners, and not merely the submission of the proof of the actual work obligations. This is the proper interpretation of this section. As explained by Justice Paras in *Santiago:* Under the Consolidated Mines Administrative Order (CMAO), implementing PD 463, as amended, **the rule that has been consistently applied is that it is the failure to perform the required assessment work, not the failure to file the AAWO that gives rise to abandonment.** x x x Even the then Ministry of Natural Resources, now Department of Environment and Natural Resources (DENR), was of the opinion that it is the failure to perform actual work obligations that would give rise to abandonment. It further interpreted the provision as one which is more of convenience than substance, and that the claim owners or lessees are not precluded from proving their actual compliance through other means.

2. **ID.; ID.; ID.; ID.; THERE IS NO "AUTOMATIC ABANDONMENT" ON THE BASIS OF NON-SUBMISSION OF AN AFFIDAVIT OF ANNUAL WORK OBLIGATIONS; IN THE ABSENCE OF PROOF THAT DUE PROCESS REQUIREMENTS HAVE BEEN COMPLIED WITH, PETITIONER COULD NOT BE SAID TO HAVE ABANDONED ITS MINING CLAIMS.—** [B]y jurisprudential rulings, there is no "automatic abandonment" on the basis of the non-submission of the AAWO alone. If the claim owners or lessees did indeed fail to perform their obligations as required in Section 27 of the Mineral Resources Development Decree of 1974, as amended, then the cancellation of their mining claims could only be considered proper upon observance of due process, which, according to *Yinlu*, takes the form of: (1) a written notice of non-compliance to the claim owners and lessees and an ample opportunity to comply; and (2) in the event of the claim owners' and lessees' failure to comply, a written notice effecting the cancellation of their mining claims. In this case, nothing on record indicates that the foregoing requirements have been complied with. There were no notices sent to Asiga, which either notified it of its non-compliance to Section 27 or notified it of the cancellation of its mining claims. Thus, on the basis of the foregoing, it could not be said that the petitioner has abandoned its mining claims over the disputed parcels of land.

3. **ID.; ID.; ID.; ID.; RECKONING POINT OF THE THIRTY (30)-DAY PERIOD WITHIN WHICH TO FILE THE OCCUPATIONAL FEES, EXPLAINED; PETITIONER HAS THIRTY (30) DAYS FROM THE FINALITY OF THIS DECISION TO PAY IN FULL THE REQUIRED OCCUPATIONAL FEES.—** [W]ith regard to the payment of occupational fees, a reading of DENR Department Administrative Order (DENR DAO) No. 97-07, the *"Guidelines in the Implementation of the Mandatory September 15, 1997 Deadline for the Filing of Mineral Agreement Applications by Holders of Valid and Existing Mining Claims and Lease/Quarry Applications and for Other Purposes,"* would reveal that the petitioner is correct in asserting that the payment thereof could be completed upon the resolution of the present dispute. The CA was partially correct when it quoted Section 9 of DENR

DAO No. 97-07 and found that it is the duty of the holder of a valid and existing mining claim to "present proof of full payment of the occupation fees and/or minimum work obligations or a Letter of Commitment undertaking to pay such amount within thirty (30) days from the date of the filing of its Mineral Agreement Application." x x x However, the CA failed to consider Section 8 of the same administrative order which, in cases when the holder of the mining claim is involved in a mining dispute/case, allowed the submission of the actual mineral agreement application thirty (30) days from the final resolution of the dispute/case. x x x In cases where a claim owner or lessee is involved in a mining dispute, it shall just submit a "Letter of Intent to file the necessary Mineral Agreement application." The *actual* mineral agreement application, however, should only be filed within thirty (30) days from the final resolution of the dispute of the case. Necessarily, therefore, and contrary to the CA ruling, the 30-day period within which to pay the occupational fees would only commence to run from the filing of the *actual* mineral agreement application, and not before. Considering that the present case is the very mining dispute referred to in Section 8 of DENR DAO No. 97-07, then, contrary to the MAB and CA decisions, Asiga is correct in asserting that it has thirty (30) days from the finality of this decision to pay in full the occupational fees as required by Section 9 thereof.

APPEARANCES OF COUNSEL

Libra Law for petitioner.
Pablo Ayson, Jr. for respondents.
Elvin P. Gana, co-counsel for respondent BMEC.

D E C I S I O N

REYES, JR., *J*.:

Under the Mineral Resources Decree of 1974, as amended, and as properly interpreted by established jurisprudence, abandonment by non-performance of the annual work obligation could be declared only after the observance of due process.

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 100335, promulgated on May 12, 2011, which affirmed *in toto* the Decision[2] dated July 31, 2007 of the Mines Adjudication Board (MAB) of the Department of Environment and Natural Resources (DENR). Likewise challenged is the subsequent Resolution[3] promulgated on October 24, 2011 which upheld the earlier decision.

The Antecedent Facts

Petitioner Asiga Mining Corporation (Asiga) was the holder of mining claims over hectares of land located in Santiago, Agusan del Norte. These claims, known as MIRADOR and CICAFE, were granted unto Asiga by virtue of the Mining Act of 1936.[4] Subsequently, when the law was amended by the Mineral Resources Decree of 1974,[5] the petitioner had to follow registration procedures so that its earlier mining claims, MIRADOR and CICAFE, could be recognized under the new law. Following their successful application, their mining claims over the subject area were upheld. Two decades later, the Mineral Resources Decree of 1974 was amended and superseded by the Mining Act of 1995.[6] Like before, Asiga was again required

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[1] Penned by Justice Manuel M. Barrios, and concurred in by Justices Mario L. Guarina III and Apolinario D. Bruselas, Jr.; *rollo*, pp. 41-52.

[2] As quoted in CA Decision dated May 12, 2011; *id.* at 41; 46.

[3] *Id.* at 54-55.

[4] Commonwealth Act No. 137 (1936)— An Act to Provide for the Conservation, Disposition, and Development of Mineral Lands and Minerals.

[5] Presidential Decree No. 463 (1974) — Providing for a Modernized System of Administration and Disposition of Mineral Lands and to Promote, and Encourage the Development and Exploitation thereof.

[6] Republic Act No. 7942 (1995) — An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation.

by the supervening law to undergo registration procedures so that its mining claims could be recognized anew.

Hence, on March 31, 1997, Asiga applied with the Mines and Geosciences Bureau (MGB) to convert its mining claims into a Mineral Production Sharing Agreement (MPSA) as required by the Mining Act of 1995 and its implementing rules and regulations.

As fate would have it, it was during this application process when Asiga discovered that its mining claims overlapped with that of respondent Manila Mining Corporation (respondent MMC), by about 1,661 hectares, and of respondent Basiana Mining Exploration Corporation (respondent BMEC) by 214 hectares.[7]

As it happened, each of the respondents had pending applications for MPSA over the overlapping subject areas which were filed way earlier than the petitioner's application. Respondent MMC applied for MPSA over Cabadbaran and Santiago, Agusan del Norte as early as November 26, 1992. Respondent BMEC, on the other hand, made a similar application as early as October 3, 1995. After satisfying the initial mandatory requirements, respondents MMC and BMEC published and posted their respective Notices of Application for MPSA in a newspaper of general circulation for two (2) consecutive weeks, and posted the same in the bulletin boards of concerned government agencies.[8]

Upon knowledge of the foregoing, and to protect its interest over the subject area, Asiga filed before the MGB-CARAGA Regional Office an *Adverse Claim with Petition for Preliminary Injunction* against the respondents MMC and BMEC, and prayed for the exclusion of the area applied for by the respondents from the bounds of its mining claims. It asserted that: (1) it has vested right to the approved and existing mining claims that were awarded to it since 1975; (2) it has preferential right to

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[7] *Rollo*, p. 43.

[8] *Id.*

enter into any mode of mineral agreement with the government for the period up to 14 September 1997; and (3) the respondents' MPSA applications are null and void because the areas applied for encroached on Asiga's mining claims and thus, were closed to application.

The respondents MMC and BMEC, on the other hand, separately filed a Motion to Dismiss on grounds of prescription and abandonment of mining claims. Collectively, they averred that: (1) Asiga's adverse claim is rendered void by prescription as it was only filed more than thirty (30) days from the date of the first publication of respondents' Notice of Application for MPSA; (2) Asiga did not substantiate the alleged encroachment since it failed to submit documents that would prove such claim; (3) Asiga already abandoned its mining claims because it failed to file an Affidavit of Annual Work Obligation (AAWO) showing its work performance over the subject mining areas for more than two (2) consecutive years.

On December 24, 1998, the Panel of Arbitrators organized by the MGB-CARAGA Regional Office rendered a Decision in favor of Asiga, the dispositive portion of which states:

> WHEREFORE, finding petitioner's adverse claim unnecessary, the same is hereby dismissed. Respondents Manila Mining Corporation and Basiana Mining Corporation's Mineral Production Sharing Agreement Applications whose areas overlapped Asiga's existing and valid mining claims, "MIRADOR" and "CICAFE" as shown herein and in the records of the Mines and Geosciences Bureau, Region XIII, Surigao City should be amended accordingly and excluded therefrom Petitioner's said valid and existing mining claims. But respondent's Mineral Production Sharing Agreement applications whose areas fell in areas open for mining locations and those which fell within petitioner's abandoned claims should remain as they are.[9]

The respondents appealed to the Mines Adjudication Board (MAB) reiterating their arguments of prescription and abandonment, to which the MAB agreed. In the dispositive portion of its Decision dated July 31, 2007, the MAB said:

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[9] *Id*. at 45.

WHEREFORE, PREMISES CONSIDERED, the Decision of the Panel of Arbitrators dated December 24, 1998 in POA CASE NO. XIII-09-97 is hereby REVERSED AND SET ASIDE. The Regional Director of the Mines and Geosciences Regional Office No. XIII, Surigao City is hereby ordered to give due course to the valid Application for Mineral Production Sharing Agreement No. APSA-0007-X of Manila Mining Corporation and APSA No. 00047-X Basiana Mining Exploration Corp., subject to compliance with the existing mining law and its implementing rules and regulations.[10]

Aggrieved, Asiga filed a Petition for Review under Rule 43 of the Rules of Court before the CA. It assailed the MAB decision arguing that: (1) holders of valid and existing mining claims cannot be divested of their rights by mere failure to file adverse claim within the prescribed 30-day period from publication of new mining applications; and (2) the decision ignored the new grace period of September 15, 1997 provided under DAO 97-07 (Series of 1997) within which to file an MPSA application and pay the required fees.

On May 12, 2011, the CA promulgated the assailed decision. It ruled that Asiga cannot be considered a holder of valid and existing mining claims. The Court of Appeals said that:

Clearly, ASIGA was duty bound to conduct actual work on its mining claims and to file an AAWO showing proof of its compliance before Mines Regional Officer concerned within sixty (60) days from the end of the year in which such work obligation was required. Significantly, it is provided that failure to comply with the said obligations for two (2) consecutive years shall result to an automatic abandonment of ASIGA's mining claims.

It is an established fact—as found by both POA and MAB—that ASIGA had, indeed, failed to file an AAWO nor to conduct actual work on its mining claims ever since it was granted a leasehold right over the same. Consequently, pursuant to Section 27 aforequoted, ASIGA's mining claims were deemed abandoned by operation of law. x x x.[11]

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[10] *Id.* at 46.

[11] *Id.* at 49.

Thus, the dispositive portion of the decision of the CA reads:

WHEREFORE, premises considered, the instant petition is DISMISSED. The Decision dated 31 July 2007 of the Mines Adjudication Board is AFFIRMED *in toto*.[12]

After the dismissal of Asiga's motion for reconsideration, Asiga filed this petition for review on *certiorari.*

The Issues

The petitioner raised the following arguments:

A — The [CA] committed grave error in law in instantly divesting petitioner of its existing rights over its mining claims for alleged failure to submit its Annual Work Obligations report, the decision being inconsistent with existing doctrines requiring field investigation on the actual work done and summary hearing to determine propriety of cancellation for abandonment of claims.

B — The [CA] committed grave error in law in holding that petitioner's failure to pay occupation fees within thirty (30) days from the filing of Mineral Production Sharing Agreement (MPSA) conversion amounts to abandonment, the finding being completely incompatible with DAO Memorandum Order No. 97-07 which allows payment of fees within 30 days from final termination or resolution of pending cases or dispute of claims.

C — The [CA] committed grave error in law in sustaining the cancellation of petitioner's mining claim in favor of respondents Manila Mining Corporation (MMC) and Basiana Mining Exploration Corporation (BMEC).[13]

In sum, petitioner Asiga comes before this Court to ask for the resolution of only one issue: whether or not Asiga could be considered to have abandoned its mining claim over the hectares of land located in Santiago, Agusan del Norte on the basis of (a) non-submission of the affidavit of annual work obligations, and (b) non-payment of fees. An answer to this query will serve

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[12] *Id.* at 51.

[13] *Id.* at 22.

as the fulcrum around which the rights of the petitioner and the respondents could be ascertained.

This Court's Ruling

The petition is impressed with merit.

Based on the facts as borne by the records of this case, the Court is of the considered opinion that Asiga did not abandon its mining claims over the subject area. To rule that it did on the basis merely of the non-submission of the affidavit and the non-payment of fees, without considering the relevant implementing rules and regulations of the law as well as settled jurisprudence on the matter, would cause undue injury to a right granted—and thus protected by law—unto the petitioner.

The notion of "automatic abandonment" being invoked by the respondents is provided for in Section 27 of the Mineral Resources Development Decree of 1974. And as early as 1990, the Court has already ruled on the proper interpretation of this provision in the case of *Santiago v. Deputy Executive Secretary.*[14] In no uncertain terms, the Court has already established that there is no rule of automatic abandonment with respect to mining claims for failure to file the affidavit of annual work obligations.[15]

As originally worded, Section 27 of the Mineral Resources Development Decree of 1974 provided that the failure of a claim owner to submit a sworn statement of its compliance with its annual work obligations for two (2) consecutive years shall "cause the forfeiture of all rights to his claim." Particularly, it states that:

SECTION 27. Proof of Annual Work Obligations. — The claim owner shall submit proof of compliance with the annual work obligations by filing a sworn statement with the Director within sixty (60) days from the end of the year in which the work obligation is required, in a form to be prescribed by regulation. Failure of the claim owner to file such proof of compliance for two (2) consecutive years shall cause the forfeiture of all rights to his claim.

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[14] 270 Phil. 288 (1990).

[15] *Id*. at 294.

In 1978, Section 15 of Presidential Decree (P.D.) No. 1385 amended this specific provision. Instead of merely causing the forfeiture of the mining rights upon failure to comply with the required submissions, the section then provided for an "automatic abandonment" of the mining claims, *viz:*

SECTION 15. Section 27 of the same Decree is hereby amended to read as follows:

SECTION 27. Proof of Annual Work Obligations. — The claimowner/lessee shall submit proof of compliance with the annual work obligations by filing an affidavit therefor and the statement of expenditures and technical report in the prescribe[d] form in support thereof with the Mines Regional Officer within sixty (60) days from the end of the year in which the work obligation is required: Provided, **That failure of the claimowner to comply therewith for two (2) consecutive years shall constitute automatic abandonment of the mining claims:** Provided, Further, That, if it is found upon field verification that no such work was actually done on the mining claims, the claimowner/lessee shall likewise lose all his rights thereto notwithstanding submission of the aforesaid documents.[16] (Emphasis supplied)

In 1980, this provision was once again amended. Section 5 of P.D. No. 1677 retained the "automatic abandonment" provision and further included that, should a verification be conducted and it was discovered that no work was actually accomplished despite the submission of an affidavit to that effect, the owner/lessee shall likewise automatically lose all the rights appurtenant to his/her mining claims. As stated by this decree:

SECTION 5. Section 27 of Presidential Decree No. 463 as amended by Section 15 of Presidential Decree No. 1385, is further amended to read, as follows:

Sec. 27. Proof of Annual Work Obligations. — The claim owner/lessee shall submit proof of compliance with the annual work obligations by filing an affidavit therefor and the statement of expenditures and technical report in the prescribed form in support

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[16] P.D. No. 1385 (1978), Sec. 15.

thereof with the Mines Regional Officer concerned within sixty (60) days from the end of the year in which the work obligations is required: Provided, That failure of the claim owner to comply therewith for two (2) consecutive years shall constitute automatic abandonment of the mining claim: Provided, further, **That if it is found upon field verification that no such work was actually done on the mining claim, the claim owner/lessee shall likewise automatically lose all his rights thereto notwithstanding submission of the aforesaid documents.**[17] (Emphasis supplied)

Finally, Section 27, as it now stands, was modified by Section 2 of P.D. No. 1902:

SECTION 2. Section 27 of Presidential Decree No. 463, as amended by Section 15 of Presidential Decree No. 1385 and Section 5 of Presidential Decree No. 1677, is further amended to read as follows:

SECTION. 27. Annual Work Obligations. — The claimowner/ lessee shall submit proof of compliance with the annual work obligations by filing an affidavit therefor and the statement of expenditures and technical report in the prescribed form in support thereof with the Mines Regional Officer concerned within one hundred and twenty (120) days from the end of the year in which the work obligation is required: **Provided, That failure of the claimowner to comply therewith for two (2) consecutive years shall constitute automatic abandonment of the mining claim: Provided, further, That, if it is found upon field verification that no such work was actually done on the mining claim, the claimowner/lessee shall likewise automatically lose all his rights thereto notwithstanding submission of the aforesaid documents:** Provided, finally, That the Director, in cases of unstable peace and order conditions and/or involvement in mining conflicts may grant further extensions. (Emphasis supplied)

What is being asked of this Court by the respondents is a re-interpretation of this most recent iteration of the Mineral Resources Development Decree of 1974. As how it was in *Santiago*, to arrive at an answer, the subject matter of the provision must first be clarified. Is it the *non-submission of*

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[17] P.D. No. 1677 (1980), Sec. 5.

the proof of the compliance—the affidavit of annual work obligation—for two consecutive years, or is it the *actual non-compliance of the annual work obligation* for two consecutive years that would become the basis for the declaration of abandonment of mining claims?

The Court opines that it is the latter.

The title of Section 27 was changed in the latest amendment from "Proof of Annual Work Obligations" as written in the Mineral Resources Development Decree of 1974, P.D. No. 1385, and P.D. No. 1677 to "Annual Work Obligations" under P.D. No. 1902. The latest version indicates that there is focus on the annual work obligations imposed upon claim owners or lessees, and not merely on the submission of proof to this requirement. Indeed, as ruled in *Santiago*, the essence of this provision is to exact compliance of the obligations imposed upon claim owners or lessees who are granted the privilege of exploring and/or exploiting the Philippines' natural resources.

Thus, when Section 27 included the phrase "failure of the claimowner to comply therewith," the phrase was referring to the actual work obligations required of the claim owners, and not merely the submission of the proof of the actual work obligations. This is the proper interpretation of this section. As explained by Justice Paras in *Santiago:*

> Under the Consolidated Mines Administrative Order (CMAO), implementing PD 463, as amended, **the rule that has been consistently applied is that it is the failure to perform the required assessment work, not the failure to file the AAWO that gives rise to abandonment.** Interpreted within the context of PD 1902, the last amending decree of PD 463, it is intended, among others, to accelerate the development of our natural resources and to accelerate mineral productions, abandonment under the aforequoted Sec. 27 refers to the failure to perform work obligations which in turn is one of the grounds for the cancellation of the lease contract (Sec. 43(a), Consolidated Mines Administrative Order, implementing PD 463).[18] (Emphasis and underscoring supplied)

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[18] *Santiago v. Deputy Executive Secretary*, *supra* note 14, at 294.

Even the then Ministry of Natural Resources, now Department of Environment and Natural Resources (DENR), was of the opinion that it is the failure to perform actual work obligations that would give rise to abandonment. It further interpreted the provision as one which is more of convenience than substance, and that the claim owners or lessees are not precluded from proving their actual compliance through other means. Again, in *Santiago:*

The question of whether or not the failure to submit AAWO for more than two (2) consecutive years constitutes abandonment as ground for cancellation of a mining lease contract has been the subject matter of many cases in the Ministry of Natural Resources (now Department of Environment and Natural Resources). Public respondent made the following significant findings, to quote:

In a number of cases, the MNR answered the question in the negative. x x x. As there explained, **it is the continued failure to perform the annual work obligations, NOT the failure to file AAWO, that gives rise to abandonment as ground for cancellation of a mining lease contract;** that compliance with AAWO requirements, not being related to the essence of the acts to be performed, is a matter of convenience rather than substance; and that non-submission of AAWO does not preclude the lessee from proving performance of such working obligation in some other way.[19] (Emphasis and underscoring supplied)

Further, in declaring claim owners or lessees to have abandoned their mining claims, due process must primarily be observed. In fact, in the recent case of *Yinlu Bicol Mining Corporation v. Trans-Asia Oil and Energy Development Corporation*,[20] the Court, through Justice Bersamin, had occasion to discuss that the basic tenets of due process require that notice be given to the claim owners if their mining claims are to be considered cancelled. *Yinlu* ruled:

The failure of Yinlu's predecessor-in-interest to register and perform annual work obligaitons did not automatically mean that they had

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[19] *Id.*

[20] 750 Phil. 148 (2015).

already abandoned their mining rights, and that such rights had already lapsed. For one, the DENR itself declared that it had not issued any specific order cancelling the mining patents. Also, the tenets of due process required that Yinlu and its predecessor-in-interest be given written notice of their non-compliance with PD No. 463 and the ample opportunity to comply. If they still failed to comply despite such notice and opportunity, then written notice must further be given informing them of the cancellation of their mining patents. **In the absence of any showing that the DENR had provided the written notice and opportunity to Yinlu and its predecessors-in-interest to that effect, it would really be inequitable to consider them to have abandoned their patents,** or to consider the patents as having lapsed.[21] (Emphasis and underscoring supplied, citations omitted)

And so, by jurisprudential rulings, there is no "automatic abandonment" on the basis of the non-submission of the AAWO alone. If the claim owners or lessees did indeed fail to perform their obligations as required in Section 27 of the Mineral Resources Development Decree of 1974, as amended, then the cancellation of their mining claims could only be considered proper upon observance of due process, which, according to *Yinlu*, takes the form of: (1) a written notice of non-compliance to the claim owners and lessees and an ample opportunity to comply; and (2) in the event of the claim owners' and lessees' failure to comply, a written notice effecting the cancellation of their mining claims.[22]

In this case, nothing on record indicates that the foregoing requirements have been complied with. There were no notices sent to Asiga, which either notified it of its non-compliance to Section 27 or notified it of the cancellation of its mining claims. Thus, on the basis of the foregoing, it could not be said that the petitioner has abandoned its mining claims over the disputed parcels of land.

Further, with regard to the payment of occupational fees, a reading of DENR Department Administrative Order (DENR

[21] *Id*. at 182.

[22] *Id*.

DAO) No. 97-07, the *"Guidelines in the Implementation of the Mandatory September 15, 1997 Deadline for the Filing of Mineral Agreement Applications by Holders of Valid and Existing Mining Claims and Lease/Quarry Applications and for Other Purposes,"* would reveal that the petitioner is correct in asserting that the payment thereof could be completed upon the resolution of the present dispute.

The CA was partially correct when it quoted Section 9 of DENR DAO No. 97-07 and found that it is the duty of the holder of a valid and existing mining claim to "present proof of full payment of the occupation fees and/or minimum work obligations or a Letter of Commitment undertaking to pay such amount within thirty (30) days from the date of the filing of its Mineral Agreement Application."[23] Section 9 provides:

> SECTION 9. Occupational Fees and Work Obligations — In case of any deficiency in the payment of occupation fees and/or minimum work obligations required, no Mineral Agreement applications by holders of valid and existing mining claims and lease/quarry applications shall be accepted without proof of full payment of such deficiency or a Letter-Commitment to pay such amount within thirty days from the date of filing of the Mineral Agreement Application. **Failure to present proof of full payment upon the filing of the Mineral Agreement application or within thirty days from filing of said Letter-Commitment shall result in the denial of the application, after which the area covered thereby shall be open for Mining Applications.** (Emphasis and underscoring supplied)

However, the CA failed to consider Section 8 of the same administrative order which, in cases when the holder of the mining claim is involved in a mining dispute/case, allowed the submission of the actual mineral agreement application thirty (30) days from the final resolution of the dispute/case. Section 8 reads:

> Section. 8. Claimants/Applicants Required to File Mineral Agreement Applications

[23] *Rollo*, p. 50.

Only holders of mining claims and lease/quarry applications filed prior to the effectivity of the Act which are valid and existing as defined in Section 5 hereof who have not filed any Mineral Agreement Applications over areas covered by such mining claims and lease/quarry applications are required to file Mineral Agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997; *Provided,* that **the holder of such a mining claim or lease/quarry application involved in a mining dispute/case shall instead file on or before said deadline a Letter of Intent to file the necessary Mineral Agreement application;** Provided, further, That if the mining claim or lease/quarry application is not determined to be invalid in the dispute/case, **the claimant or applicant shall have thirty (30) days from the final resolution of the dispute/case to file the necessary Mineral Agreement application;** *Provided, finally,* that failure by the claimant or applicant to file the necessary Mineral Agreement application within said thirty (30)-day period shall result in the abandonment of such claim or application, after which, any area covered by the same shall be opened for Mining Applications. (Emphasis and underscoring supplied)

These provisions could not be any clearer. In cases where a claim owner or lessee is involved in a mining dispute, it shall just submit a "Letter of Intent to file the necessary Mineral Agreement application." The *actual* mineral agreement application, however, should only be filed within thirty (30) days from the final resolution of the dispute of the case. Necessarily, therefore, and contrary to the CA ruling, the 30-day period within which to pay the occupational fees would only commence to run from the filing of the *actual* mineral agreement application, and not before.

Considering that the present case is the very mining dispute referred to in Section 8 of DENR DAO No. 97-07, then, contrary to the MAB and CA decisions, Asiga is correct in asserting that it has thirty (30) days from the finality of this decision to pay in full the occupational fees as required by Section 9 thereof.

Resultantly, the disputed parcel of land covered by respondent MMC's MPSA application which overlapped with Asiga's claim by about 1,661 hectares, and the parcel of land covered by respondent BMEC's MPSA application which overlapped by

214 hectares, should be excluded in the respondents' MPSA application. This is because the petitioner's mining claims are "valid and existing mining claims" as defined in Section 5(c) of DENR DAO No. 97-07,[24] and are therefore, as provided for in Section 19(c) of the Mining Act of 1995,[25] closed to other mining applications.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated May 12, 2011, and the subsequent Resolution dated October 24, 2011 are hereby **REVERSED and SET ASIDE.** The Decision of the Panel of Arbitrators, Mines and Geosciences Bureau, Region 13 dated December 24, 1998 is hereby **REINSTATED.**

SO ORDERED.

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

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[24] Sec. 5. Valid and Existing Mining Claims and Lease/Quarry Applications

For purposes of this Order, a mining claim shall be considered valid and existing if it has complied with the following requirements.

x x x x x x x x x

c. For a mining claim located/filed under the provision of Commonwealth Act No. 137 and/or earlier laws, it must be covered by a timely and duly filed Application for Availment under Presidential Decree No. 463 as Amended, Application for Mining Lease, Application for Survey and Survey Returns (if Survey Order was issued).

[25] R.A. No. 7942 - Section 19. Areas Closed to Mining Application

Mineral agreement or financial or technical assistance agreement applications shall not be allowed:

x x x x x x x x x

c. In areas covered by valid and existing mining rights;

THIRD DIVISION

[G.R. No. 201792. January 24, 2018]

WILFREDO P. ASAYAS, *petitioner, vs.* **SEA POWER SHIPPING ENTERPRISES, INC., and/or AVIN INTERNATIONAL S.A., and/or ANTONIETTE GUERRERO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; WHERE A PARTY FAILED TO APPEAL THE LABOR ARBITER'S DECISION WITHIN TEN (10) CALENDAR DAYS FROM THE RETURN OF THE MAIL, SAID DECISION BECAME FINAL AND EXECUTORY; THE DECISION COULD NO LONGER BE REVIEWED OR MODIFIED BY A HIGHER COURT, NOT EVEN THE SUPREME COURT; REASONS.—** With the service by registered mail being complete, the respondents only had 10 calendar days from the return of the mail within which to appeal in accordance with the *Labor Code*. When they did not so appeal, the LA's decision became final and executory. With the LA's decision attaining finality, it was no longer legally feasible or permissible to modify the ruling through the expediency of a petition claiming that the termination of the petitioner's employment had been legal. Verily, the decision could no longer be reviewed, or in any way modified directly or indirectly by a higher court, not even by the Supreme Court. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business; and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. The courts must guard against any scheme calculated to bring about that result, and must frown upon any attempt to prolong controversies.

2. **ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DISMISSING RESPONDENTS'**

APPEAL; CONCEPT OF GRAVE ABUSE OF DISCRETION.— *Grave abuse of discretion*, as held in *De los Santos v. Metropolitan Bank and Trust Company*, "must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction." Accordingly, the dismissal of the respondents' appeal, being fully warranted and in accord with jurisprudence, did not constitute grave abuse of discretion simply because the NLRC did not thereby act whimsically, or capriciously, or arbitrarily.

APPEARANCES OF COUNSEL

IBP National Center for Legal Aid for petitioner.
Ortega Bacorro Odulio Calma & Carbonnel for respondents.

D E C I S I O N

BERSAMIN, *J*.:

The seafarer hereby seeks to reverse and undo the adverse decision promulgated on November 28, 2011,[1] whereby the Court of Appeals (CA) nullified and set aside the decision rendered on May 9, 2011 by the National Labor Relations Commission (NLRC)[2] that had affirmed the decision rendered by the Labor Arbiter on October 29, 2010 declaring him to have been illegally terminated from employment, and ordering the respondents to pay him his salaries for the unexpired portion of his contract.[3]

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[1] *Rollo* pp. 32-41; penned by Associate Justice Stephen C. Cruz, with the concurrence of Associate Justice S.E. Veloso and Associate Justice Danton Q. Bueser.

[2] *Id*. at 51-53; penned by Presiding Commissioner Benedicto R. Palacol and concurred in by Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves Vivar-De Castro.

[3] *Id*. at 45-49; penned by Labor Arbiter Madjayran H. Ajan.

Antecedents

Respondent Sea Power Shipping Enterprises, Inc. employed the petitioner as Third Officer on board the M/T Samaria, a vessel owned by Avin International SA. On October 25, 2009, prior to the expiration of his employment contract, the shipowner sold the M/T Samaria to the Swiss Singapore Overseas Enterprise, Pte. Ltd. As a consequence of the sale, he was discharged from the vessel and repatriated to the Philippines under the promise to transfer him to the M/T Platinum, another vessel of the respondents. After he was not ultimately deployed on the M/T Platinum, he was engaged to work as a Second Mate on board the M/T Kriti Akti. Before his deployment on board the M/T Kriti Akti, however, the shipowner also sold the vessel to the Mideast Shipping and Trading Limited on April 8, 2010. Thereafter, he was no longer deployed to another vessel to complete his contract.[4]

On April 23, 2010, the petitioner complained against the respondents in the Philippine Overseas Employment Administration (POEA) demanding the full payment of his employment contract. His claim was settled through a compromise agreement with quitclaim, pursuant to which he received separation pay after deducting his cash advances.

Two months thereafter, the petitioner filed another complaint against the respondents for alleged illegal dismissal and non-payment of the unexpired portion of his contract. The complaint was docketed as NLRC Case No. 04-05764-10.[5]

On October 29, 2010, the Labor Arbiter (LA) rendered a decision in NLRC Case No. 04-05764-10 declaring the termination of the petitioner's employment as illegal,[6] pertinently holding:

With the finding that complainant was illegally dismissed from employment, he is entitled to payment of his salaries of the remaining

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[4] *Id*. at 33-34.

[5] *Id*. at 34.

[6] *Id*. at 45-49.

ten (10) months unexpired portion of his employment contract in the total amount of twenty-two thousand and three hundred US dollars (US22,300.00) basic monthly salary, allowances and leave pay x 10 months plus attorneys fees equivalent to ten percent (10%) thereof.

All other claims are hereby denied for lack of sufficient factual and legal basis.

SO ORDERED.[7]

The LA ratiocinated that:

Settled is the rule that in termination cases, the burden of proving that the dismissal of the employee was for a valid and authorized cause roots on the employer. It is incumbent upon the employer to show by substantial evidence that the termination of the employment of the employees was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal (Fernando P De Guzman versus NLRC, December 12, 2007).

In the instant case, complainant seafarer was deployed as Third Mate by virtue of a contract entered into by the parties on August 26, 2009. But after the sale of the vessel SAMARIA by the principal owner, on October 25, 2009, there is illegal termination because there is no showing that he was transferred or re-engaged to another vessel named PLATINUM as promised by the respondents as they are governed by employment contract for nine (9) months plus three (3) months with the consent of both parties. Notwithstanding this is in violation to Section 23 on the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels, regarding termination due to vessel sale, buy up or discontinuance of voyage, to wit:

> Where the vessel is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay, unless arrangements have been made for the seafarer to join another vessel belonging to the same principal to complete his contract which case the seafarer shall be entitled to basic wages until the date of joining the other vessel.

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[7] *Id*. at 49.

Anent the Compromise Agreement with quitclaim and Release (Annex "4" Respondent's Position Paper), this Office noted that it pertains clearly to a final settlement of claims relative to the complaint of both parties against one another for recruitment violation/disciplinary action.

It does not include release and settlement to complaint for termination disputes and money claims, which is not barred from proceeding his cause of action for illegal dismissal and money claims pursuant to R.A. 8042 otherwise known as Migrant Workers Act.[8]

The copy of the LA's decision sent to the respondents by registered mail was returned with the notation "Moved Out."[9] Thus, on December 14, 2010, the LA issued a writ of execution.[10] On December 17, 2010, the respondents moved to quash the writ of execution, but the LA denied their motion on January 17, 2011, *viz.*:

WHEREFORE, the Writ of Execution dated December 14, 2010, hereby STANDS UNDISTURBED and REMAINS effective.

ACCORDINGLY, let an Order to Release should be, as it is issued as prayed for in the complainant's Urgent Ex-Parte Motion for an Order to Release, dated January 7, 2010, of the garnished amount of ₱848,810,53 from the respondent's account with the Bank of the Philippine Islands pursuant to the 2nd Sheriff Report dated January 7, 2011.

SO ORDERED.[11]

Apprised of the LA's decision upon receipt of the writ of execution,[12] the respondents appealed the LA's decision to the NLRC.

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[8] *Id*. at 48-49.

[9] *Id.* at 50.

[10] *Id*. at 35.

[11] *Id.* at 35.

[12] *Id*. at 62.

However, on May 9, 2011,[13] the NLRC dismissed the respondents' appeal, disposing in its decision:

WHEREFORE, premises considered, judgment is hereby rendered **DISMISSING** the appeal for lack of merit. The Order of the Labor dated January 17, 2011 is hereby **AFFIRMED**.

SO ORDERED.[14]

The NLRC justified its dismissal of the respondents' appeal as follows:

We are not persuaded.

It is noteworthy that the service was made by registered mail and We presume regularity of the service in the absence of proof to the contrary. Since the postal service stated that the respondents-appellants have moved out of their address on record and since the latter failed to present substantial evidence to disprove it, We find no valid reason to rule otherwise.

It is worth to state that the address currently issued by the respondent-appellants is new one as evidenced by the Secretary's Certificate attached to their appeal (Records, p. 339)

Lastly, the quashal of the writ of execution is appropriate only in any of the following circumstances:

1) when the writ of execution varies the judgment;

2) when there has been a change in the situation of the parties making execution inequitable or unjust;

3) when execution is sought to be enforced against property exempt from execution;

4) when it appears that the controversy has never been submitted to the judgment of the court;

5) when the terms of the judgment are not clear enough and there remains room for interpretation thereof; or,

6) when it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or

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

[14] *Id*. at 53.

is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority;

None of these circumstances exist to warrant quashal thereof."[15]

After the NLRC denied their motion for reconsideration on June 10, 2011,[16] the respondents brought their petition for *certiorari* in the CA, submitting that the NLRC committed grave abuse of discretion in dismissing their appeal and denying their motion for reconsideration.

Decision of the CA

On November 28, 2011, the CA promulgated the assailed decision granting the respondents' petition for *certiorari*,[17] to wit:

WHEREFORE, in the light of all the foregoing, the petition is **GRANTED**. The assailed decision dated May 9, 2011 and Resolution dated June 10, 2011, respectively, promulgated by the National Labor Relations Commission (Sixth Division) in NLRC LAC No. (M) 02-000102-11; NLRC Case No. 04-05764-10, are hereby **REVERSED**. Likewise, the Decision of the Labor Arbiter dated October 29, 2010 is hereby **ANNULLED and SET ASIDE**. The complaint of private respondent dated June 15, 2010 is **DISMISSED** for lack of merit. Accordingly, private respondent Wilfredo P. Asayas is ordered to **RETURN/REIMBURSE** to the petitioners all amounts (₱1,079,320.03) received from petitioners to earn legal interest of twelve (12%) per annum from date of receipt until fully paid.

SO ORDERED.[18]

The CA explained its grant of the respondents' petition for *certiorari* in the following manner:

This Court is constrained to probe into the attendant circumstances as appearing on record in view of the peculiar circumstances

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

[16] *Id*. at 56.

[17] *Id.* at 32-41.

[18] *Id*. at 40.

surrounding the instant case and in as much as the questions that need to be settled are factual in nature.

The instant case is sanctioned by the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels. We quote the provisions thereof pertinent to the case, specifically Sections 23 and 26, to wit:

> SECTION 23. TERMINATION DUE TO VESSEL SALE, LAY-UP OR DISCONTINUANCE OF VOYAGE
>
> Where the vessel is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay, unless arrangements have been made for the seafarer to join another vessel belonging to the same principal to complete his contract which case the seafarer shall be entitled to basic wages until the date of joining the other vessel."
>
> SECTION 26.CHANGE OF PRINCIPAL
>
> A. Where there is change of principal of the vessel necessitating the termination of employment of the seafarer before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's expense and one month basic pay as termination pay.
>
> B. If by mutual agreement, the seafarer continues his service on board the same vessel, such service shall be treated as a new contract. The seafarer shall be entitled to earned wages only.
>
> C. In case arrangements have been made for the seafarer to join another vessel to complete his contract, the seafarer shall be entitled to basic wage until the date joining the other vessel."

It is worthy to note that private respondent's non-inclusion of employment contract in the case at bar was due to the sale of M/T SAMARIA to Swiss Singapore Overseas Enterprise, Pte. Ltd. We find that the requirements under the Standard Terms and Conditions Governing the employment of Filipino Seafarers on Board Ocean Going Vessels were met, to wit: (a) Seafarer's entitlement to earned

wages; (b) Seafarer's repatriation at employer's cost; and (c) one (1) month basic wage as termination pay.

Indubitably, the foregoing were availed of by private respondent.

It must also be stressed that upon the signing of the employment contract, private respondent was duly informed of the impending sale of the vessel. The same was admitted by private respondent in his position paper and he does not deny the fact that he had knowledge of the same when he signed his employment contract.

More importantly, private respondent later on executed a "Compromise Agreement with Quitclaim" before conciliator Judy A. Santillan. The Supreme Court in a litany of cases has ruled that a waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import, to wit:

> Not all quitclaims are per se invalid or against public policy, except: 1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transaction. Indeed, there are legitimate waivers that represent a voluntary and reasonable settlement of laborer's claims which should be respected by the Court as the law between the parties. Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim so credible and reasonable, the transaction must be recognized as being valid and binding undertaking, and may not later be disowned simply because of a change of mind.

In this case, We hold and so rule that private respondent voluntarily executed the "Compromise Agreement with Quitclaim" discharging and releasing petitioners for any and all claims and liabilities attendant to or arising out of private respondent's application for overseas employment. Thus, there is no more legal controversy to speak of.

All told, We hold and so rule that private respondent Wilfredo P. Asayas was not illegally dismissed.

During the pendency of this petition, private respondent received the amounts of ₱848,810.53 and ₱230,509,50 representing the judgment award from the NLRC cashier as this Court did not issue

a TRO. Thus, private respondent was able to receive the total amount of ₱1,079,320.03. Justice and equity demand that private respondent should return all amounts received with legal interest from date of receipt.[19]

The CA denied the petitioner's motion for reconsideration on May 10, 2012.[20]

Issues

In this appeal, the petitioner insists that the CA seriously erred in granting the respondents' petition for *certiorari* despite the absence of grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the LA and the NLRC in issuing their decisions and resolutions, in clear derogation of the settled doctrine of conclusiveness of a final and immutable judgment.[21]

In contrast, the respondents contend in their comment that the petitioner was not illegally dismissed considering that the POEA Standard Contract permitted the termination of his employment on account of the sale of the vessel.[22]

It is noted that both the respondents and the CA were silent about the finality and immutability of the LA's decision.

Ruling of the Court

The appeal is meritorious.

It was entirely unwarranted on the part of the CA to have granted the respondents' petition for *certiorari* despite the absence of the showing by them that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction.

The LA's decision that was served on the respondents by registered mail was returned with the notation "Moved Out." In this regard, the NLRC specifically observed that:

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[19] *Id*. at 37-40.

[20] *Id*. at 42-44.

[21] *Id*. at 11.

[22] *Id*. at 58-65.

It is noteworthy that the service was made by registered mail and We presume regularity of the service in the absence of proof to the contrary. Since the postal service stated that the respondents-appellants have moved out of their address on record and since the latter failed to present substantial evidence to disprove it, We find no valid reason to rule otherwise.

It is worth to state that the address currently issued by the respondent-appellants is new one as evidenced by the Secretary's Certificate attached to their appeal (Records, p. 339).[23]

The service of the LA's decision by registered mail was deemed complete five days after the copy of decision sent to the respondents was returned to the NLRC as the sender. Such consequence was unavoidable even if the addressees did not actually receive the copy of the decision. In *Philippine Airlines, Inc. v. Heirs of Bernardin J. Zamora*,[24] the petitioner moved to another address without giving a notice of the change of address to the NLRC. As a result, the copy of the NLRC's decision dispatched to the petitioner's address of record by registered mail was returned. The Court ruled there as follows:[25]

The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.

In the instant case, there is no postmaster's certification to the effect that the registered mail containing the NLRC decision was unclaimed by the addressee and thus returned to sender, after first

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[23] *Id*. at 52.

[24] G.R. No. 164267 and G.R. No. 166996, March 31, 2009, 582 SCRA 670.

[25] *Id*. at 683.

notice was sent to and received by the addressee on a specified date. All that appears from the records are the envelopes containing the NLRC decision with the stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED." Still, we must rule that service upon PAL and the other petitioners was complete.

With the service by registered mail being complete, the respondents only had 10 calendar days from the return of the mail within which to appeal in accordance with the *Labor Code*.[26] When they did not so appeal, the LA's decision became final and executory. With the LA's decision attaining finality, it was no longer legally feasible or permissible to modify the ruling through the expediency of a petition claiming that the termination of the petitioner's employment had been legal. Verily, the decision could no longer be reviewed, or in any way modified directly or indirectly by a higher court, not even by the Supreme Court.[27] The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business; and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[28] The courts must guard against any scheme calculated to bring about that result, and must frown upon any attempt to prolong controversies.[29]

Grave abuse of discretion, as held in *De los Santos v. Metropolitan Bank and Trust Company*,[30] "must be grave, which

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[26] Article 229 (223) of the *Labor Code.*

[27] *C-E Construction Corporation v. National Labor Relations Commission,* G.R. No. 180188, 582 SCRA 449, 456.

[28] *Navarro v. Metropolitan Bank & Trust Company*, G.R. Nos. 165697 and 166481, August 4, 2009, 595 SCRA 149, 159.

[29] *Johnson and Johnson (Phils.), Inc. v. Court of Appeals*, G.R. No. 102692, September 22, 1996, 262 SCRA 298, 311-312, citing *Li Kim Tho v. Go Siv Kao*, 82 Phil. 776 (1949).

[30] G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction." Accordingly, the dismissal of the respondents' appeal, being fully warranted and in accord with jurisprudence, did not constitute grave abuse of discretion simply because the NLRC did not thereby act whimsically, or capriciously, or arbitrarily.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on November 28, 2011 in CA-G.R. SP No. 120175; **REINSTATES** the decision issued on May 9, 2011 in NLRC LAC No. (M) 02-000102-11; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

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

Martires, J., on wellness leave.

SECOND DIVISION

[G.R. No. 203160. January 24, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COVANTA ENERGY PHILIPPINE HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. **TAXATION; REPUBLIC ACT NO. 9480 (THE TAX AMNESTY LAW); AVAILMENT OF TAX AMNESTY; UPON THE TAXPAYER'S FULL COMPLIANCE WITH THE REQUIREMENTS, THE TAXPAYER IS IMMEDIATELY ENTITLED TO THE ENJOYMENT OF THE IMMUNITIES AND PRIVILEGES OF THE TAX AMNESTY PROGRAM; EXCEPTION.—** R.A. No. 9480 governs the tax amnesty program for national internal revenue taxes for the taxable year 2005 and prior years. Subject to certain exceptions, a taxpayer may avail of this program by complying with the documentary submissions to the Bureau of Internal Revenue (BIR) and thereafter, paying the applicable amnesty tax. The implementing rules and regulations of R.A. No. 9480, as embodied in Department of Finance (DOF) Department Order No. 29-07, laid down the procedure for availing of the tax amnesty x x x. Upon the taxpayer's full compliance with x x x [the] requirements, the taxpayer is immediately entitled to the enjoyment of the immunities and privileges of the tax amnesty program. But when: (a) the taxpayer fails to file a SALN and the Tax Amnesty Return; or (b) the net worth of the taxpayer in the SALN as of December 31, 2005 is *proven* to be understated to the extent of 30% or more, the taxpayer shall cease to enjoy these immunities and privileges.

2. **ID.; ID.; ID.; ID.; ID.; UNDERDECLARATION OF NET WORTH; HOW PROVEN.—** The underdeclaration of a taxpayer's net worth x x x is proven through: (a) proceedings initiated by parties other than the BIR or its agents, within one (1) year from the filing of the SALN and the Tax Amnesty Return; or (b) findings or admissions in congressional hearings or proceedings in administrative agencies, and in courts. Otherwise, the taxpayer's SALN is presumed true and correct. The tax amnesty law thus places the burden of overturning this presumption to the parties who claim that there was an underdeclaration of the taxpayer's net worth.

3. **ID.; ID.; ID.; THE IMMUNITIES AND PRIVILEGES GRANTED TO TAXPAYERS ARE SUBJECT TO A RESOLUTORY CONDITION.—** The required information that should be reflected in the taxpayer's SALN is enumerated

in Section 3 of R.A. No. 9480. The essential contents of the SALN are also itemized under the implementing rules and regulations x x x. It is evident from CEPHI's original and amended SALN that the information statutorily mandated in R.A. No. 9480 were all reflected in its submission to the BIR. While the columns for *Reference and Basis for Valuation* were indeed left blank, **CEPHI attached schedules to its SALN (Schedules 1 to 7), both original and amended, which provide the required information under R.A. No. 9480 and its implementing rules and regulations.** A review of the SALN form likewise reveals that the information required in the *Reference* and *Basis for Valuation* columns are actually the specific description of the taxpayer's declared asserts. As such, these were deemed filled when CEPHI referred to the attached schedules in its SALN. On this basis, the CIR cannot disregard or simply set aside the SALN submitted by CEPHI. More importantly, CEPHI's SALN is presumed true and correct, pursuant to Section 4 of R.A. No. 9480. This presumption may be overturned if the CIR is able to establish that CEPHI understated its net worth by the required threshold of at least 30%. However, aside from the bare allegations of the CIR, there is no evidence on record to prove that the amount of CEPHI's net worth was understated. x x x Considering that CEPHI completed the requirements and paid the corresponding amnesty tax, it is considered to have totally complied with the tax amnesty program. As a matter of course, CEPHI is entitled to the immediate enjoyment of the immunities and privileges of the tax amnesty program. Nonetheless, the Court emphasizes that the immunities and privileges granted to taxpayers under R.A. No. 9480 x x x [are] *not* absolute. **It is subject to a resolutory condition insofar as the taxpayers' enjoyment of the immunities and privileges of the law is concerned.** These immunities cease upon proof that they underdeclared their net worth by 30%.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Salvador & Perez for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[2] dated March 30, 2012 and Resolution[3] dated August 16, 2012 of the Court of Tax Appeals (*CTA*) *en banc* in CTA EB Case No. 713.

The CTA *en banc* denied the appeal of the Commissioner of Internal Revenue (CIR) and affirmed the cancellation and withdrawal of the deficiency tax assessments on respondent Covanta Energy Philippine Holdings, Inc. (CEPHI). The CIR avers, however, that CEPHI failed to comply with the requirements of the tax amnesty law, or Republic Act (R.A.) No. 9480.[4]

Factual Antecedents

On December 6, 2004, the CIR issued Formal Letters of Demand and Assessment Notices against CEPHI for deficiency value-added tax (VAT) and expanded withholding tax (EWT). The deficiency assessments were respectively in the amounts of ₱465,593.21 and ₱288,903.78, or an aggregate amount of ₱754,496.99, representing CEPHI's VAT and EWT liabilities for the taxable year 2001.[5]

CEPHI protested the assessments by filing two (2) separate Letters of Protest on January 19, 2005. However, the CIR issued

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[1] *Rollo,* pp. 9-29.

[2] Penned by Associate Justice Lovell R. Bautista; *id.* at 30-54.

[3] *Id.* at 55-57.

[4] AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2005 AND PRIOR YEARS. Approved on May 24, 2007.

[5] *Rollo*, pp. 32-33.

another Formal Letter of Demand and Assessment Notice dated January 11, 2005, assessing CEPHI for deficiency minimum corporate income tax (MCIT) in the amount of ₱467,801.99, likewise for the taxable year 2001. This assessment lead to CEPHI filing a Letter of Protest on the MCIT assessment on February 16, 2015.[6]

The protests remained unacted upon. Thus, CEPHI filed separate petitions before the CTA, seeking the cancellation and withdrawal of the deficiency assessments. The petitions were filed on October 10, 2005, for the deficiency VAT and EWT, which was docketed as CTA Case No. 7338; and on November 9, 2005, for the deficiency MCIT, which was docketed as CTA Case No. 7365.[7]

On December 6, 2005, the CIR filed an Answer for CTA Case No. 7338, while the Answer for CTA Case No. 7365 was filed on January 10, 2006. The cases were eventually consolidated upon the CIR's motion.[8]

After the parties' respective submission of their formal offer of evidence, CEPHI filed a Supplemental Petition on October 7, 2008, informing the CTA that it availed of the tax amnesty under R.A. No. 9480. CEPHI afterwards submitted a Supplemental Formal Offer of Evidence, together with the documents relevant to its tax amnesty.[9]

The CTA then required the parties to submit their respective memoranda within 30 days. The case was submitted for decision upon the parties' compliance.[10]

Ruling of the CTA Second Division

In a Decision dated July 27, 2010, the CTA Second Division partially granted the petitions of CEPHI with respect to the

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[6] *Id*. at 33.

[7] *Id.*

[8] *Id.* at 37.

[9] *Id*.

[10] *Id*.

deficiency VAT and MCIT assessments for 2001. Since tax amnesty does not extend to withholding agents with respect to their withholding tax liabilities,[11] the CTA Second Division ruled, after computation, that CEPHI is liable to pay the amount of ₱131,791.02 for the deficiency EWT assessment, plus additional deficiency and delinquency interest. The dispositive portion of this decision states:[12]

> WHEREFORE, the instant Petitions for Review are hereby PARTIALLY GRANTED. Accordingly, the deficiency [VAT] and deficiency [MCIT] assessments for taxable year 2001 issued against petitioner are CANCELLED and WITHDRAWN.
>
> However, petitioner is ORDERED TO PAY respondent the amount of ONE HUNDRED THIRTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE PESOS AND 02/100 (₱131,791.02), representing deficiency [EWT], including the twenty-five percent (25%) surcharge imposed thereon.
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> Likewise, petitioner is ORDERED TO PAY:
>
> (a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT of ₱29,415.00 computed from November 16, 2005 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and
>
> (b) delinquency interest at the rate of 20% *per annum* of ₱131,791.02 which is the total amount still due and on the 20% deficiency interest which have accrued as afore-stated in paragraph (a) computed from January 10, 2005 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.
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> SO ORDERED.[13]

The CIR moved for the reconsideration of this decision, which the CTA Second Division denied in its Resolution[14] dated December 13, 2010:

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[11] R.A. No. 9480, Section 8(1).

[12] *Rollo*, pp. 108-109.

[13] *Id*.

[14] *Id*. at 128-132.

WHEREFORE, premises considered, respondent's "Motion for Reconsideration" is hereby DENIED for lack of merit.

SO ORDERED.[15]

Unsatisfied with the ruling of the CTA Second Division, the CIR elevated the matter to the CTA *en banc* through a Petition for Review dated January 4, 2011, pursuant to R.A. No. 1125,[16] as amended by R.A. No. 9282[17] and R.A. No. 9503.[18] The sole issue raised in the CIR's appeal was whether the CTA Second Division erred in upholding the validity of the tax amnesty availed by CEPHI. The CIR was of the position that CEPHI is not entitled to the immunities and privileges under R.A. No. 9480 because its documentary submissions failed to comply with the requirements under the tax amnesty law.[19]

Ruling of the CTA *En Banc*

Finding the CIR's petition for review unmeritorious, the CTA *en banc* denied the appeal in the assailed Decision[20] dated March 30, 2012:

WHEREFORE, the Petition for Review filed by [CIR] is hereby DENIED for lack of merit. The Decision dated July 27, 2010 and

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[15] *Id*. at 132.

[16] AN ACT CREATING THE COURT OF TAX APPEALS. Approved on June 16, 1954.

[17] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. Approved on March 30, 2004.

[18] AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. Approved on June 12, 2008.

[19] *Rollo*, pp. 40-43.

[20] *Id*. at 30-54.

Resolution dated December 13, 2010 are hereby AFFIRMED. Deficiency [VAT] and Deficiency [MCIT] in taxable year 2001 remain CANCELLED and WITHDRAWN. Respondent, however, is ORDERED TO PAY the amount of ONE HUNDRED THIRTY-ONE THOUSAND SEVEN HUNDRED NINETY-ONE PESOS AND 02/100 (₱131,791.02), representing deficiency [EWT], including the twenty-five (25%) surcharge imposed thereon. Likewise, respondent is ORDERED TO PAY:

(a) deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT of ₱29,415.00 computed from November 16, 2005 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% *per annum* of ₱131,791.02 which is the total amount still due and on the 20% deficiency interest which have accrued as afore-stated in paragraph (a) computed from January 10, 2005 until full payment thereof, pursuant to Section 249(c) of the NIRC of 1997.

SO ORDERED.[21]

The CTA *en banc* upheld the ruling that, without any evidence that CEPHI's net worth was underdeclared by at least 30%, there is a presumption of compliance with the requirements of the tax amnesty law. For this reason, CEPHI may immediately enjoy the privileges of the tax amnesty program.[22] The CIR disagreed with this decision, and on April 23, 2012, it moved for the reconsideration of the CTA *en banc's* decision.

The CIR's motion for reconsideration was denied in the assailed CTA *en banc* Resolution[23] dated August 16, 2012:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.[24]

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

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

[23] *Id.* at 55-57.

[24] *Id.* at 56-57.

Prompted by the denial of their petition for review and motion for reconsideration, the CIR elevated the matter to this Court, by again assailing the validity of CEPHI's tax amnesty. The CIR reiterated its argument that CEPHI's failure to provide complete information in its Statement of Assets, Liabilities and Net worth (SALN), particularly the columns requiring the *Reference* and *Basis of Valuation*, is sufficient basis to disqualify CEPHI from the tax amnesty program.[25] The CIR also alleged that there is no period of limitation in challenging CEPHI's compliance with the requirements of the tax amnesty program.[26]

Ruling of this Court

The Court dismisses the petition.

CEPHI is entitled to the immunities and privileges of the tax amnesty program upon full compliance with the requirements of R.A. No. 9480.

R.A. No. 9480 governs the tax amnesty program for national internal revenue taxes for the taxable year 2005 and prior years.[27] Subject to certain exceptions,[28] a taxpayer may avail of this program by complying with the documentary submissions to the Bureau of Internal Revenue (BIR) and thereafter, paying the applicable amnesty tax.[29]

The implementing rules and regulations of R.A. No. 9480, as embodied in Department of Finance (DOF) Department Order No. 29-07,[30] laid down the procedure for availing of the tax amnesty:

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[25] *Id*. at 16-23.

[26] *Id*. at 23-26.

[27] R.A. No. 9480, Section 1.

[28] *Id.* at Section 8.

[29] *Id*. at Section 2.

[30] Rules and Regulations to Implement Republic Act No. 9480 (August 15, 2007).

SEC. 6. *Method of Availment of Tax Amnesty*. –

1. ***Forms/Documents to be filed***. – To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:
   a. Notice of Availment in such forms as may be prescribed by the BIR.
   b. [SALN] as of December 31, 2005 in such forms, as may be prescribed by the BIR.
   c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. ***Place of Filing of Amnesty Tax Return***. – The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:
   a. Residents shall file with the Revenue District Officer (RDO)/Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.
   b. Non-residents shall file with the office of the Commissioner of the BIR, or with the RDO.
   c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, [SALN], or such other documents submitted by the taxpayer.

3. ***Payment of Amnesty Tax and Full Compliance***. — Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

   The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of-or to be accomplished by – the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. **The completion of these requirements shall be deemed full compliance with the provisions of RA 9480.**

4. ***Time for Filing and Payment of Amnesty Tax***. – The filing of the Tax Amnesty Return, together with the SALN, and the payment of the amnesty tax shall be made within six (6) months from the effectivity of these Rules.[31] (Emphasis and underscoring Ours)

Upon the taxpayer's full compliance with these requirements, the taxpayer is immediately entitled to the enjoyment of the immunities and privileges of the tax amnesty program.[32] But when: (a) the taxpayer fails to file a SALN and the Tax Amnesty Return; or (b) the net worth of the taxpayer in the SALN as of December 31, 2005 is *proven* to be understated to the extent of 30% or more, the taxpayer shall cease to enjoy these immunities and privileges.[33]

The underdeclaration of a taxpayer's net worth, as referred in the second instance above, is proven through: (a) proceedings initiated by parties other than the BIR or its agents, within one (1) year from the filing of the SALN and the Tax Amnesty Return; or (b) findings or admissions in congressional hearings or proceedings in administrative agencies, and in courts. Otherwise, the taxpayer's SALN is presumed true and correct.[34] The tax amnesty law thus places the burden of overturning this presumption to the parties who claim that there was an underdeclaration of the taxpayer's net worth.

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[31] DOF Department Order No. 29-07, Rule III, Section 6.

[32] *R.A. No. 9480*, Section 6; DOF Department Order No. 29-07, Rule V, Section 10; *See* also *CIR v. Apo Cement Corporation,* G.R. No. 193381, February 8, 2017.

[33] *Id*.

[34] *R.A. No. 9480*, Section 4; DOF Department Order No. 29-07, Rule IV, Section 9.

In this case, it is undisputed that CEPHI submitted all the documentary requirements for the tax amnesty program.[35] The CIR argued, however, that CEPHI cannot enjoy the privileges attendant to the tax amnesty program because its SALN failed to comply with the requirements of R.A. No. 9480. The CIR specifically points to CEPHI's supposed omission of the information relating to the *Reference* and *Basis for Valuation* columns in CEPHI's original and amended SALNs.[36]

The required information that should be reflected in the taxpayer's SALN is enumerated in Section 3 of R.A. No. 9480.[37] The essential contents of the SALN are also itemized under the implementing rules and regulations as follows:

> **SEC. 8.** ***Contents of the SALN.*** – The SALN shall contain a true and complete declaration of assets, liabilities and networth of the taxpayer as of December 31, 2005, as follows:
>
> 1. Assets within or without the Philippines, whether real or personal, tangible or intangible, whether or not used in trade or business:
>
>   a. Real properties shall be accompanied by a description of their classification, exact location, and valued at acquisition cost, if acquired by purchase or the zonal valuation or fair market value, whichever is higher, if acquired through inheritance or donation;

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[35] *Rollo*, p. 100.

[36] *Id*. at 23.

[37] **SEC. 3**. ***What to Declare in the SALN***. — The SALN shall contain a declaration of the assets, liabilities and networth as of December 31, 2005, as follows:

1. Assets within or without the Philippines, whether real or personal, tangible or intangible, whether or not used in trade or business: *Provided*, That property other than money shall be valued at the cost at which the property was acquired: *Provided*, further, That foreign currency assets and/or securities shall be valued at the rate of exchange prevailing as of the date of the SALN;

2. All existing liabilities which are legitimate and enforceable, secured or unsecured, whether or not incurred in trade or business; and

3. The networth of the taxpayer, which shall be the difference between the total assets and total liabilities.

b. Personal properties other than money, shall be accompanied by a specific description of the kind and number of assets (i.e. automobiles, shares of stock, etc.) or other investments, indicating the acquisition cost less depreciation or amortization, in proper cases, if acquired by purchase, or the fair market price or value at the time of receipt, if acquired through inheritance or donations;

c. Assets denominated in foreign currency shall be converted into the corresponding Philippine currency equivalent, at the rate of exchange prevailing as of December 31, 2005; and

d. Cash on hand and in bank in peso as of December 31, 2005, as well as Cash on Hand and in Bank in foreign currency, converted to peso as of December 31, 2005.

2. All existing liabilities which are legitimate and enforceable, secured and unsecured, whether or not incurred in trade or business, disclosing or indicating clearly the name and address of the creditor and the amount of the corresponding liability.

3. The total networth of the taxpayer, which shall be difference between the total assets and total liabilities.

It is evident from CEPHI's original and amended SALN that the information statutorily mandated in R.A. No. 9480 were all reflected in its submission to the BIR. While the columns for *Reference* and *Basis for Valuation* were indeed left blank, **CEPHI attached schedules to its SALN (Schedules 1 to 7), both original and amended, which provide the required information under R.A. No. 9480 and its implementing rules and regulations**.[38] A review of the SALN form likewise reveals that the information required in the *Reference* and *Basis for Valuation* columns are actually the specific description of the taxpayer's declared assets. As such, these were deemed filled when CEPHI referred to the attached schedules in its SALN.

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[38] *Rollo*, pp. 111-126.

On this basis, the CIR cannot disregard or simply set aside the SALN submitted by CEPHI.

More importantly, CEPHI's SALN is presumed true and correct, pursuant to Section 4 of R.A. No. 9480.[39] This presumption may be overturned if the CIR is able to establish that CEPHI understated its net worth by the required threshold of at least 30%.

However, aside from the bare allegations of the CIR, there is no evidence on record to prove that the amount of CEPHI's net worth was understated. Parties other than the BIR or its agents did not initiate proceedings within one year from the filing of the SALN or Tax Amnesty Return, in order to challenge the net worth of CEPHI. Neither was the CIR able to establish that there were findings or admissions in a congressional, administrative, or court proceeding that CEPHI indeed understated its net worth by 30%.

As the Court previously held in *CS Garment, Inc. v. CIR,*[40] taxpayers are eligible to the immunities of the tax amnesty program as soon as they fulfill the suspensive conditions imposed under R.A. No. 9480:

> A careful scrutiny of the 2007 Tax Amnesty Law would tell us that the law contains two types of conditions – one suspensive, the other resolutory. Borrowing from the concepts under our Civil Code, a condition may be classified as *suspensive* when the fulfillment of the condition results in the acquisition of rights. On the other hand, a condition may be considered *resolutory* when the fulfillment of the condition results in the extinguishment of rights. In the context of tax amnesty, the rights referred to are those arising out of the privileges and immunities granted under the applicable tax amnesty law.
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> x x x x x x x x x
>
> **This clarification, however, does not mean that the amnesty taxpayers would go scot-free in case they substantially understate**

[39] *Supra* note 34.

[40] 729 Phil. 253, 267 (2014).

the amounts of their net worth in their SALN. The 2007 Tax Amnesty Law imposes a resolutory condition insofar as the enjoyment of immunities and privileges under the law is concerned. Pursuant to Section 4 of the law, third parties may initiate proceedings contesting the declared amount of net worth of the amnesty taxpayer within one year following the date of the filing of the tax amnesty return and the SALN. Section 6 then states that "All these immunities and privileges shall not apply x x x where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof." Accordingly, Section 10 provides that amnesty taxpayers who willfully understate their net worth shall be (a) liable for perjury under the Revised Penal Code; and (b) subject to immediate tax fraud investigation in order to collect all taxes due and to criminally prosecute those found to have willfully evaded lawful taxes due.[41] (Emphasis Ours)

Considering that CEPHI completed the requirements and paid the corresponding amnesty tax, it is considered to have totally complied with the tax amnesty program. As a matter of course, CEPHI is entitled to the immediate enjoyment of the immunities and privileges of the tax amnesty program.[42] Nonetheless, the Court emphasizes that the immunities and privileges granted to taxpayers under R.A. No. 9480 are *not* absolute. **It is subject to a resolutory condition insofar as the taxpayers' enjoyment of the immunities and privileges of the law is concerned**. These immunities cease upon proof that they underdeclared their net worth by 30%.

Unfortunately for the CIR, however, there is no such proof in CEPHI's case. The Court, thus, finds it necessary to deny the present petition. While tax amnesty is in the nature of a tax exemption, which is strictly construed against the taxpayer,[43] the Court cannot disregard the plain text of R.A. No. 9480.

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[41] *Id.* at 271-272.

[42] DOF Department Order No. 29-07, Rule III, Section 6(3).

[43] *Philippine Banking Corp. v. CIR*, 597 Phil. 363, 388 (2009).

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The Decision dated March 30, 2012 and Resolution dated August 16, 2012 of the CTA *en banc* in CTA EB Case No. 713 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207252. January 24, 2018]

PHILIPPINE GEOTHERMAL, INC. EMPLOYEES UNION (PGIEU), *petitioner, vs.* **CHEVRON GEOTHERMAL PHILS. HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; WAGE DISTORTION; COVERS ONLY WAGE ADJUSTMENTS AND INCREASES DUE TO A PRESCRIBED LAW OR WAGE ORDER.—** Upon the enactment of Republic Act (R.A.) No. 6727 (Wage Rationalization Act, amending among others, Article 124 of the Labor Code) on June 9, 1989, the term "Wage Distortion" was explicitly defined as "*a situation where an increase in prescribed wage rate results in the elimination or severe contraction of intentional quantitative differences in wage or salary rate between and among employee groups* [*in*] *an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service or other logical bases of differentiation."* Contrary to petitioner's claim of alleged "wage distortion", Article 124 of the Labor Code of the Philippines only x x x [covers] wage adjustments and increase due to a prescribed law or wage order x x x.

2. **ID.; ID.; ID.; ELEMENTS.—** *Prubankers Association v. Prudential Bank and Trust Company* laid down the four elements of wage distortion, to wit: (1) an existing hierarchy of positions with corresponding salary rates; (2) a significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one; (3) the elimination of the distinction between the two levels; and (4) the existence of the distortion in the same region of the country.

3. **ID.; ID.; MANAGEMENT PREROGATIVE; GIVES AN EMPLOYER FREEDOM TO REGULATE ALL ASPECTS OF EMPLOYMENT WHICH MUST BE EXERCISED IN GOOD FAITH AND WITH DUE REGARD TO THE RIGHTS OF THE EMPLOYEES.—** The apparent increase in Lanao and Cordovales' salaries as compared to the other company workers who also have the same salary/pay grade with them should not be interpreted to mean that they were given a premature increase for November 1, 2008, thus resulting to a wage distortion. The alleged increase in their salaries was not a result of the erroneous application of Article VII and Annex D of the CBA, rather, it was because when they were hired by respondent in 2009, when the hiring rates were relatively higher as compared to those of the previous years. Verily, the setting and implementation of such various engagement rates were purely an exercise of the respondent's business prerogative in order to attract or lure the best possible applicants in the market and which We will not interfere with, absent any showing that it was exercised in bad faith. Management prerogative gives an employer freedom to regulate according to their discretion and best judgment, all aspects of employment including work assignment, working methods, the processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. This right is tempered only by these limitations: that it must be exercised in good faith and with due regard to the rights of the employees.

4. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; 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.— [T]he Court has ruled time and again 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 and affirmed by the CA, in the exercise of its expanded jurisdiction to review findings of the National Labor Relations Commission.

APPEARANCES OF COUNSEL

Samson S. Alcantara for petitioner.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] pursuant to Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[2] dated November 5, 2012 of the Court of Appeals (CA) in CA-G.R. SP. No. 115796, dismissing the Petition for Review entitled "*Philippine Geothermal, Inc. Employees Union (PGIEU) vs. Chevron Geothermal Phils. Holdings, Inc*." as well as the Resolution[3] dated May 17, 2013 denying Philippine Geothermal, Inc. Employees Union's (petitioner) Motion[4] for Reconsideration dated November 27, 2012.

The Facts

Petitioner is a legitimate labor organization and the certified bargaining agent of the rank-and-file employees of Chevron Geothermal Phils. Holdings, Inc. (respondent).[5]

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[1] *Rollo,* pp. 3-5.

[2] *Id*. at 223-231.

[3] *Id*. at 235-237.

[4] *Id.* at 232-233.

[5] *Id*. at 224.

On July 31, 2008, the petitioner and respondent formally executed a Collective Bargaining Agreement (CBA) which was made effective for the period from November 1, 2007 until October 31, 2012. Under Article VII, Section 1 thereof, there is a stipulation governing salary increases of the respondent's rank-and-file employees, as follows:

Section 1. *WAGE INCREASE*

The COMPANY will grant the following:

- Effective Nov. 1, 2007, ₱260,000.00 - lump sum payment for the 1st year of this agreement (taxable).
- Effective Nov. 1, 2008, across the board increase on the monthly salary in the amount of ₱1,500.00
- Effective Nov. 1, 2009, across the board increase on the monthly salary in the amount of ₱1,500.00.[6]

In implementing the foregoing provision, the parties agreed on the following guidelines appended as Annex D of said CBA, *viz.*:

Employment Status	₱260K	₱1500	₱1500
	LumpSum	(Nov. 1, 2008)	(Nov. 1, 2009)
Regularized on or before April 30, 2008	√	√	√
Regularized between May 1, 2008 and October 31, 2008	X	√	√
Regularized on or before April 30, 2009	X	√	√
Regularized between May 1, 2009 and October 31, 2009	X	X	√
Regularized on or before April 30, 2010	X	X	√

[6] *Id.*

On October 6, 2009, a letter dated September 20, 2009 was sent by the petitioner's President to respondent expressing, on behalf of its members, the concern that the aforesaid CBA provision and implementing rules were not being implemented properly pursuant to the guidelines and that, if not addressed, might result to a salary distortion among union members.[7]

On even date, respondent responded by letter denying any occurrence of salary distortion among union members and reiterating its remuneration philosophy of having "similar values for similar jobs", which means that employees in similarly-valued jobs would have similar salary rates. It explained that to attain such objective, it made annual reviews and necessary adjustments of the employees' salaries and hiring rates based on the computed values for each job.[8]

Finding the explanation not satisfactory, petitioner, with respondent's approval, referred the subject dispute to the Voluntary Arbitration of the National Conciliation and Mediation Board (NCMB). It averred that respondent breached their CBA provision on worker's wage increase because it granted salary increase even to probationary employees in contravention of the express mandate of that particular CBA article and implementing guidelines that salary increases were to be given only to regular employees.[9]

To cite an example, petitioner alleged that respondent granted salary increases of One Thousand Five Hundred Pesos (₱1,500.00) each to then probationary employees Sherwin Lanao (Lanao) and Jonel Cordovales (Cordovales) at a time when they have not yet attained regular status. They (Lanao and Cordovales) were regularized only on January 1, 2010 and April 16, 2010, respectively, yet they were given salary increase for November 1, 2008. As a consequence of their accelerated increases, wages of said probationary workers equated the wage rates of the regular

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[7] *Id*. at 225.

[8] *Id.*

[9] *Id.*

employees, thereby obliterating the wage rates distinction based on merit, skills and length of service. Therefore, the petitioner insisted that its members' salaries must necessarily be increased so as to maintain the higher strata of their salaries from those of the probationary employees who were given the said premature salary increases.[10]

On the other hand, respondent maintained that it did not commit any violation of that CBA provision and its implementing guidelines; in fact, it complied therewith. It reasoned that the questioned increases given to Lanao and Cordovales' salaries were granted, not during their probationary employment, but after they were already regularized. It further asseverated that there was actually no salary distortion in this case since the disparity or difference of salaries between Lanao and Cordovales with that of the other company employees were merely a result of their being hired on different dates, regularization at different occasions, and differences in their hiring rates at the time of their employment.[11]

After due proceedings, the Voluntary Arbitrator rendered a Decision[12] dated August 16, 2010 in favor of respondent, ruling that petitioner failed to duly substantiate its allegations that the former prematurely gave salary increases to its probationary employees and that there was a resultant distortion in the salary scale of its regular employees.[13]

Thereafter, a Petition[14] for Review under Rule 65 was filed with the CA on September 22, 2010.

On November 5, 2012, the CA rendered its Decision.[15] It dismissed the petition for review and sustained the Voluntary

[10] *Id*. at 226.

[11] *Id*.

[12] *Id*. at 119-123.

[13] *Id*. at 227.

[14] *Id.* at 19-25.

[15] *Id*. at 223-231.

Arbitrator's decision. The pertinent and dispositive portion of the assailed decision reads as follows:

In fine, We hold that the Voluntary Arbitrator of NCMB did not commit grave abuse of discretion in dismissing petitioner union's complaint against respondent company. Settled is the rule 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, and they are binding when supported by substantial evidence. In this case, these findings are supported by competent and convincing evidence.

WHEREFORE, premises considered, the instant petition is **DISMISSED**. The Decision dated 16 August 2010 of the Voluntary Arbitrator of the NCMB Regional Branch No. IV is **SUSTAINED**.

SO ORDERED.[16]

On November 28, 2012, petitioner filed its Motion[17] for Reconsideration. This was, however, denied by the CA in its Resolution[18] dated May 17, 2013.

Hence, this petition.

The Issues

I.

WHETHER OR NOT THE CA GRAVELY ERRED IN HOLDING THAT RESPONDENT DID NOT VIOLATE THE CBA IN GRANTING WAGE INCREASE OF ₱1,500.00 TO LANAO AND CORDOVALES AT A TIME WHEN THEY HAD NOT YET ATTAINED REGULAR STATUS

II.

WHETHER OR NOT THE CA GRAVELY ERRED IN HOLDING THAT THE GRANT OF WAGE INCREASE TO LANAO AND CORDOVALES IS A VALID EXERCISE OF MANAGEMENT PREROGATIVES BY RESPONDENT

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[16] *Id*. at 230-231.

[17] *Id.* at 232-233.

[18] *Id*. at 235-237.

III.

WHETHER OR NOT THE CA ERRED IN NOT ORDERING RESPONDENT TO LIKEWISE INCREASE THE RATES OF OTHER REGULAR EMPLOYEES IN ORDER TO MAINTAIN THE DIFFERENCE BETWEEN THEIR RATES AND THOSE OF THE EMPLOYEES WHO WERE ALLEGEDLY GRANTED PREMATURE WAGE INCREASES

Ruling of the Court

The petition is devoid of merit.

Petitioner and respondent entered into an agreement whereby employees will be granted a wage increase depending on the date of their regularization, *viz.*:

Employment Status	₱260K	₱1500	₱1500
	Lump Sum	(Nov. 1, 2008)	(Nov. 1, 2009)
Regularized on or before April 30, 2008	√	√	√
Regularized between May 1, 2008 and October 31, 2008	X	√	√
Regularized on or before April 30, 2009	X	√	√
Regularized between May 1, 2009 and October 31, 2009	X	X	√
Regularized on or before April 30, 2010	X	X	√

Petitioner claims that Lanao and Cordovales having been regularized only on January 1, 2010 and April 16, 2010, respectively, are not covered by the ₱260,000.00 lump sum and the initial ₱1500.00 wage increase effective on Nov. 1, 2008. It appears, however, that based on the actual pay slips of union members, Lanao and Cordovales both received wage increase in the amount of ₱1500.00 effective Nov. 1, 2008 and

that such increase was immediately granted to them at the time of their hiring which resulted to the increase of their salaries to ₱36,500.00 per month.

It is further stressed by petitioner that the increase granted by respondent to Lanao and Cordovales are violative of the terms of the CBA, specifically Section 1, Article VII and Annex D, for the reason that these employees have not yet attained "Regular" status at the time they were granted a wage increase and thus resulting to a salary/wage distortion.

Respondent, for its part, claims that the alleged "increase" in the wages of these employees was not due to application of the provisions of Article VII and Annex D of the CBA, rather it was brought about by the increase in the hiring rates at the time these employees were hired. As a matter of fact, a careful scrutiny of the records reveals that respondent have complied with the terms agreed upon in the CBA.

Notably, respondent's reply to the petitioner's letter accusing them of violation of the terms of the CBA and holding them responsible for the alleged wage distortion, clarified the ambiguity with regard to the hiring rates, *viz.*:

> As for the perceived salary distortion among Union members resulting from the non-implementation of the guidelines on Article VH-Salaries and Allowances, Section 1 - Wage Increase, Annex D of the CBA 2007-2012, we would like to reiterate our discussion during the recent NLMC meeting of September 16, on Chevron's remuneration philosophy of having "similar value for similar jobs" which simply states that employees in similarly valued jobs will have similar salary rates. <u>Salaries and hiring rates are reviewed annually and adjusted as necessary based on the computed values of each job, an employee's tenure or seniority in his/her current position will not influence the value of the job.</u>[19] (Underlining Ours)

Clearly then, the increase in the salaries of Lanao and Cordovales was not pursuant to the wage increase agreed upon

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[19] *Id.* at 225.

in CBA 2007-2012 rather it was the result of the increase in hiring rates at the time they were hired.

To illustrate, in its *Reply*,[20] respondent discussed the difference in the hiring rates of employees Lanao and Robert Gawat, *viz.*:

> Mr. Robert Gawat was regularized on April 16, 2007 having been hired on October 16, 2007 while Mr. Lanao as shown in the Company's position paper was regularized on January 1, 2010, having been hired only on July 1, 2009. **At the time of Mr. Gawat's hiring, the hiring rate for Pay Grade 12 was ₱31,800.00**. On April 16, 2007, Mr. Gawat was given a CBA salary increase under the 2002-2007 CBA of ₱1,700.00 per month which increased his pay to ₱33,500.00 per month. He received another CBA salary increase of ₱1,500.00 under the 2007-2012 CBA on November 1, 2008, thus increasing his pay to ₱35,000.00. On November 1, 2009, he received another salary increase of ₱1,500.00 under the 2007-2012 CBA which further increased his pay to ₱36,500.00 per month until the present.
>
> On the other hand, **when Mr. Lanao was hired on July 9, 2009, the hiring rate at the time for employees falling under Pay Grade 12 was already ₱35,000.00**, having been adjusted by the company in accordance with market and industry practice. On January 1, 2010, Mr. Lanao was regularized and as dictated by the CBA, he was given a CBA salary increase of ₱1,500.00 per month effective January 1, 2010 which increased his monthly pay at the present to ₱36,500.00.[21] (Emphasis and underlining Ours)

As shown above, the respondent never violated the CBA and in fact, complied with it to the letter. Clearly, the petitioner only used the respondent's alleged violation of the CBA when its true gripe is related to the respondent's prerogative of setting the hiring rate of the employees over which the petitioner neither has the personality nor the privilege to meddle or interfere with.[22]

The second and third issue, being interrelated, shall be discussed jointly.

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[20] *Id*. at 98-103.

[21] *Id*. at 100.

[22] *Id*. at 115.

Upon the enactment of Republic Act (R.A.) No. 6727 (Wage Rationalization Act, amending among others, Article 124 of the Labor Code) on June 9, 1989, the term "*Wage Distortion"* was explicitly defined as *"a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rate between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service or other logical bases of differentiation.*"[23]

Contrary to petitioner's claim of alleged "wage distortion", Article 124 of the Labor Code of the Philippines only cover wage adjustments and increases <u>due to a prescribed law or wage order</u>, *viz.*:

Article 124. *Standards/Criteria for Minimum Wage Fixing.*

x x x x x x x x x

Where the application of any **prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board** results in distortions of the wage structure within an establishment, the employer and union shall negotiate to correct the distortions. Any dispute arising from the wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration.[24] (Emphasis Ours)

Prubankers Association v. Prudential Bank and Trust Company[25] laid down the four elements of wage distortion, to wit: (1) an existing hierarchy of positions with corresponding salary rates; (2) a significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one; (3) the elimination of the distinction between the two levels; and (4) the existence of the distortion in the same region of the country.

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[23] LABOR CODE OF THE PHILIPPINES, Article 124.

[24] *Id*.

[25] 361 Phil. 744, 757 (1999).

The apparent increase in Lanao and Cordovales' salaries as compared to the other company workers who also have the same salary/pay grade with them should not be interpreted to mean that they were given a premature increase for November 1, 2008, thus resulting to a wage distortion. The alleged increase in their salaries was not a result of the erroneous application of Article VII and Annex D of the CBA, rather, it was because when they were hired by respondent in 2009, when the hiring rates were relatively higher as compared to those of the previous years. Verily, the setting and implementation of such various engagement rates were purely an exercise of the respondent's business prerogative in order to attract or lure the best possible applicants in the market and which We will not interfere with, absent any showing that it was exercised in bad faith.

Management prerogative gives an employer freedom to regulate according to their discretion and best judgment, all aspects of employment including work assignment, working methods, the processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.[26] This right is tempered only by these limitations: that it must be exercised in good faith and with due regard to the rights of the employees.[27]

Petitioner claims that the wages of other employees should also be increased in order to maintain the difference between their salaries and those of employees granted a "premature" wage increase. Such a situation may be remedied if it falls under the concept of a wage distortion as defined by Article 124 of the Labor Code of the Philippines. However, as already discussed, there is no wage distortion in the case at bench. Not all increases in salary which obliterate the salary differences of certain employees should be perceived as wage distortion.

In the case of *Bankard Employees Union-Workers Alliance Trade Unions v. National Labor Relations Commission*,[28] the

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[26] *Philippine Airlines, Inc. v. NLRC*, 392 Phil. 50, 56 (2000).

[27] *Julie's Bakeshop, et al. v. Arnaiz, et al.,* 682 Phil. 95, 108 (2012).

[28] 467 Phil. 570 (2004).

Court discussed the possible implication of an expanded interpretation of the concept of Wage Distortion, to wit:

> If the compulsory mandate under Article 124 to correct "wage distortion" is applied to voluntary and unilateral increases by the employer in fixing hiring rates which is inherently a business judgment prerogative, then the hands of the employer would be completely tied even in cases where an increase in wages of a particular group is justified due to a re-evaluation of the high productivity of a particular group, or as in the present case, the need to increase the competitiveness of Bankard's hiring rate. An employer would be discouraged from adjusting the salary rates of a particular group of employees for fear that it would result to a demand by all employees for a similar increase, especially if the financial conditions the business cannot address an across-the-board increase.[29]

The Court's ruling in the case of *Bankard* seek to address and resolve conflicting opinions regarding the true concept of a wage distortion like the one presented in this case whereby a legitimate exercise by an employer of its management prerogative is being taken against it in the guise of an allegation that it is circumventing labor laws. An employer should not be held hostage by the whims and caprices of its employees especially when it has faithfully complied with and executed the terms of the CBA.

It is the prerogative of management to regulate, according to its discretion and judgment all aspects of employment. This flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of its business. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or agreements and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.[30]

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[29] *Id*. at 579-580.

[30] *Wise and Co., Inc. v. Wise and Co. Inc. Employees Union-NATU*, 258-A Phil. 321-322 (1989).

On a final note, the Court has ruled time and again 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 and affirmed by the CA, in the exercise of its expanded jurisdiction to review findings of the National Labor Relations Commission.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated November 5, 2012 of the Court of Appeals in CA-G.R. SP No. 115796 is hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 208638. January 24, 2018]

SPOUSES FRANCISCO ONG and BETTY LIM ONG, and SPOUSES JOSEPH ONG CHUAN and ESPERANZA ONG CHUAN, *petitioners, vs.* **BPI FAMILY SAVINGS BANK, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACTS; PERFECTED BY MERE CONSENT.—** As a rule, a contract is perfected upon the meeting of the minds of the two parties. It is perfected by mere consent, that is, from the moment that there is a meeting of the offer and acceptance upon the thing and the cause that constitute the contract. x x x [T]here is no iota of doubt that when BSA

approved and released the ₱3,000,000.00 out of the original ₱5,000,000.00 credit facility, the contract was perfected. x x x A careful perusal of the records reveal that the credit facility that BSA extended to petitioners was a credit line of ₱20,000,000.00 consisting of a term loan in the sum of ₱15,000,000.00 and a revolving omnibus line of ₱3,000,000.00 to be used in the petitioner's printing business. In separate Letters both dated January 31, 1997, BSA approved the term loan and the credit line. Such approval and subsequent release of the amounts, albeit delayed, perfected the contract between the parties.

2. **ID.; ID.; ID.; LOAN; CONSIDERED A RECIPROCAL OBLIGATION WHEREBY THE CREDITOR RELEASES THE FULL LOAN AMOUNT AND THE DEBTOR REPAYS IT WHEN IT BECOMES DUE AND DEMANDABLE.—** Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor and the other the debtor. The obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. This means that in a loan, the creditor should release the full loan amount and the debtor repays it when it becomes due and demandable. In this case, BSA did not only incur delay in releasing the pre-agreed credit line of ₱5,000,000.00 but likewise violated the terms of its agreement with petitioners when it *deliberately* failed to release the amount of ₱2,000,000.00 after petitioners complied with their terms and paid the first ₱3,000,000.00 in full. The default attributed to petitioners when they stopped paying their amortizations on the term loan cannot be sustained by this Court because long before they sent a Letter to BSA informing the latter of their refusal to continue paying amortizations, BSA had already reneged on its obligation to release the amount previously agreed upon, *i.e.*, the ₱5,000,000.00 covered by the credit line.

3. **MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; MERGER; THE SURVIVING CORPORATION NOT ONLY ACQUIRES ALL THE RIGHTS, PRIVILEGES AND ASSETS OF THE CONSTITUENT CORPORATION BUT LIKEWISE ACQUIRES THE LIABILITIES AND OBLIGATIONS OF THE LATTER.—** BPI insists that it acted in good faith when

it sought extrajudicial foreclosure of the mortgage and that it was not responsible for acts committed by its predecessor, BSA. Good faith, however, is not an excuse to exempt BPI from the effects of a merger or consolidation x x x. Applying the pertinent provisions of the Corporation Code, BPI did not only acquire all the rights, privileges and assets of BSA but likewise acquired the liabilities and obligations of the latter as if BPI itself incurred it. Moreover, Section 1(e) of the Articles of Merger dated November 21, 2001 provides that all liabilities and obligations of BSA shall be transferred to and become the liabilities and obligations of BPI in the same manner as if it had itself incurred such liabilities or obligations. Pursuant to such merger and consolidation, BPI's right to foreclose the mortgage on petitioner's property depends on the status of the contract and the corresponding obligations of the parties originally involved, that is, the agreement between its predecessor BSA and petitioner. Since BSA incurred delay in the performance of its obligations and subsequently cancelled the omnibus line without petitioners' consent, its successor BPI cannot be permitted to foreclose the loan for the reason that its successor BSA violated the terms of the contract even prior to petitioners' justified refusal to continue paying the amortizations.

4. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; A DEBTOR CANNOT INCUR DELAY UNLESS THE CREDITOR HAS FULLY PERFORMED ITS RECIPROCAL OBLIGATION.—** In the case of *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corp.*, the Court ruled that a debtor cannot incur delay unless the creditor has fully performed its reciprocal obligation x x x. Since the credit facility that BSA extended to petitioners was a credit line total of ₱20,000,000.00, its refusal to release the balance on the omnibus line prevented full performance of its obligation to petitioners. There being no release of the full loan amount, no default could be attributed to petitioners. In other words, foreclosure was premature.

APPEARANCES OF COUNSEL

Cinco Neri Associates for petitioners.
Benedicto and Associates Law Office for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[1] dated January 31, 2013 and Resolution[2] dated August 16, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 92348.

The Facts

Spouses Francisco Ong and Betty Lim Ong and Spouses Joseph Ong Chuan and Esperanza Ong Chuan (collectively referred to as the petitioners) are engaged in the business of printing under the name and style "MELBROS PRINTING CENTER."[3]

Sometime in December 1996, Bank of Southeast Asia's (BSA) managers, Ronnie Denila and Rommel Nayve, visited petitioners' office and discussed the various loan and credit facilities offered by their bank. In view of petitioners' business expansion plans and the assurances made by BSA's managers, they applied for the credit facilities offered by the latter.

Sometime in April 1997, they executed a real estate mortgage (REM) over their property situated in Paco, Manila, covered by Transfer Certificate of Title No. 143457, in favor of BSA as security for a ₱15,000,000.00 term loan and ₱5,000,000.00 credit line or a total of ₱20,000,000.00.

With regard to the term loan, only ₱10,444,271.49 was released by BSA (the amount needed by the petitioners to pay out their loan with Ayala life assurance, the balance was credited to their account with BSA).

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan concurring; *rollo*, pp. 56-64.

[2] *Id.* at 65.

[3] *Id.* at 11.

With regard to the ₱5,000,000.00 credit line, only ₱3,000,000.00 was released. BSA promised to release the remaining ₱2,000,000.00 conditioned upon the payment of the ₱3,000,000.00 initially released to petitioners.

Petitioners acceded to the condition and paid the ₱3,000,000.00 in full. However, BSA still refused to release the ₱2,000,000.00. Petitioners then refused to pay the amortizations due on their term loan.

Later on, BPI Family Savings Bank (BPI) merged with BSA, thus, acquired all the latter's rights and assumed its obligations. BPI filed a petition for extrajudicial foreclosure of the REM for petitioners' default in the payment of their term loan.

In order to enjoin the foreclosure, petitioners instituted an action for damages with Temporary Restraining Order and Preliminary Injunction against BPI praying for ₱23,570,881.32 as actual damages; ₱1,000,000.00 as moral damages; ₱500,000.00 as attorney's fees, litigation expenses and costs of suit.

On November 10, 2008, the trial court rendered its Decision,[4] disposing, thus:

WHEREFORE, in view of all the foregoing, the Court hereby resolves in favor of the plaintiffs and against the defendant bank for the latter to pay the former the above-cited sum of Php20,469,498.00 by way of actual damages and Php500,000.00 by way of attorney's fees.

No pronouncement as to costs.

SO ORDERED.[5]

BPI thereafter appealed to the CA averring that the court *a quo* erred when it ruled that petitioners were entitled to damages. BPI posited that petitioners are liable to them on the principal balance of the mortgage loan agreement.

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[4] *Id*. at 178-188.

[5] *Id*. at 188.

The CA reversed the decision of the lower court and ruled in favor of BPI, the dispositive portion of which states:

WHEREFORE, in the light of the foregoing, the assailed Decision dated 10 November 2008 of the Regional Trial Court, Branch 49, Manila, in Civil Case No. 02-105189 is hereby **REVERSED and SET ASIDE**. The Complaint for Damages below is **DISMISSED** for lack of merit.

SO ORDERED.

Petitioners filed a Motion for Reconsideration but the same was denied by the CA in a Resolution dated August 16, 2013, *viz.*:

Finding no new matter of substance which would warrant the modification much less the reversal of the assailed decision, plaintiffs-appellees' motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[6]

Aggrieved, petitioners filed the present petition.

The Issues

I. WHETHER OR NOT THERE WAS ALREADY AN EXISTING AND BINDING CONTRACT BETWEEN PETITIONERS AND BSA WITH REGARD TO THE OMNIBUS CREDIT LINE;

II. WHETHER OR NOT BSA INCURRED DELAY IN THE PERFORMANCE OF ITS OBLIGATIONS;

III. WHETHER OR NOT PETITIONERS ARE ENTITLED TO DAMAGES; and

IV. WHETHER OR NOT BPI CAN FORECLOSE THE MORTGAGE ON THE LAND OF HEREIN PETITIONERS.[7]

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[6] *Id*. at 65.

[7] *Id*. at 21-22.

Ruling of the Court

The Court finds merit in the petition.

In fine, petitioners contend that the CA in its assailed decision erred in ruling that that there was no perfected contract between the parties with respect to the omnibus credit line and that being so, no delay could be attributed to BPI, the successor-in-interest of BSA. Petitioners likewise pointed out that it was error for the CA to delve into the matter regarding existence or perfection of a contract, especially when such issue was never raised by BPI in any of its pleadings or proceedings in the lower court.

As a rule, a contract is perfected upon the meeting of the minds of the two parties. It is perfected by mere consent, that is, from the moment that there is a meeting of the offer and acceptance upon the thing and the cause that constitute the contract.[8]

In the case of *Spouses Palada v. Solidbank Corporation, et al.*,[9] this Court held that under Article 1934 of the Civil Code, a loan contract is perfected only upon the delivery of the object of the contract. In that case, although therein petitioners applied for a ₱3,000,000.00 loan, only the amount of ₱1,000,000.00 was approved by therein respondent bank because petitioners became collaterally deficient. Nonetheless, the loan contract was deemed perfected on March 17, 1997, the date when petitioners received the ₱1,000,000.00 loan, which was the object of the contract and the date when the REM was constituted over the property.[10]

Applying this to the case at bench, there is no iota of doubt that when BSA approved and released the ₱3,000,000.00 out of the original ₱5,000,000.00 credit facility, the contract was perfected.

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[8] *Traders Royal Bank v. Cuison Lumber Co., Inc., et al.,* 606 Phil. 700, 713 (2009).

[9] 668 Phil. 172 (2011).

[10] *Id.* at 182.

The conclusion reached by the appellate court that only the term loan of ₱15,000,000.00 was proved to have materialized into an actual contract while the ₱5,000,000.00 omnibus line credit remained non-existent is ludicrous. A careful perusal of the records reveal that the credit facility that BSA extended to petitioners was a credit line of ₱20,000,000.00 consisting of a term loan in the sum of ₱15,000,000.00 and a revolving omnibus line of ₱3,000,000.00 to be used in the petitioner's printing business. In separate Letters both dated January 31, 1997, BSA approved the term loan and the credit line. Such approval and subsequent release of the amounts, albeit delayed, perfected the contract between the parties.

Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor and the other the debtor.[11] The obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. This means that in a loan, the creditor should release the full loan amount and the debtor repays it when it becomes due and demandable.[12]

In this case, BSA did not only incur delay in releasing the pre-agreed credit line of ₱5,000,000.00 but likewise violated the terms of its agreement with petitioners when it *deliberately* failed to release the amount of ₱2,000,000.00 after petitioners complied with their terms and paid the first ₱3,000,000.00 in full. The default attributed to petitioners when they stopped paying their amortizations on the term loan cannot be sustained by this Court because long before they sent a Letter to BSA informing the latter of their refusal to continue paying amortizations, BSA had already reneged on its obligation to release the amount previously agreed upon, *i.e.*, the ₱5,000,000.00 covered by the credit line.

Article 1170 of the Civil Code enumerates the instances when parties to a contract may be held liable for damages, *viz.*:

[11] IV Tolentino, *The Civil Code of the Philippines*, p. 175 (1999).

[12] *Subic Bay Metropolitan Authority v. Court of Appeals, et al.*, 690 Phil. 336, 344 (2012).

Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

It bears stressing that petitioners entered into a credit agreement with BSA to enable them to buy machineries and equipment for their printing business. On its face, it can be gleaned that the purpose of the credit agreement with BSA was indeed to assist and finance petitioner's business by way of providing additional funds as working capital or revolving fund.[13]

The direct consequences therefore of the acts of BSA are: the machinery and equipment that were essential to petitioners' business and requisite for its operations had to be procured so late in time and had crippled the printing of school supplies, hence, petitioners were constrained to cancel purchase orders of their clients to petitioners' damage.[14]

BSA claims that the release of the amount covered by the credit line was subject to the "availability of funds" thus only a part of the proceeds of the entire omnibus line was released.

Assuming for the sake of discussion that the funds at the time were insufficient to cover the entire ₱5,000,000.00, BSA should have at least informed petitioners in advance so that the latter could have resorted to other means to secure the amount needed for their printing business. The omnibus line was approved and became effective on January 1997 yet BSA did not allow petitioners to draw from the line until November 1997. Moreover, BSA downgraded petitioners' drawdown to only ₱3,000,000.00 despite the clear wordings of their credit agreement whereby petitioners were allowed to draw any portion or all of the omnibus line not to exceed ₱5,000,000.00. The almost 10 months delay in releasing the amount applied for by petitioners negates good faith on the part of BSA.

BPI insists that it acted in good faith when it sought extrajudicial foreclosure of the mortgage and that it was not

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[13] *Rollo*, p. 183.

[14] *Id*.

responsible for acts committed by its predecessor, BSA. Good faith, however, is not an excuse to exempt BPI from the effects of a merger or consolidation, *viz.*:

Section 80. *Effects of merger or consolidation.* — The merger or consolidation shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merge; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

x x x x x x x x x

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the right, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivable due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. **The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations**; and any pending claim, action, or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

Applying the pertinent provisions of the Corporation Code, BPI did not only acquire all the rights, privileges and assets of BSA but likewise acquired the liabilities and obligations of the latter as if BPI itself incurred it.

Moreover, Section 1(e) of the Articles of Merger dated November 21, 2001 provides that all liabilities and obligations of BSA shall be transferred to and become the liabilities and obligations of BPI in the same manner as if it had itself incurred such liabilities or obligations.[15]

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[15] *Id.* at 307.

Pursuant to such merger and consolidation, BPI's right to foreclose the mortgage on petitioner's property depends on the status of the contract and the corresponding obligations of the parties originally involved, that is, the agreement between its predecessor BSA and petitioner.

Since BSA incurred delay in the performance of its obligations and subsequently cancelled the omnibus line without petitioners' consent, its successor BPI cannot be permitted to foreclose the loan for the reason that its successor BSA violated the terms of the contract even prior to petitioners' justified refusal to continue paying the amortizations.

The trial court pointed out that based on the evidence presented by petitioners, the latter conformed to the acquisition of the loan precisely because BSA promised them working capital for the expansion of their business, *viz*.:

> Clear from the plaintiffs' evidence actually presented and marked is the fact that plaintiffs conformed to the acquisition of the loan principally upon the promise by BSA that the working capital would be made available to plaintiffs on time for the opening of classes, for plaintiffs to be able to secure their machineries and meet the orders of their clients.[16]

The subsequent refusal of BSA in releasing the maximum amount agreed upon, transgressed the very purpose of petitioners in availing the credit facility. Clearly, given the nature of petitioners' business, time is of the essence as they needed to have the orders ready before opening of classes.

To emphasize the injury caused to the petitioners due to the bank's delay and subsequent refusal to release the omnibus loan, the petitioners testified as follows:

> *Q The fact that the bank did not allow you to avail of the omnibus line, what is the effect to your business?*
> *A Because I have already manufactured the notebooks for St. Michael and I already sent them to supermarkets and family*

[16] *Id*. at 184.

stores like SM and Gaisano and they have PO coming, I cannot deliver the goods because of lack of funds. They kept calling and confirming about their PO. Because of this my reputation is going down.

(TSN dated November 28, 2002 pp. 28-29)

Witness: And the 4.2 was released... When we originally received the Php 4.2 Million, we could not push through with our plan in our business, sir.

Court: Why?
Witness: Because it was not sufficient and money came to us very late with the lines of our plans, because we are supposed to manufacture notebooks, school items in time for the school opening in June, and it was delayed, your Honor. We continued paying our amortization for two years. We paid almost 7 million.

(TSN dated September 24, 2007 pp. 13 and 14)

Q How important is your working capital to your business?
A: The omnibus line is the most important in the business.

Court: The question is, why is it important?
A: Because I need capital for my business to replenish my supply and to pay the labor and materials

Atty. Cinco: and when you said the proceeds of the omnibus line was released only on November 10, 1997, how did this affect your business?
A: My business suffered badly because I already got the orders from the department stores and book stores.

(TSN dated September 17, 2004 pp.43-44)[17]

The CA, on the other hand, is of the opinion that the delay and damages claimed by the petitioners are mere cloaks to hide their obligations in the mortgage loan agreement.

The Court disagrees.

No evidence was ever presented in the lower courts showing that the petitioners defaulted in paying their amortizations on

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[17] *Id.* at 185-186.

the term loan prior to their refusal which was mainly grounded on BSA's failure to release the amount covered by the omnibus line. Petitioners' continuous payment of amortizations even during the period between January 1997 and November 1997 (when BSA incurred delay in releasing the omnibus line credit) is inconsistent with the appellate court's finding that petitioners intended to hide their obligations in the mortgage loan agreement. Petitioners' refusal to continue paying was only prompted by BSA's refusal to abide by the terms of the contract. Thus, it would be the height of injustice to allow BPI to foreclose on the mortgage despite violation of its predecessor BSA of its principal obligation.

In the case of *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corp.,*[18] the Court ruled that a debtor cannot incur delay unless the creditor has fully performed its reciprocal obligation, *viz.*:

> It is true that loans are often secured by a mortgage constituted on real or personal property to protect the creditor's interest in case of the default of the debtor. By its nature, however, a mortgage remains an accessory contract dependent on the principal obligation, such that enforcement of the mortgage contract will depend on whether or not there has been a violation of the principal obligation. While a creditor and a debtor could regulate the order in which they should comply with their reciprocal obligations, it is presupposed that in a loan the lender should perform its obligation - the release of the full loan amount - before it could demand that the borrower repay the loaned amount. In other words, Guariña Corporation would not incur in delay before DBP fully performed its reciprocal obligation.[19]

Since the credit facility that BSA extended to petitioners was a credit line total of ₱20,000,000.00, its refusal to release the balance on the omnibus line prevented full performance of its obligation to petitioners. There being no release of the full loan amount, no default could be attributed to petitioners. In other words, foreclosure was premature.

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[18] 724 Phil. 209 (2014).

[19] *Id.* at 221-222.

In *Metropolitan Bank v. Wong*,[20] the Court declared:

While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.[21]

BPI was remiss in its duty of looking into the transaction involving the mortgage it sought to foreclose. As BSA's successor-in-interest, it cannot feign ignorance of transactions entered into by the former especially when it seeks to benefit from the same by foreclosing the mortgage thereon.

Anent the propriety of awarding damages, the Court upholds the ruling of the trial court that actual damages in the amount of ₱2,772,000.00 is proper. Said amount is the computed total difference in interest paid to other sources and that which should have only been paid to BSA had the latter complied with the terms of the agreement. However, with regard to the claim of damages representing petitioners' unrealized profits of ₱23,570,881.32, the Court agrees with the CA that petitioners failed to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable, the actual amount of loss. Although petitioners were able to present in evidence purchase orders, company records and checks, the Court agrees with the appellate court that these are insufficient as they are self-serving. Although petitioners claimed that these orders were cancelled, no other evidence was adduced to prove such fact of cancellation.

The law allows the grant of exemplary damages to set an example for the public good. The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether

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[20] 412 Phil. 207 (2001).

[21] *Id.* at 220.

as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence. For this reason, banks should guard against injury attributable to negligence or bad faith on its part.[22] Thus, the Court finds it proper to likewise award exemplary damages in the amount of ₱100,000.00.

Finally, as to the matter concerning attorney's fees, the Court finds the ₱500,000.00 awarded by the trial court to be excessive and should accordingly be reduced to ₱300,000.00.

WHEREFORE, in light of the foregoing, the petition is hereby **GRANTED**. The Decision dated January 31, 2013 of the Court of Appeals in CA-G.R. CV No. 92348 is hereby **REVERSED** and **SET ASIDE.** The questioned extrajudicial foreclosure of real estate mortgage is likewise declared **VOID**. Respondent BPI Family Savings Bank, Inc. is hereby **ORDERED** to pay petitioners Spouses Francisco Ong and Betty Lim Ong and Spouses Joseph Ong Chuan and Esperanza Ong Chuan the amount of ₱2,772,000.00 as actual or compensatory damages; ₱100,000.00 as exemplary damages; ₱300,000.00 as attorney's fees; and interest of six percent (6%) *per annum* on all the amounts of damages reckoned from the finality of this decision.

SO ORDERED.

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

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[22] *Cangungun v. Planters Development Bank*, 510 Phil. 51, 65 (2005).

SECOND DIVISION

[G.R. No. 210504. January 24, 2018]

HEIRS OF ALFONSO YUSINGCO, represented by their Attorney-in-Fact, TEODORO K. YUSINGCO, *petitioners, vs.* **AMELITA BUSILAK, COSCA NAVARRO, FLAVIA CURAYAG and LIXBERTO[1] CASTRO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; *ACCION REIVINDICATORIA*; REFERS TO A SUIT TO RECOVER POSSESSION OF A PARCEL OF LAND AS AN ELEMENT OF OWNERSHIP.—** *Accion reivindicatoria* or *accion de reivindicacion* is x x x an action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. It is a suit to recover possession of a parcel of land as an element of ownership. The judgment in such a case determines the ownership of the property and awards the possession of the property to the lawful owner. It is different from *accion interdictal* or *accion publiciana* where plaintiff merely alleges proof of a better right to possess without claim of title.

2. **ID.; ID.; ID.; AN ACTION TO RECOVER A PARCEL OF LAND IS AN ACTION *IN PERSONAM* AND ANY JUDGMENT THEREIN IS BINDING ONLY UPON THE PARTIES PROPERLY IMPLEADED AND DULY HEARD OR GIVEN AN OPPORTUNITY TO BE HEARD; EXCEPTION.—** It is settled that a judgment directing a party to deliver possession of a property to another is *in personam*. It is conclusive, not against the whole world, but only "between the parties and their successors in interest by title subsequent to the commencement of the action." An action to recover a parcel of land is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing. Any judgment therein is binding

[1] "*Lexberto*" in some parts of the records.

only upon the parties properly impleaded and duly heard or given an opportunity to be heard. However, this rule admits of the exception that even a non-party may be bound by the judgment in an ejectment suit where he is any of the following: (a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or occupant of the premises with the permission of the defendant; (c) transferee *pendente lite;* (d) sublessee; (e) co-lessee; or (f) member of the family, relative or privy of the defendant.

APPEARANCES OF COUNSEL

Henry LL. Yusingco, Jr. for petitioners.
Almeda Loza & Associates for respondents.

D E C I S I ON

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals (*CA*), Cagayan de Oro City, dated July 31, 2013 in CA-G.R. SP No. 04500. The questioned CA Decision set aside the Joint Decision[3] of the Regional Trial Court (*RTC*), Branch 30, Surigao City, dated August 17, 2011, which affirmed with modification the February 25, 2011 Omnibus Judgment[4] of the Municipal Trial Court in Cities (MTCC), Branch 1, Surigao City, in five (5) consolidated cases for *accion publiciana* and/or recovery of possession.

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

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[2] Penned by Associate Justice Edgardo T. Lloren, with the concurrence of Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras, Annex "A" to Petition, *rollo*, pp. 21-28.

[3] Penned by Presiding Judge Evangeline S. Yuipco Bayana; *rollo*, pp. 42-57.

[4] Penned by Presiding Judge Cesar P. Bordalba; *id.* at 30-41.

On August 11, 2005, herein petitioners filed five separate (5) Complaints[5] for *accion publiciana* and/or recovery of possession against herein respondents and a certain Reynaldo Peralta. The suits, which were subsequently consolidated, were filed with the MTCC of Surigao City, which were later raffled to Branch 1 thereof. Petitioners uniformly alleged in the said Complaints that: they are owners of three (3) parcels of land, denominated as Lot Nos. 519, 520 and 1015, which are all located at *Barangay* Taft, Surigao City; they inherited the lots from their predecessor-in-interest, Alfonso Yusingco; they were in possession of the said properties prior to and at the start of the Second World War, but lost possession thereof during the war; after the war, petitioners discovered that the subject properties were occupied by several persons, which prompted petitioners to file separate cases for *accion reivindicatoria* and recovery of possession against these persons; during the pendency of these cases, herein respondents entered different portions of the same properties and occupied them without the knowledge and consent of petitioners; petitioners were forced to tolerate the illegal occupation of respondents as they did not have sufficient resources to protect their property at that time and also because their ownership was still being disputed in the earlier cases filed; subsequently, the cases which they earlier filed were decided in their favor and they were declared the owners of the subject properties; thereafter, petitioners demanded that respondents vacate the said properties, but the latter refused.

In their Answer, respondents raised essentially similar defenses, contending, in essence, that: they have been in possession of the subject properties for more than thirty (30) years; petitioners never actually possessed the said parcels of land and that they never had title over the same; thus, petitioners' claim would be in conflict with and inferior to respondents' claim of possession.

After the issues were joined, trial ensued.

On February 25, 2011, the MTCC, Branch 1, Surigao City issued an Omnibus Judgment in favor of herein petitioners and disposed as follows:

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[5] CA *rollo*, pp. 61-80.

WHEREFORE, premises considered judgment is hereby rendered in favor of the plaintiffs, Heirs of Alfonso Yusingco, represented by their attorney-in-fact Teodoro E. Yusingco, against defendants Flavia Curayag, Cosca Navarro, Amelita Busilak, Lexberto Castro, Reynaldo Peralta and Adriano Solamo ordering:

1. Defendants Flavia Curayag, Cosca Navarro, Amelita Busilak, Lexberto Castro, Reynaldo Peralta and Adriano Solamo and all those claiming rights under them to vacate the premises of the lots respectively occupied by them and to remove their improvements from the premises and restore possession to the plaintiffs;

2. Defendant Amelita Busilak to pay the plaintiffs a monthly compensation of ₱1,200.00 for the use of the property occupied by her at 2763 P. Reyes cor. Narciso Sts., Surigao City, computed from the time of the filing of the complaint on August 11, 2005 until she vacates the subject property;

3. Defendant Cosca Navarro to pay the plaintiffs a monthly compensation of ₱2,120.00 for the use of the property occupied by her located at 03240, Borromeo St., Surigao City, computed from the time of the filing of the complaint on August 11, 2005 until she vacates the subject property;

4. Defendant Flavia Curayag to pay the plaintiffs a monthly compensation of ₱1,760.00 for the use of the property occupied by her located at 03818, Narciso St., Surigao City, computed from the time of the filing of the complaint on August 11, 2005 until she vacates the subject property;

5. Defendant Lexberto Castro to pay the plaintiffs a monthly compensation of ₱1,500.00 for the use of the property occupied by her located at SLB Pension House, Borromeo St., Surigao City, computed from the time of the filing of the complaint on November 27, 2007 until he vacates the subject property;

6. Defendants Reynaldo Peralta and Adriano Solamo to pay the plaintiffs a monthly compensation of ₱2,000.00 for the use of the property occupied by them located at 04286, Navarro St., Surigao City, computed from the time of the filing of the complaint on November 27, 2007 until they vacate the subject property

7. All the defendants to pay the cost of the suit.

SO ORDERED.[6]

The MTCC held that: in an earlier case for *accion reivindicatoria* (Civil Case No. 1645) decided by the Court of First Instance of Surigao Del Norte on June 8, 1979 and affirmed by the CA in its Decision dated August 30, 1982 (CA-G.R. No. 66508-R), which became final and executory on December 18, 1986, herein petitioners were declared the true and lawful co-owners of the subject properties; on the other hand, evidence showed that respondents were mere intruders on the lots in question; thus, as judicially- declared owners of the said lots, petitioners are entitled to possession thereof as against respondents whose entries into the said properties are illegal.

Herein respondents filed an appeal with the RTC of Surigao City.

On August 17, 2011, the RTC, Branch 30, Surigao City, rendered a Joint Decision, which affirmed, with modification, the Omnibus Judgment of the MTCC. The dispositive portion of the RTC Joint Decision reads, thus:

WHEREFORE, the assailed Omnibus Judgment dated February 25, 2011 of the Municipal Trial Court in Cities, Branch 1, Surigao City is **AFFIRMED WITH MODIFICATION** as to the judgment against defendants Reynaldo Peralta and Adriano Solamo who did not file an appeal therefrom. x x x

SO ORDERED.[7]

Herein respondents then filed with the CA a petition for review under Rule 42 of the Rules of Court assailing the abovementioned Joint Decision of the RTC.

On July 31, 2013, the CA promulgated its Decision granting the petition of herein respondents. The CA disposed as follows:

WHEREFORE, the petition is GRANTED. The Joint Decision dated August 17, 2011 of the Regional Trial Court, 10th Judicial Region,

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[6] *Rollo*, pp. 40-41.

[7] *Id*. at 57.

Branch 30, Surigao City is SET ASIDE and a new one rendered: (1) SETTING ASIDE the Omnibus Judgment dated February 25, 2011 of the Municipal Trial Court in Cities, Branch 1, Surigao City, in consolidated civil cases for *Accion Publiciana* and/or Recovery of Possession, and (2) DISMISSING the consolidated cases for lack of merit.

SO ORDERED.[8]

The CA ruled that the RTC and CA Decisions used by the MTCC in holding that herein petitioners are owners of the subject properties and are, thus, entitled to legal possession thereof, are based on a previous *accion reivindicatoria*, which is a suit *in personam*. The CA held that, being an action *in personam*, the judgments in the said case binds only the parties properly impleaded therein. Since respondents were not parties to the said action, the CA concluded that they could not be bound by the judgments declaring petitioners as owners of the disputed properties. Hence, petitioners' present actions to recover possession of the said properties from respondents, on the basis of the said judgments, must fail.

Aggrieved by the CA Decision, herein petitioners are now before this Court via the instant petition for review on *certiorari* contending that the assailed CA Decision is replete with legal infirmities, to wit:

1. When Honorable Court of Appeals held that the prior judgments declaring herein petitioners as the true and lawful co-owners of the property did not bind herein respondents, as they were not parties to the actions, saying that these were an *accion reivindicatoria* and an action for recovery of possession, hence *in personam*, and as such, they bound only the parties properly impleaded and duly heard or given an opportunity to be heard; even if such principle is inapplicable in the instant case.

2. When Honorable Court of Appeals impliedly ruled that herein respondents would have a better right of possession over the subject

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

matter property over herein petitioners, despite the rulings in the prior judgments showing the contrary.[9]

The petition is meritorious.

The issues raised in the instant petition boil down to the basic question of whether or not the final and executory decisions rendered in a previous *accion reivindicatoria*, finding petitioners to be the lawful owners of the subject properties, are binding upon respondents.

This Court rules in the affirmative.

At the outset, the Court finds it proper to look into the nature of the actions filed by petitioners against respondents. A perusal of the complaints filed by petitioners shows that the actions were captioned as "*Accion Publiciana* and/or Recovery of Possession." However, the Court agrees with the ruling of the lower courts that the complaints filed were actually *accion reivindicatoria*.

In a number of cases,[10] this Court had occasion to discuss the three (3) kinds of actions available to recover possession of real property, to wit:

> x x x (a) *accion interdictal*; (b) *accion publiciana;* and (a) *accion reivindicatoria*
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> *Accion interdictal* comprises two distinct causes of action, namely, forcible entry (*detentacion*) and unlawful detainer (*desahuico*) [sic]. In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is

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[9] *Id*. at 12-13.

[10] *Spouses Valdez, Jr. v. Court of Appeals*, 523 Phil. 39, 45-46 (2006); *Encarnacion v. Amigo*, 533 Phil. 466, 472 (2006); *Suarez v. Spouses Emboy, Jr.,* 729 Phil. 315, 329-330 (2014).

illegal from the beginning, and that the issue is which party has prior *de facto* possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess.

The jurisdiction of these two actions, which are summary in nature, lies in the proper municipal trial court or metropolitan trial court. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer. The issue in said cases is the right to physical possession.

Accion publiciana is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of the forcible entry or illegal detainer, but an *accion publiciana*. On the other hand, *accion reivindicatoria* is an action to recover ownership also brought in the proper regional trial court in an ordinary civil proceeding.

Accion reivindicatoria or *accion de reivindicacion* is, thus, an action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.[11] It is a suit to recover possession of a parcel of land as an element of ownership.[12] The judgment in such a case determines the ownership of the property and awards the possession of the property to the lawful owner.[13] It is different from *accion interdictal* or *accion publiciana* where plaintiff merely alleges proof of a better right to possess without claim of title.[14]

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[11] *Amoroso v. Alegre, Jr.,* 552 Phil. 22, 34 (2007); *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83, 96 (1998).

[12] *Id.*

[13] *Amoroso v. Alegre, Jr., supra*, at 35.

[14] *Serdoncillo v. Spouses Benolirao, supra* note 11.

On the basis of the above discussions, it is clear that the lower courts did not err in ruling that the suits filed by petitioners are *accion reivindicatoria*, not *accion publiciana*, as petitioners seek to recover possession of the subject lots on the basis of their ownership thereof.

Proceeding to the main issue in the instant petition, there is no dispute that the RTC Decision in Civil Case No. 1645 and the CA Decision in CA-G.R. CV No. 66508-R used by the MTCC in the present case as bases in holding that herein petitioners are owners of the subject properties and are, thus, entitled to legal possession thereof, are judgments on a previous case for *accion reivindicatoria*, which was filed by petitioners against persons other than herein respondents.

It is settled that a judgment directing a party to deliver possession of a property to another is *in personam*.[15] It is conclusive, not against the whole world, but only "between the parties and their successors in interest by title subsequent to the commencement of the action."[16] An action to recover a parcel of land is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing.[17] Any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard.[18] However, this rule admits of the exception that even a non-party may be bound by the judgment in an ejectment suit[19] where he is any of the following:

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[15] *Spouses Stilgrove v. Sabas*, 538 Phil. 232, 244 (2006).

[16] *Id*. at 244-245.

[17] *Id*. at 245.

[18] *Id.*

[19] This Court has explained in *Vencilao v. Camarenta* and in *Sering v. Plaza* that the term action in ejectment includes a suit for forcible entry (*detentacion*) or unlawful detainer (*desahucio*). The Court also noted in *Sering* that the term action in ejectment includes also, an *accion publiciana* (recovery of possession) or *accion reivindicatoria* (recovery of ownership). Most recently in *Estreller v. Ysmael,* the Court applied Article 487 of the Civil Code to an *accion publiciana* case; in *Plasabas v. Court of Appeals*

(a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or occupant of the premises with the permission of the defendant; (c) transferee *pendente lite;* (d) sublessee; (e) co-lessee; or (f) member of the family, relative or privy of the defendant.[20]

In the instant case, the Court finds no cogent reason to depart from the findings and conclusions of the MTCC, as affirmed by the RTC, that respondents are mere intruders or trespassers who do not have a right to possess the subject lots. Thus, the Court adopts the discussion of the MTCC on the matter, to wit:

On the other hand, the evidence for the defendants showed that they are mere intruders on the lots in question. They are occupying their respective portions simply as places to stay with intention of acquiring the said properties in the event that they are public lands and not owned by any private person.

It is noted that while the defendants had declared their houses and improvements for tax purposes, not one of them had declared in his name the lot in which his house or improvement is built on. They just waited for the Yusingcos to show proof of their ownership of the lot.

It was indeed revealing that while professing that the lots are public land, the defendants never bothered to apply under any of the legal modes of acquiring land of the public domain for the portion occupied by them. Obviously, their physical possession of the premises was not under claim of ownership or in the concept of an owner. Hence, the defendants' possession cannot ripen into ownership by prescription as claimed by them. They are intruders, plain and simple, without any right of possession to be protected.

The plaintiff[s] [herein petitioners] prayed that their right of possession of the lots is entitled to protection under the law. In the case at bar, the evidence showed that the defendant's [herein

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the Court categorically stated that Article 487 applies to reivindicatory actions. See discussions and citations in *Marmo, et al. v. Anacay*, 621 Phil. 212, 222 (2009).

[20] *Spouses Stilgrove v. Sabas, supra* note 14, at 245.

respondents'] entry into and possession of the disputed premises was illegal from the beginning and remain to be so until the present. There is no question, therefore, that as between the plaintiffs [herein petitioners] who had been judicially declared the owners of the land and the defendants [herein respondents] who are mere squatters therein, the former are entitled to such legal protection.[21]

On the basis of the foregoing, the CA erred in ruling that the judgments of the RTC (in Civil Case No. 1645) and the CA (in CA-G.R. CV No. 66508-R) on the suit for *accion reivindicatoria* filed by petitioners against persons other than herein respondents are not binding upon the latter. Respondents, being trespassers on the subject lots are bound by the said judgments, which find petitioners to be entitled to the possession of the subject lots as owners thereof.

WHEREFORE, the instant petition is **GRANTED**. The July 31, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 04500 is **REVERSED** and **SET ASIDE**. The Omnibus Judgment of the Municipal Trial Court in Cities, Branch 1, Surigao City, dated February 25, 2011, is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 210961. January 24, 2018]

LEO V. MAGO and LEILANIE E. COLOBONG, *petitioners, vs.* **SUNPOWER MANUFACTURING LIMITED,** *respondent.*

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[21] *Rollo*, pp. 54-55.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; JOB CONTRACTING; SUBSTANTIAL CAPITAL OR INVESTMENT; THE CONTRACTOR IS REQUIRED TO HAVE SUBSTANTIAL CAPITAL OR INVESTMENT IN ORDER TO BE CONSIDERED A LEGITIMATE AND INDEPENDENT CONTRACTOR.—** The law and the relevant regulatory rules require the contractor to have substantial capital or investment, in order to be considered a legitimate and independent contractor. *Substantial capital or investment* was defined in DOLE DO No. 18-02 as "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out." DOLE initially did not provide a specific amount as to what constitutes substantial capital. It later on specified in its subsequent issuance, DOLE DO No. 18-A, series of 2011, that *substantial capital* refers to paid-up capital stocks/shares of at least Php 3,000,000.00 in the case of corporations. x x x DOLE DO No. 18-02 and DO No. 18-A, as well as Article 106 of the Labor Code itself, all use the conjunctive term "*or*" in prescribing that the contractor should have substantial capital *or* investment. Having established that Jobcrest had substantial capital, it is unnecessary for this Court to determine whether it had sufficient investment in the form of tools, equipment, machinery and work premises.

2. **ID.; ID.; ID.; ELEMENT OF CONTROL; THE CONTRACTOR SHOULD UNDERTAKE THE PERFORMANCE OF THE SERVICES UNDER ITS CONTRACT ACCORDING TO ITS OWN MANNER AND METHOD, FREE FROM THE CONTROL AND SUPERVISION OF THE PRINCIPAL.—** In most cases, despite proof of substantial capital, the Court declared a contractor as a labor-only contractor whenever it is established that the principal—not the alleged legitimate contractor—actually controls the manner of the employees' work. x x x [T]he contractor should undertake the performance of the services under its contract according to its own manner and method, free from the control and supervision of the principal. Otherwise, the contractor is deemed an illegitimate or labor-only contractor. The control over the employees'

performance of the work is, as the Court ruled in some cases, usually manifested through the power to hire, fire, and pay the contractor's employees, the power to discipline the employees and impose the corresponding penalty, and more importantly, the actual supervision of the employees' performance.

3. **ID.; ID.; ID.; CONSIDERED PERMISSIBLE WHETHER THE WORK OR SERVICE IS TO BE PERFORMED OR COMPLETED WITHIN OR OUTSIDE THE PREMISES OF THE PRINCIPAL FOR AS LONG AS THE ELEMENTS OF A LABOR-ONLY CONTRACTOR ARE NOT PRESENT.—** The fact that the petitioners were working within the premises of Sunpower, by itself, does not negate Jobcrest's control over the means, method, and result of the petitioners' work. Job contracting is permissible "whether such job, work, or service is to be performed or completed within or outside the premises of the principal" for as long as the elements of a labor-only contractor are not present. Since Jobcrest was a provider of business process services, its employees would necessarily work within the premises of its client companies in order for Jobcrest to perform its contractual undertaking. Mere physical presence in Sunpower's plant does not necessarily mean that Sunpower controlled the means and method of the petitioners' work.

4. **ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.—** The four-fold test is the established standard for determining the existence of an employer-employee relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control over the employee's conduct. Of the four elements, the power of control is the most important.

APPEARANCES OF COUNSEL

Banzuela & Associates for petitioners.
Cruz Enverga & Lucero for respondent.

DECISION

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking the review of the Decision[2] dated October 8, 2013 and Resolution[3] dated January 13, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 131059. In these assailed issuances, the CA reversed the decision[4] of the National Labor Relations Commission (NLRC) declaring Leo V. Mago (Leo) and Leilanie E. Colobong (Leilanie) (petitioners) as employees of Sunpower Philippines Manufacturing Limited (Sunpower) and consequently, holding that Jobcrest Manufacturing, Incorporated (Jobcrest) was a labor-only contractor. The NLRC in turn reversed the ruling[5] of the labor arbiter (LA) dismissing the petitioners' complaint for illegal dismissal.

Factual Antecedents

The petitioners are former employees of Jobcrest, a corporation duly organized under existing laws of the Philippines, engaged in the business of contracting management consultancy and services.[6] Jobcrest was licensed by the Department of Labor and Employment (DOLE) through Certificate of Registration No. NCR-MUNTA-64209-0910-087-R.[7] During the time material to this case, the petitioners' co-habited together.[8]

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[1] *Rollo*, pp. 9-47.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Franchito N. Diamante and Melchor Q. C. Sadang, concurring; *id*. at 385-412.

[3] *Id*. at 439-442.

[4] *Id*. at 229-252.

[5] *Id*. at 164-190.

[6] *Id*. at 145-151.

[7] *Id*. at 139.

[8] *Id*. at 13.

On October 10, 2008, Jobcrest and Sunpower entered into a Service Contract Agreement, in which Jobcrest undertook to provide business process services for Sunpower, a corporation principally engaged in the business of manufacturing automotive computer and other electronic parts.[9] Jobcrest then trained its employees, including the petitioners, for purposes of their engagement in Sunpower.[10] After the satisfactory completion of this training, the petitioners were assigned to Sunpower's plant in Laguna Technopark. Leo was tasked as a Production Operator in the Coinstacking Station on July 25, 2009,[11] while Leilanie was assigned as a Production Operator, tasked with final visual inspection in the Packaging Station on June 27, 2009.[12] Jobcrest's On-site Supervisor, Allan Dimayuga (Allan), supervised the petitioners during their assignment with Sunpower.[13]

It was alleged that sometime in October 2011, Sunpower conducted an operational alignment, which affected some of the services supplied by Jobcrest. Sunpower decided to terminate the Coinstacking/Material Handling segment and the Visual Inspection segment.[14] Meanwhile, Leo and Leilanie were respectively on paternity and maternity leave because Leilanie was due to give birth to their common child.[15]

When Leo reported for work to formally file his paternity leave, Allan purportedly informed Leo that his employment was terminated due to his absences. Leo, however, further alleged that he was asked to report to Jobcrest on December 14, 2011

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[9] *Id*. at 140.

[10] *Id*. at 404-405.

[11] *Id*. at 88-94.

[12] *Id*. at 96-102.

[13] *Id*. at 404.

[14] *Id*. at 445.

[15] *Id*. at 14, 103.

for his assignment to Sunpower.[16] In their defense, both Jobcrest and Allan denied terminating Leo's employment from Jobcrest.[17]

Leo complied with the directive to go to Jobcrest's office on December 14, 2011. While he was there, Jobcrest's Human Resource Manager, Noel J. Pagtalunan (Noel), served Leo with a "Notice of Admin Charge/Explanation Slip."[18] The notice stated that Leo violated the Jobcrest policy against falsification or tampering because he failed to disclose his relationship with Leilanie. Leo denied the charges and explained that he already filed a complaint for illegal dismissal with the NLRC.[19]

Leilanie, on the other hand, alleged that when she reported for work at Jobcrest on November 29, 2011, she was informed by one of the Jobcrest personnel that she will be transferred to another client company. She was likewise provided a referral slip for a medical examination, pursuant to her new assignment.[20]

Instead of complying with Jobcrest's directives, Leo and Leilanie filed a complaint for illegal dismissal and regularization on December 15, 2011, with the NLRC Regional Arbitration Branch No. IV. Leo alleged that he was dismissed on October 30, 2011, while Leilanie alleged that she was dismissed from employment on December 4, 2011.[21] Despite the filing of the complaint, Leilanie returned to Jobcrest on December 16, 2011, where she was served with a similar "Notice of Admin Charge/ Explanation Slip," requiring her to explain why she failed to disclose her co-habitation status with Leo.[22]

During the mandatory conference, Jobcrest clarified that the petitioners were not dismissed from employment and offered

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[16] *Id*. at 54.

[17] *Id*. at 185.

[18] *Id*. at 54, 107.

[19] *Id*. at 107.

[20] *Id*. at 69.

[21] *Id*. at 109-110

[22] *Id.* at 55, 108.

to accept them when they report back to work. The petitioners refused and insisted that they were regular employees of Sunpower, not Jobcrest.[23]

There being no amicable settlement of the matter among the parties, they proceeded to file their respective position papers.[24]

Ruling of the LA

In a Decision[25] dated July 3, 2012, the LA held that Jobcrest is a legitimate independent contractor and the petitioners' statutory employer:

> WHEREFORE, premises considered, the complaint for illegal dismissal against [Sunpower] and Dwight Deato is DISMISSED for lack of employer-employee relationship. [Jobcrest] is declared as the statutory employer and is ordered to reinstate complainants sans backwages to substantially equivalent positions within ten (10) days from receipt hereof.
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> SO ORDERED.[26]

The LA found the capital of Jobcrest substantial enough to comply with the requirements for an independent contractor, and that Jobcrest exercised control over the petitioners' work.[27] The LA likewise rejected the petitioners' claim that they were illegally dismissed, ruling that the petitioners failed to establish the fact of dismissal itself.[28]

Jobcrest partially appealed the LA's Decision dated July 3, 2012. Among its arguments is the assertion that the petitioners refused to be reinstated. Hence, they were considered constructively resigned from their employment with Jobcrest,

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[23] *Id*. at 237, 535.

[24] *Id*. at 44-154.

[25] Issued by LA Renell Joseph R. Dela Cruz; *id.* at 164-190.

[26] *Id*. at 190.

[27] *Id*. at 187-189.

[28] *Id*. at 189-190.

especially because they obtained a job somewhere else. As an alternative relief, Jobcrest prayed that it be directed to pay the petitioners' separation pay instead of reinstating them to their former positions.[29]

The petitioners, on the other hand, attributed serious error on the LA for ruling against their complaint.[30]

Ruling of the NLRC

The NLRC reversed the LA's findings in its Decision[31] dated April 24, 2013 and ruled favorably for the petitioners, *viz.*:

> WHEREFORE, the decision appealed from is hereby SET ASIDE and a NEW ONE ENTERED declaring that [the petitioners] are regular employees of respondent [Sunpower], respondent [Jobcrest] being a mere labor-only contractor that [petitioners] were illegally dismissed; hence, respondent [Sunpower] is hereby ordered to reinstate them to their former position with full backwages, from the time they were refused to work on October 31, 2011 until reinstated, within ten (10) days from notice plus 10% of the total monetary awards as and for attorney's fees.
>
> SO ORDERED.[32]

According to the NLRC, the contract between Jobcrest and Sunpower was for the sole supply of manpower. The tools and equipment for the performance of the work were for the account of Sunpower, which supposedly contradicted the claim that Jobcrest has the required capital for a legitimate contractor.[33] The NLRC also disagreed that Jobcrest exercised control over the petitioners and likewise gave more credence to the petitioners' sworn statements, which narrate that Sunpower employees

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[29] *Id*. at 237-238.

[30] *Id*. at 191-225.

[31] Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora, concurring; *id*. at 229-252.

[32] *Id*. at 252.

[33] *Id*. at 241.

allegedly supervised their work.[34] Lastly, on the basis of the "Notice of Administrative Charge/Explanation Slip" furnished to the petitioners, the NLRC reversed the LA's ruling and held that the petitioners were illegally dismissed from employment.[35]

Sunpower moved for the reconsideration of the NLRC's Decision dated April 24, 2013.[36] Unconvinced, the NLRC denied this motion in its Resolution[37] dated May 28, 2013 as follows:

> WHEREFORE, the instant Motion for Reconsideration is hereby DENIED for lack of merit.
>
> No further motion of this nature shall be entertained.
>
> SO ORDERED.[38]

As a result of the NLRC's ruling, Sunpower filed a petition for *certiorari* with the CA, with a prayer for the issuance of an injunctive writ.[39] Sunpower attributed grave abuse of discretion, amounting to lack or excess of jurisdiction, on the NLRC for holding that the petitioners were regular employees of Sunpower despite evidence to the contrary.[40] Sunpower also disagreed that Jobcrest is a labor-only contractor, and further submitted that the NLRC misinterpreted its Service Contract Agreement with Jobcrest.[41]

Ruling of the CA

In a Decision[42] dated October 8, 2013, the CA granted Sunpower's petition for *certiorari* and enjoined the implementation of the assailed NLRC ruling:

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[34] *Id*. at 242-246.

[35] *Id*. at 249-251.

[36] *Id*. at 271-283.

[37] *Id*. at 287-289.

[38] *Id*. at 288.

[39] *Id*. at 290-322.

[40] *Id*. at 300-308.

[41] *Id*. at 296-300, 308-311.

[42] *Id*. at 385-412.

WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated 24 April 2013 and Resolution dated 28 May 2013 of the [NLRC] (Second Division) in NLRC-LAC No. 09-002582-12; NLRC RAB-IV-12-01978-11-B are NULLIFIED. All the respondents and/or persons acting for and on their behalf are ENJOINED from enforcing or implementing the same. The Decision dated 03 July 2012 of LA Renell Joseph R. Dela Cruz is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.[43]

The CA ruled that Sunpower was able to overcome the presumption that Jobcrest was a labor-only contractor, especially considering that the DOLE Certificate of Registration issued in favor of Jobcrest carries the presumption of regularity. In contrast with the NLRC ruling, the CA found that the Service Contract Agreement between Sunpower and Jobcrest specifically stated the job or task contracted out by stating that it was for the performance of various business process services.[44] The CA also held that Jobcrest has substantial capital and as such, it was no longer necessary to prove that it has investment in the form of tools, equipment, machinery, and work premises.[45]

Also, the CA found that there is an employer-employee relationship between Jobcrest and the petitioners under the four-fold test. The CA appreciated the affidavits of Jobcrest employees, as well as the sworn statements of Sunpower employees who the petitioners claim to supervise their work. In these statements, the Sunpower employees categorically denied under oath that they supervised the manner of the petitioners' work. Taken together with other pieces of evidence, the CA ruled that there was no employer-employee relationship between Sunpower and the petitioners. Finally, the CA held that any form of supervision, which Sunpower exercised over the results of the petitioners' work, was necessary and allowable under the circumstances.[46]

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[43] *Id*. at 408.

[44] *Id*. at 399-400, 406-407.

[45] *Id*. at 401-402.

[46] *Id*. at 402-405.

Consequently, the CA rejected the claim that the petitioners were illegally dismissed from employment, especially in light of Jobcrest's earlier offer to accept the petitioners' return to work.[47]

Following their receipt of the CA's Decision dated October 8, 2013, the petitioners filed their Motions for Reconsideration and to Investigate the Reviewer Who Recommended the Palpably Erroneous Decision.[48] The CA firmly denied these motions in its Resolution[49] dated January 13, 2014 for failure to raise any substantial argument that would warrant the reconsideration of its decision:

WHEREFORE, premises considered, the Motions for Reconsideration and to Investigate the Reviewer Who Recommended the Palpably Erroneous Decision are DENIED for sheer lack of merit.

SO ORDERED.[50]

The petitioners are now before this Court, seeking to reverse and set aside the CA's issuances, and to reinstate the NLRC's decision.[51] The petitioners insist that Jobcrest is a labor-only contractor, and that the DOLE Certificate of Registration is not conclusive of Jobcrest's legitimate status as a contractor.[52] They further argue that, aside from lacking substantial capital, Jobcrest only supplied manpower to Sunpower.[53] These services, the petitioners allege, are directly related and necessary to Sunpower's business.[54]

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[47] *Id*. at 406-407.

[48] *Id*. at 413-437.

[49] *Id*. at 439-442.

[50] *Id*. at 442.

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

[52] *Id*. at 21-22.

[53] *Id*. at 26-34.

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

Furthermore, the petitioners submit that it was Sunpower that controlled their work. They refute the evidentiary weight and value of the sworn statements of Jobcrest and Sunpower employees.[55] The petitioners assert that the NLRC was correct in ruling that Sunpower was their statutory employer, and in ordering their reinstatement with payment of full backwages and attorney's fees.[56] The petitioners thus pray that this Court reverse and set aside the Decision dated October 8, 2013 and Resolution dated January 13, 2014 of the CA.[57]

Ruling of the Court

The Court resolves to deny the petition.

Jobcrest is a legitimate and independent contractor.

Article 106 of the Labor Code defines *labor-only contracting* as a situation "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."[58]

DOLE Department Order (DO) No. 18-02, the regulation in force at the time of the petitioners' assignment to Sunpower, reiterated the language of the Labor Code:

Section 5. ***Prohibition against labor-only contracting.*** x x x [L]abor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service

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[55] *Id*. at 35-37.

[56] *Id*. at 38-42.

[57] *Id*. at 43.

[58] Emphasis Ours.

to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

Thus, in order to become a legitimate contractor, the contractor must have substantial capital or investment, and must carry a distinct and independent business free from the control of the principal. In addition, the Court requires the agreement between the principal and the contractor or subcontractor to assure the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[59]

Furthermore, the Court considers job contracting or subcontracting as permissible when the principal agrees to farm out the performance of a specific job, work or service to the contractor, for a definite or predetermined period of time, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal.[60] Ordinarily, a contractor is presumed to be a labor-only contractor, unless the contractor is able to discharge the burden of overcoming this presumption. In cases when it's the principal claiming the legitimacy of the contractor, then the burden is borne by the principal.[61]

Preliminarily, the Court finds that there is no such burden resting on either Sunpower or Jobcrest in this case. It is true that Sunpower maintained its position that Jobcrest is a legitimate and independent contractor.[62] But since the petitioners do not dispute that Jobcrest was a duly-registered contractor under

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[59] *Babas, et al. v. Lorenzo Shipping Corp.*, 653 Phil. 421, 432 (2010); See *Vinoya v. NLRC*, 393 Phil. 441, 445 (2000).

[60] *Babas, et al. v. Lorenzo Shipping Corp.*, *id.*

[61] *Alilin. et al. v. Petron Corporation*, 735 Phil. 509, 513 (2014).

[62] *Rollo*, pp. 448-462.

Section 11 of DOLE DO No. 18-02,[63] there is no operative presumption that Jobcrest is a labor-only contractor.[64]

Conversely, the fact of registration with DOLE does not necessarily create a presumption that Jobcrest is a legitimate and independent contractor. **The Court emphasizes, however, that the DOLE Certificate of Registration issued in favor of Jobcrest is presumed to have been issued in the regular performance of official duty.**[65] In other words, the DOLE officer who issued the certificate in favor of Jobcrest is presumed, unless proven otherwise, to have evaluated the application for registration in accordance with the applicable rules and regulations.[66] The petitioners must overcome the presumption of regularity accorded to the official act of DOLE, which is no less than the agency primarily tasked with the regulation of job contracting.[67]

For the reasons discussed below, the Court is constrained to give more weight to the substantiated allegations of Sunpower, as opposed to the unfounded self-serving accusations of the petitioners.

Jobcrest has substantial capital.

The law and the relevant regulatory rules require the contractor to have substantial capital or investment, in order to be considered a legitimate and independent contractor. *Substantial capital or investment* was defined in DOLE DO No. 18-02 as "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor

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[63] *Id*. at 139, 166.

[64] *Cf. Rollo*, p. 399; *De Castro v. Court of Appeals*, G.R. No. 204261, October 5, 2016, 805 SCRA 265.

[65] *Sasan, Sr., et al. v. NLRC 4th Division, et al*., 590 Phil. 685, 707 (2008).

[66] *See* DOLE DO No. 18-02, Section 12; *Gallego v. Bayer Philippines, Inc., et al.,* 612 Phil. 250, 263 (2009).

[67] LABOR CODE OF THE PHILIPPINES, Article 106.

in the performance or completion of the job, work or service contracted out." DOLE initially did not provide a specific amount as to what constitutes substantial capital. It later on specified in its subsequent issuance, DOLE DO No. 18-A, series of 2011, that *substantial capital* refers to paid-up capital stocks/shares of at least Php 3,000,000.00 in the case of corporations.[68] Despite prescribing a threshold amount under DO No. 18-A, certificates of registration issued under DO No. 18-02, such as that of Jobcrest, remained valid until its expiration.[69]

The records show that as early as the proceedings before the LA, Jobcrest established that it had an authorized capital stock of Php 8,000,000.00, Php 2,000,000.00 of which was subscribed, and a paid-up capital stock of Php 500,000.00, in full compliance with Section 13 of the Corporation Code.[70] **For the year ended December 31, 2011, the paid-up capital of Jobcrest increased to Php 8,000,000.00,**[71] **notably more than the required capital under DOLE DO No. 18-A.**[72]

The balance sheet submitted by Jobcrest for the year ending on December 31, 2010 also reveals that its **total assets for the year 2009 amounted to Php 11,280,597.94, and Php 16,825,271.30 for the year 2010, which were comprised of office furniture, fixtures and equipment, land, building, and motor vehicles, among others**.[73] As of December 31, 2012, the total assets for the years 2011 and 2012 also increased to Php 35,631,498.58 and Php 42,603,167.16, respectively.[74]

Evidently, Jobcrest had substantial capital to perform the business process services it provided Sunpower. It has its own

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[68] DOLE DO No. 18-A, Section 3(1).

[69] *Id*. at Section 38.

[70] *Rollo*, pp. 148-149, 514.

[71] *Id*. at 334.

[72] *Id*. at 139, 166.

[73] *Id*. at 152, 523.

[74] *Id*. at 332.

office, to which the petitioners admittedly reported to, possessed numerous assets for the conduct of its business, and even continuously earned profit as a result.[75] The Court can therefore reasonably conclude from Jobcrest's financial statements that it carried its own business independent from and distinctly outside the control of its principals.

The petitioners argue that the amount of substantial capital is irrelevant because Sunpower provided the tools and owned the work premises. These supposedly negate the claim that Jobcrest has substantial capital.[76]

The Court does not agree with the petitioners.

DOLE DO No. 18-02 and DO No. 18-A, as well as Article 106 of the Labor Code itself, all use the conjunctive term "*or*" in prescribing that the contractor should have substantial capital *or* investment. Having established that Jobcrest had substantial capital, it is unnecessary for this Court to determine whether it had sufficient investment in the form of tools, equipment, machinery and work premises.

In *Neri v. NLRC*,[77] the Court rejected the same argument put forward by the petitioners, arid ruled that proof of either substantial capital or investment is sufficient for purposes of determining whether the first element of labor-only contracting is absent:

> Based on the foregoing, BCC cannot be considered a "labor-only" contractor because it has substantial capital. While there may be no evidence that it has investment in the form of tools, equipment, machineries, work premises, among others, it is enough that it has substantial capital, as was established before the Labor Arbiter as well as the NLRC. In other words, the law does not require both substantial capital and investment in the form of tools, equipment,

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[75] *Id*. at 326-345, 522-525. See also *Sasan, et al. v. NLRC 4th Division, et al*., *supra* note 65, at 704- 705; *Gallego v. Bayer Philippines, Inc., et al*., *supra* note 66, at 263-264; *Escario v. NLRC*, 388 Phil. 929, 938-939 (2000).

[76] *Rollo*, pp. 29-34.

[77] 296 Phil. 610 (1993).

machineries, etc. This is clear from the use of the conjunction "or". **If the intention was to require the contractor to prove that he has both capital and the requisite investment, then the conjunction "and" should have been used.** But, having established that it has substantial capital, it was no longer necessary for BCC to further adduce evidence to prove that it does not fall within the purview of "labor-only" contracting. There is even no need for it to refute petitioners' contention that the activities they perform are directly related to the principal business of respondent bank.[78] (Emphasis Ours)

The agreement between Jobcrest and Sunpower also complied with the statutory requirement of ensuring the observance of the contractual employees' rights under the law. Specifically, paragraph 7 of the Service Contract Agreement obligates Jobcrest to observe all laws, rules and regulations pertaining to the employment of its employees.[79]

Suncrest does not control the manner by which the petitioners accomplished their work.

In most cases, despite proof of substantial capital, the Court declared a contractor as a labor-only contractor whenever it is established that the principal—not the alleged legitimate contractor—actually controls the manner of the employees' work.[80] The element of *control* was defined under DOLE DO No. 18-02 as:

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.[81]

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[78] *Id*. at 616.

[79] *Rollo*, p. 142.

[80] *Vinoya v. NLRC*, *supra* note 59, at 444-445.

[81] *See* DOLE DO No. 18-A, Section 6; *See* also *Locsin, et al. v. Philippine Long Distance Telephone Company*, 617 Phil. 955, 964 (2009), citing *Francisco v. NLRC*, 532 Phil. 399, 407 (2006).

In other words, the contractor should undertake the performance of the services under its contract according to its own manner and method, free from the control and supervision of the principal.[82] Otherwise, the contractor is deemed an illegitimate or labor-only contractor.

The control over the employees' performance of the work is, as the Court ruled in some cases, usually manifested through the power to hire, fire, and pay the contractor's employees,[83] the power to discipline the employees and impose the corresponding penalty,[84] and more importantly, the actual supervision of the employees' performance.[85] On this point, the petitioners claim that Sunpower employees supervised their work while in the premises of Sunpower's own plant. They also disclaim the affidavits of Sunpower employees, which denied exercising any form of supervision over the petitioners,[86] by alleging that these are self-serving assertions. The petitioners also refute the veracity of the sworn statements of Jobcrest's employees.[87]

Upon review of the records, the Court finds that the evidence clearly points to Jobcrest as the entity that exercised control over the petitioners' work with Sunpower. Upon the petitioners' assignment to Sunpower, Jobcrest conducted a training and certification program, during which time, the petitioners reported directly to the designated Jobcrest trainer.[88] The affidavit of Jobcrest's Operations Manager, Kathy T. Morales (Kathy), states

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[82] *Vinoya v. NLRC*, *supra* note 59, at 445.

[83] *Coca-Cola Bottlers Phils., Inc. v. Agito, et al.*, 611 Phil. 327 (2009).

[84] *Manila Water Co., Inc. v. Pena*, 478 Phil. 68, 81 (2004).

[85] *Philippine Airlines, Inc. v. Ligan, et al.*, 570 Phil. 497, 508 (2008); *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa - Pinagbuklod ng Manggagawang Promo ng Burlingame v. Burlingame Corporation*, 552 Phil. 58, 61-62 (2007).

[86] *Rollo*, pp. 247-248.

[87] *Id*. at 35-40.

[88] *Id*. at 403-404.

that operational control over Jobcrest employees was exercised to make sure that they conform to the quantity and time specifications of the service agreements with Jobcrest's clients. She narrated that manager and shift supervisors were assigned to the premises of Sunpower, with the task to oversee the accomplishment of the target volume of work. She also mentioned that there is administrative control over Jobcrest employees because they monitor the employees' attendance and punctuality, and the employees' observance of other rules and regulations.[89]

The affidavit of Kathy was markedly corroborated by the sworn statement of Jobcrest's On-site Supervisor, Allan, in which he affirmed that he directly supervised the petitioners while they were stationed in Sunpower. He also confirmed that during this period, he issued several memoranda to the petitioners for violating rules and regulations, and provided their hourly output performance assessment, which "determine[s] their fitness to continue their employment with Jobcrest."[90]

The petitioners' very own sworn statements further establish this point. In his statement, Leo averred that when he reported for work to file his application for paternity leave, he reported to Allan, Jobcrest's supervisor, who then approved his leave application. He likewise narrated that it was Jobcrest's Human Resource Manager, Noel, who informed Leo about the disciplinary charge against him for allegedly violating the Jobcrest Code of Conduct.[91]

The same conclusion holds for Leilanie. In her statement, Leilanie narrated that she reported for work to the Jobcrest office on November 29, 2011 after giving birth to her second child. She also alleged in her affidavit that similar to Leo, it was Noel who informed her of the disciplinary action against her, through the service of a copy of the "Notice of Admin Charge/Explanation Slip."[92]

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[89] *Id*. at 404, 455-456.

[90] *Id*. at 404-405, 455.

[91] *Id*. at 54.

[92] *Id*. at 54-55.

Notably, other documentary evidence plainly show that Leo's paternity leave application was indeed filed with Jobcrest,[93]and the respective notices of disciplinary action against the petitioners were prepared and signed by the Jobcrest Human Resource Manager.[94] These are clear indications that Jobcrest exercised control over the petitioners' work.

The fact that the petitioners were working within the premises of Sunpower, by itself, does not negate Jobcrest's control over the means, method, and result of the petitioners' work.[95] Job contracting is permissible "whether such job, work, or service is to be performed or completed within or outside the premises of the principal"[96] for as long as the elements of a labor-only contractor are not present. Since Jobcrest was a provider of business process services, its employees would necessarily work within the premises of its client companies in order for Jobcrest to perform its contractual undertaking. Mere physical presence in Sunpower's plant does not necessarily mean that Sunpower controlled the means and method of the petitioners' work. The petitioners, despite working in Sunpower's plant for most of the time, admit that whenever they file their leave application, or whenever required by their supervisors in Jobcrest, they report to the Jobcrest office. Designated on-site supervisors from Jobcrest were the ones who oversaw the performance of the employees' work within the premises of Sunpower.

Besides, while the Court repeatedly recognizes that there are employers who abuse the system of subcontracting, **we also acknowledge that contracts for services does not necessarily provide "untrammeled freedom" to the contractor in undertaking the engagement.**[97] What is important, as

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[93] *Id*. at 103.

[94] *Id*. at 107-108.

[95] *Escasinas, et al. v. Shangri-La's Mactan Island Resort, et al.*, 599 Phil. 746, 755 (2009).

[96] *Babas, et al. v. Lorenzo Shipping Corp.*, *supra* note 59, at 432.

[97] *Gallego v. Bayer Philippines, Inc.*, *supra* note 66, at 265.

incontrovertibly established in this case, is that the principal's right to control is limited to the results of the work of the contractor's employees.

The petitioners were regular employees of Jobcrest.

The four-fold test is the established standard for determining the existence of an employer-employee relationship:[98] (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control over the employee's conduct. Of the four elements, the power of control is the most important.[99] Having found that Jobcrest exercised control over the petitioners' work, the Court is constrained to determine whether the petitioners were regular employees of Jobcrest by virtue of the three other elements of the four-fold test.

The petitioners themselves admit that they were hired by Jobcrest.[100] In their subsequent engagement to Sunpower, it was Jobcrest that selected and trained the petitioners.[101] Despite their assignment to Sunpower, Jobcrest paid the petitioners' wages, including their contributions to the Social Security System (SSS), Philippine Health Insurance Corporation (Philhealth), and Home Development Mutual Fund (HDMF, also known as Pag-IBIG).[102] The power to discipline the petitioners was also retained by Jobcrest, as evidenced by the "Notice of Admin Charge/ Explanation Slip" furnished the petitioners through Jobcrest's Human Resource department.[103]

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[98] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc., et al.*, 655 Phil. 384, 407 (2011).

[99] *Manila Water Co., Inc. v. Dalumpines, et al.*, 646 Phil. 383, 398-399 (2010).

[100] *Rollo*, p.51.

[101] *Id.* at 88-102.

[102] *Id.* at 95, 186-187, 492-504.

[103] *Id.* at 107-108.

The Court further notes that on December 27, 2010 and January 25, 2011, Leilanie and Leo were respectively confirmed as regular employees of Jobcrest.[104] Jobcrest did not even deny that the petitioners were their regular employees. Consequently, the petitioners cannot be terminated from employment without just or authorized cause.[105]

A review of the petitioners' repeated submissions reveals that while they claim to have been illegally dismissed from employment,[106] Jobcrest actually intended to assign Leo again to Sunpower, and provide Leilanie with another engagement with a different client company. The petitioners all admitted to these facts in their sworn statement, heavily quoted in their position paper filed with the LA:[107]

> 41. Noong December 14, 2011, **ako [Leo Mago] ay tinawagan sa aking cellular phone ng nagpakilalang Julie at taga HR ng JOBCREST at ang sabi sa akin ay magreport umano ako sa opisina upang ipadala sa SUNPOWER**;
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> x x x x x x x x x
>
> 44. Noong November 29, 2011, **ako [Leilani Colobong] ay nagreport sa JOBCREST at aking nakausap ang isa sa staff ng JOBCREST na hindi ko alam ang pangalan at ang sabi niya sa akin ay ililipat umano ako sa kompanyang FIRST SUMIDEN** dahil hindi na umano ako pwedeng m[a]gtrabaho sa SUNPOWER na hindi niya sinabi kung anu ang dahilan;
>
> 45. Noong December 1, 2011, ako ay bumalik sa JOBCREST at ako ay binigyan nila ng referral para magpamedical para sa aking bagong requirements diumano sa aking bagong trabaho sa FIRST SUMIDEN dahil hindi na talaga umano ako tatanggapin sa SUNPOWER sa aking pagbabalik trabaho ng December 4, 2011 na hindi naman niya sinabi kung anu

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[104] *Id*. at 94, 102.

[105] LABOR CODE OF THE PHILIPPINES, Article 279.

[106] *Rollo*, p. 109.

[107] *Id*. at 54-55.

> ang dahilan; Kalakip nito ang nas[a]bing referral slip bilang Exhibit "S"[108] (Emphasis Ours)

It was also uncontroverted that Jobcrest offered to accept the petitioners' return to work, but they refused this offer during the mandatory conference.[109] Clearly, the petitioners were not illegally dismissed, much less terminated from their employment. There is nothing on record that established the dismissal of the petitioners in the first place.

In *MZR Industries, et al. v. Colambot*,[110] the employee claimed to have been illegally dismissed through a verbal directive. The employer denied this and alleged waiting for the employee to report for work, only to later find out that a complaint for illegal dismissal was filed against them. The Court recognized that while the employer is generally required to establish the legality of the employee's termination, the employee should first establish the fact of dismissal from service. Failing such, as in this case, the Court cannot rule that the employee was illegally dismissed.

The "Notice of Admin Charge/Explanation Slip" is also insufficient proof of the petitioners' termination from employment. The notice merely required the petitioners to explain whether they violated Jobcrest's Code of Conduct. No penalty was imposed on the petitioners yet when they were furnished with a copy of the notices.[111] In fact, Jobcrest was unable to take the appropriate action on the charge, considering that the petitioners immediately filed their complaint for illegal dismissal with the NLRC the following day, or on December 15, 2011.[112]

All things considered, Sunpower is not the statutory employer of the petitioners. The circumstances obtaining in this case, as

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[108] *Id*.

[109] *Id*. at 237, 535.

[110] 716 Phil. 617, 624 (2013).

[111] *Rollo*, pp. 107-108.

[112] *Id*. at 109-110.

supported by the evidence on record, establish that Jobcrest was a legitimate and independent contractor. There is no reason for this Court to depart from the CA's findings.

WHEREFORE, premises considered, the present petition is hereby **DENIED** for lack of merit. The Court of Appeals' Decision dated October 8, 2013 and Resolution dated January 13, 2014 in CA-G.R. SP No. 131059 are **AFFIRMED**, which nullified the National Labor Relations Commission's Decision dated April 24, 2013 and Resolution dated May 28, 2013, and reinstated the Labor Arbiter's decision dated July 3, 2012. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 213945. January 24, 2018]

LUCILA YARED and HEIRS OF THE LATE ERNESTO YARED, SR., *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; INHERENT POWERS OF THE STATE; EXPROPRIATION; JUST COMPENSATION; REFERS TO THE FULL AND FAIR EQUIVALENT OF THE PROPERTY WHICH MUST BE PAID TO THE OWNERS OF THE LAND WITHIN A REASONABLE TIME FROM ITS TAKING.— The concept of just compensation has long been settled by the Court as the full and fair equivalent of the property which must be paid to the owners of the land within a reasonable time from its taking. This is because without prompt payment, "compensation cannot be considered "just"

inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss."

2. ID.; ID.; ID.; ID.; AWARD OF INTEREST; PROPER WHEN THERE IS DELAY IN THE PAYMENT OF JUST COMPENSATION.— The Court recognizes that the owner's loss is not limited to his property alone but includes its income-generating potential. The government, upon its taking of the landholding, must properly compensate the landowner through its payment of the full valuation of the property with imposition of legal interest. This is the only way to achieve a fair exchange for the property and the potential income loss of the landowner. x x x[T]he petitioners have been painstakingly waiting for a very long time for the payment of their property. Land Bank could have expedited the proceedings had it considered all the relevant factors mandated by law in its determination of just compensation. To make the matters worse for the petitioners, DARAB ordered Land Bank to recompute the property valuation only to revert back to the initial valuation of ₱7,067,426.91 after for more than six years of inaction. Clearly, these factual circumstances fall within the purview of the contemplated delay in just compensation. x x x [W]hile indeed there was an immediate deposit of partial payment in the name of the petitioners, it is significant to point out that 21 years have already passed since the taking of the property. A lost opportunity in the interest-earning potential of the difference between the initial valuation and final amount adjudged is too substantial to be considered as the full requirement of just compensation. As to the rate of imposable interest and reckoning period, the Court concurs with the recent jurisprudential doctrines imposing legal interest on just compensation reckoned from the time of taking.

APPEARANCES OF COUNSEL

Valencia Ciocon Dabao Valencia Dionela Pandan Rubica and Garcia Law Offices for petitioners.

LBP Legal Services Group for respondent.

DECISION

REYES, JR., *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 filed by Lucila C. Yared and the Heirs of Ernesto Yared, Sr. namely, Ma. Magdalena Lourdes Y. Ng, Ma. Carmela Y. Malayang, Lucila C. Yared, Mary Anne Martha Y. Naldo, Ma. Teresa Y. de Leon, Ernesto C. Yared, Jr., and Joseph Ray C. Yared (petitioners, for brevity), seeking to set aside the Decision[2] dated April 20, 2012 of the Court of Appeals (CA) in C.A. G.R. SP No. 05773, which affirmed with modification (by deleting the award of legal interest, exemplary damages and attorney's fees) the Decision[3] dated January 31, 2011 of the Regional Trial Court (RTC) of Dumaguete City, Branch 32, directing Land Bank of the Philippines (Land Bank) to pay the remaining balance of just compensation with legal interest and attorney's fees, exemplary damages, unpaid Commissioners' fees and cost of suit.

The Antecedents

Petitioners were the registered owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. ST-27 with a total area of 134.895 hectares located in Bais City, Negros Oriental. Sometime in 1996, the property was placed under the coverage of Comprehensive Agrarian Reform Program (CARP) under Republic Act (R.A.) No. 6657,[4] compulsory

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[1] *Rollo,* pp. 5-26.

[2] Penned by Associate Justice Abraham B. Borreta, with Associate Justices Edgardo L. Delos Santos and Nina G. Antonio-Valenzuela, concurring; *id.* at 34-46.

[3] Penned by Judge Roderick A. Maxino; *id.* at 55-75.

[4] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES. Approved on June 10, 1988.

acquisition scheme of the government. Land Bank initially valued the property at ₱7,067,426.91 and deposited the amount, in cash and agrarian reform bonds, to the account of the petitioners, as evidenced by the certification and inscription in TCT No. ST-27 dated September 25, 1996.[5]

Dissatisfied with the valuation, the petitioners initiated a case before the Department of Agrarian Reform Adjudication Board (DARAB) docketed as DARAB Case No. JC-RVII-NEG-22-CO. On August 22, 2001, DARAB directed Land Bank to recompute the initial valuation of the property. In compliance, Land Bank submitted a manifestation and motion dated November 8, 2011 with a re-evaluation of the property in the amount of ₱11,366,366.15.[6]

After seven years from the submission of Land Bank's manifestation and motion and petitioners' several motions to resolve the case, DARAB acted on the resolution of the case on July 1, 2008, by rejecting the amount submitted by Land Bank and reverting to the initial valuation of ₱7,067,426.91, as the proper amount of just compensation.[7]

Aggrieved, petitioners filed a Petition for the Determination of Just Compensation before the RTC, sitting as Special Agrarian Court (SAC), of Dumaguete City, Negros Oriental and prayed for the following: (1) the determination of just compensation in an amount not less than ₱7,067,426.91; (2) payment of legal interest on the basis of recomputed initial valuation of Land Bank from 1996 until the finality of this case due to the delay caused by the inaction of DARAB in resolving the amount of just compensation; and (3) payment of attorney's fees and filing fee.[8]

On its part, Land Bank argued that the valuation of TCT No. ST-27 depends on the data used, including but not limited

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[5] *Rollo,* pp. 55(B)-56.

[6] *Id*. at 35 and 56.

[7] *Id.* at 35-36 and 56.

[8] *Id*. at 57.

to the Annual Gross Production (AGP), Selling Price (SP), Market Value per Tax Declaration (MV) and the actual receipt of the claim folder from Department of Agrarian Reform (DAR). Land Bank arrived at the initial valuation of ₱7,067,426.91 following the provisions of DAR Administrative Order No. 6, Series of 1992 pursuant to the valuation formula as provided for by Sec. 17 of R.A. No. 6657. Rejecting the argument of the petitioners, Land Bank averred that the adjacent property (TCT No. ST-27) may not necessarily be similar in land valuation to the contested property of the petitioners. Finally, Land Bank argued that it was prompt in its deposit of the initial valuation of just compensation on the property and attributed fault on the release due to petitioners' non-compliance with the documentary requirements.[9]

Ruling of the RTC

In a Decision[10] dated January 31, 2011, the trial court recomputed the initial valuation of Land Bank due to the bank's failure to reconsider the other relevant factors of sales transactions, cost of acquisition and mortgage value in the computation of just compensation. The trial court noted the bank's disregard of the other mandatory factors in the computation of just compensation due to lack of earnest efforts in ensuring the procurement of the necessary data. In arriving at the total land compensation, the trial court followed the alternative formula of Land Value (LV) = [Capitalized Net Income (CNI) x 0.9] + [Market Value (MV) x 0.1], considering the absence of comparable sales data.[11]

As compensation for the time lost and delay, an award of legal interest was imposed on the difference between the initial deposit of ₱7,067,426.91 and judicially determined compensation of ₱18,604,478.00 from September 25, 1996 until full payment of just compensation. The trial court likewise awarded attorney's

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

[10] *Id.* at 55(B)-75.

[11] *Id.* at 70-72.

fees and exemplary damages considering that the petitioners were compelled to litigate in court for the payment of just compensation and to serve as an example for "public good as a form of deterrent to the repetition of this oppressive practice by government agencies."[12] Finally, the RTC ordered the payment of ₱15,000.00 as Commissioner's fee, in view of the indispensability of the appointment of Commissioners to aid in the judicial determination of just compensation.[13]

The dispositive portion of the RTC ruling reads:

> WHEREFORE, premises considered, the Court finds for the Petitioners, and hereby DIRECTS the Respondent Land Bank to pay the following: (1) the remaining balance of the just compensation to the Petitioners in the amount of Eleven Million Five Hundred Thirty-Seven Thousand Four Hundred Seventy-Eight Pesos (₱11,537,478.00), with legal interest of 12% per annum reckoned from September 25, 1996 up to the time when the whole amount is actually paid; (2) to pay attorney's fees in the amount of Fifty Thousand Pesos (₱50,000.00); (3) exemplary damages in the amount of One Hundred Thousand Pesos (₱100,000.00); (4) unpaid Commissioner's fees in the amount of Fifteen Thousand (₱15,000.00); and (5) cost of suit.
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> SO ORDERED.[14]

Ruling of the CA

In a Decision[15] dated April 20, 2012, the CA affirmed with modification the decision of the trial court. While the CA upheld the applied formula in determining the land valuation, the CA nonetheless deleted legal interest due to the absence of any delay in the payment of just compensation. The appellate court likewise deleted the award of exemplary damages and attorney's fees in the absence of bad faith on the part of Land Bank. The dispositive portion of the decision reads:

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

[13] *Id.* at 75.

[14] *Id.* at 75.

[15] *Id.* at 34-46.

WHEREFORE, premised considered, the petition is **PARTLY GRANTED.** The January 31, 2011 Decision of the [RTC] Branch 32 of Dumaguete City is **AFFIRMED with MODIFICATION.** The award of 12% interest, one hundred thousand pesos (PhP100,000.00) exemplary damages and fifty thousand pesos (PhP50,000.00) attorney's fees shall be **DELETED.**

SO ORDERED.[16]

Discontented, Land Bank filed its Petition for Review on *Certiorari* before this Court entitled as *"Land Bank of the Philippines v. Lucila Yared, Heirs of Ernesto Yared, Sr."*[17] disputing the decision of the CA. On July 30, 2012, the Court denied the petition for failure to sufficiently show any reversible error in the assailed CA decision to warrant the exercise of the Court's discretionary appellate jurisdiction. On December 18, 2012, the denial of the petition became final and executory.[18]

Meanwhile, the petitioners filed a Motion for Reconsideration before the CA on May 28, 2012 but the same was denied in a Resolution dated July 3, 2014. Hence, this present petition.

The Issue

The lone issue before the Court is whether or not legal interest shall be imposed on the unpaid balance of ₱11,537,478.00 reckoned from the time of taking until full payment of just compensation.

Ruling of the Court

The petitioners allege that the CA erred when it deleted the award of legal interest on the unpaid balance of just compensation despite the incurred delay on the part of the government. They argue on the imposition of legal interest on the payment of unpaid balance of just compensation, following the Court's decisions in *Apo Fruits Corporation, et al. v. Land Bank of the*

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[16] *Id.* at 45.

[17] *Id.* at 86.

[18] *Id.*

Philippines,[19] *Land Bank of the Philippines v. Rivera, et al.,*[20] *Land Bank of the Philippines v. Santiago, Jr.*[21] *and Land Bank v. Nable.*[22]

In its Comment, Land Bank disputes the award considering the absence of delay upon immediate deposit of ₱7,067,426.91 on September 25, 1996. In the same way, Land Bank stressed on the earned interest of the deposited amount of just compensation, thus, there is no more reason to grant additional interest.

The petition is granted.

The concept of just compensation has long been settled by the Court as the full and fair equivalent of the property which must be paid to the owners of the land within a reasonable time from its taking.[23] This is because without prompt payment, "compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss."[24]

In *Republic of the Philippines, et al. v. Judge Mupas, et al.,*[25] the Court elucidated that just compensation does not only refer to the full and fair equivalent of the property taken; it also means, equally if not more than anything else, payment in full without delay. It is presumed that there is delay if the government

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[19] 647 Phil. 251 (2010).

[20] 705 Phil. 139 (2013).

[21] 696 Phil. 142 (2012).

[22] 689 Phil. 524 (2012).

[23] *Apo Fruits Corp. v. Court of Appeals,* 543 Phil. 497, 519 (2007); *Republic of the Philippines, et al. v. Judge Mupas, et al.*, G.R. No. 181892, April 19, 2016, 790 SCRA 217.

[24] *Apo Fruits Corp. v. Court of Appeals, id.* at 525.

[25] G.R. No. 181892, April 19, 2016, 790 SCRA 217.

failed to pay the property owner the full amount of just compensation on the date of taking. Accordingly, to equalize the effect of losing the income-generating potential of the property, the Court imposed an interest on the unpaid compensation from the time of taking until full payment.[26]

Similar ruling on the imposition of interest was concurred with in the 2010 Resolution of *Apo Fruits*:[27]

[I]f property is taken for public use before compensation is deposited with the court having jurisdiction over the case, **the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court**. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

While the LBP immediately paid the remaining balance on the just compensation due to the petitioners after this Court had fixed the value of the expropriated properties, it overlooks one essential fact - from the time that the State took the petitioners' properties until the time that the petitioners were fully paid, almost 12 long years passed. **This is the rationale for imposing the 12% interest - in order to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking.**[28] (Emphasis Ours)

The Court recognizes that the owner's loss is not limited to his property alone but includes its income-generating potential. The government, upon its taking of the landholding, must properly compensate the landowner through its payment of the full valuation of the property with imposition of legal interest. This is the only way to achieve a fair exchange for the property and the potential income loss of the landowner.[29]

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[26] *Id.*

[27] *Supra* note 19.

[28] *Id.* at 273-274.

[29] *Land Bank of the Philippines v. Avanceña,* G.R. No. 190520, May 30, 2016, 791 SCRA 319, citing *Heirs of Tantoco, Sr. v. CA,* 523 Phil. 257,

In the recent case of *Land Bank v. Phil-Agro Industrial Corporation,*[30] the Court explained that the award of interest is in the nature of damages for delay in payment which makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner.

From the foregoing, the Court agrees with the trial court that the petitioners have been painstakingly waiting for a very long time for the payment of their property. Land Bank could have expedited the proceedings had it considered all the relevant factors mandated by law in its determination of just compensation. To make the matters worse for the petitioners, DARAB ordered Land Bank to recompute the property valuation only to revert back to the initial valuation of ₱7,067,426.91 after for more than six years of inaction. Clearly, these factual circumstances fall within the purview of the contemplated delay in just compensation.

In contrast, the Court cannot subscribe to the contention of Land Bank that there is no need to impose additional interest on just compensation since the deposited amount of initial valuation is already earning interest since 1996. It is worth stressing that while indeed there was an immediate deposit of partial payment in the name of the petitioners, it is significant to point out that 21 years have already passed since the taking of the property. A lost opportunity in the interest-earning potential of the difference between the initial valuation and final amount adjudged is too substantial to be considered as the full requirement of just compensation.

As to the rate of imposable interest and reckoning period, the Court concurs with the recent jurisprudential doctrines

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278 (2006), *Land Bank of the Philippines v. Heirs of Jesus Alsua,* 753 Phil. 323 (2015), *Secretary of the Department of Public Works and Highways, et al. v. Sps. Tecson,* 758 Phil. 604, 635 (2015), *Land Bank of the Philippines v. Obias, et al.,* 684 Phil. 296, 304 (2012).

[30] G.R. No. 193987, March 13, 2017.

imposing legal interest on just compensation reckoned from the time of taking.

In *Land Bank v. Edgardo Santos,*[31] an interest of 12% *per annum* on the unpaid balance of the just compensation reckoned from the time of taking was imposed due to delay in the payment of just compensation to the landowner; the obligation to compensate the landowners is deemed to be an effective forbearance on the part of the State.[32]

In *Land Bank v. Kho*[33] as further affirmed in *Heirs of Pablo Feliciano v. Land Bank*[34] and *Land Bank v. Heirs of Jose Tapulado,*[35] the Court provided a guideline in the award of interest in expropriation cases in line with the amended interest rate pursuant to Bangko Sentral ng Pilipinas - Monetary Board (BSP-MB) Circular No. 799, series of 2013, as affirmed in *Nacar v. Gallery Frames, et al.*[36] As held:

3. ***Interest may be awarded as may be warranted by the circumstances of the case and based on prevailing jurisprudence.*** In previous cases, the Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State. Legal interest on the unpaid balance shall be pegged at the rate of 12% p.a. from the time of taking on May 27, 2002 until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new legal rate of 6% p.a. in line with the amendment introduced by BSP-MB Circular No. 799, series of 2013.

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[31] G.R. No. 213863, January 2016, 782 SCRA 441.

[32] *Id.* at 462.

[33] G.R. No. 214901, June 15, 2016, 793 SCRA 651.

[34] G.R. No. 215290, January 11, 2017.

[35] G.R. No. 199141, March 8, 2017.

[36] 716 Phil. 267 (2013).

Similar rulings were upheld in *Land Bank v. Miguel Omengan*[37] and *Land Bank v. Dalauta*[38] imposing an interest on just compensation or the balance thereof with a rate of 12% *per annum* from the time of taking until June 30, 2013. Thereafter, the rate of six percent (6%) interest *per annum* shall be imposed until full payment, pursuant to the modification introduced by BSP-MB Circular No. 799 as affirmed in *Nacar*.

Applying the foregoing jurisprudence, an interest rate of 12% *per annum* shall be imposed on the amount of ₱11,537,478.00 representing the difference between the initial deposit of 7,067,426.91 and actual compensation as judicially determined to be 18,604,478.00 reckoned from September 25, 1996 until June 30, 2013. Thereafter, an interest rate of six percent (6%) *per annum* shall be imposed until full payment.

WHEREFORE, after judicious review of the records, the Court resolves to **DIRECT** the respondent Land Bank of the Philippines to pay the remaining balance of ₱11,537,478.00 at a rate of twelve percent (12%) legal interest *per annum* from September 25, 1996 until July 30, 2013 and at a rate of six percent (6%) legal interest *per annum* from July 1, 2013 until full payment of just compensation.

SO ORDERED.

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

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[37] G.R. No. 196412, July 19, 2017.

[38] G.R. No. 190004, August 8, 2017.

FIRST DIVISION

[G.R. No. 218208. January 24, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BRIAN VILLAHERMOSO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165; ILLEGAL SALE OF DANGEROUS DRUGS; ENTRAPMENT; PRIOR SURVEILLANCE IS NOT A PREREQUISITE FOR THE VALIDITY OF AN ENTRAPMENT OPERATION.—** Jurisprudence has consistently held that "prior surveillance is not a prerequisite for the validity of an entrapment operation x x x especially if the buy-bust team is accompanied to the target area by their informant." Such is the situation in this case. PO2 Villaester, who was designated as the poseur buyer, was assisted by the confidential informant, who contacted the appellant to inform the latter that there was a prospective buyer of "*shabu*."

2. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY RULE; SUBSTANTIAL COMPLIANCE THEREOF IS SUFFICIENT AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING POLICE OFFICERS.—** As to the Chain of Custody Rule, the Court, taking into consideration the difficulty of complete compliance with the said rule, has considered substantial compliance sufficient "as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers." In this case, x x x the marking of the evidence was done at the police station x x x. Likewise, the absence of a physical inventory and the lack of a photograph of the seized items are not sufficient justifications to acquit the appellant as the Court in several cases has affirmed convictions despite the failure of the arresting officers to strictly comply with the Chain of Custody Rule as long as the integrity and identity of the *corpus delicti* of the crime are preserved.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J*.:

This is an appeal filed by appellant Brian Villahermoso from the January 28, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR HC No. 01023, affirming the November 14, 2008 Judgment[2] of the Regional Trial Court (RTC) of Cebu City, Branch 17, in Crim. Case No. CBU-78163.

The Factual Antecedents

Appellant was charged under the following Information:

> That on or about the 12th day of October, 2006, at about 2:45 x x x P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said [appellant] with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer:
>
> 'Two (2) heat-sealed transparent plastic sachets, each containing white crystalline substance weighing A-1=15.12 grams and A-2=12.13 grams or with a total weight of 27.30 grams'
>
> locally known as "SHABU" containing Methylamphetamine hydrochloride, a dangerous drug.
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> CONTRARY TO LAW.[3]

Appellant pleaded not guilty to the crime charged.[4]

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[1] *Rollo*, pp. 4-13; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan Manahan.

[2] CA *rollo*, pp. 16-18; penned by Judge Silvestre A. Maamo, Jr.

[3] *Rollo*, p. 5.

[4] CA *rollo*, p.16.

Version of the Prosecution

During the trial, the prosecution presented the testimony of the poseur-buyer PO2 Joseph Villaester (PO2 Villaester).

The evidence of the prosecution as summarized by the CA is as follows:

The prosecution relays that on October 12, 2006, at around 1:00 o'clock in the afternoon, PCI Fermin Armendarez III called a conference and formed a buy-bust team to counter the selling of *shabu* by one Brian Villahermoso in Sitio Pailob, Urgeloo St., Barangay Sambag II, Cebu City. The designated poseur-buyer was PO2 Villaester. The buy-bust was done with prior coordination with the PDEA (Philippine Drug Enforcement Agency).

Upon dispatch at the scene, the civilian informant contacted Brian and went with the latter to a small house where PO2 Villaester was waiting. The informant introduced PO2 Villaester as an interested buyer of ₱32,000.00 worth of *shabu*. PO2 Villaester then exhibited a bundle of money purporting to be ₱32,000.00 but was in truth just boodle money wrapped with a genuine 1,000-peso bill bearing PO2 Villaester's signature. Brian handed to PO2 Villaester two big sachets of *shabu* after seeing the money.

PO2 Villaester scratched his head as a signal for other team members, who were waiting at a distance, that the buying and selling had been consummated. PO2 Villaester then introduced himself as a police officer, apprised Brian of the latter's violation as well as of his constitutional rights, and effected the arrest through the assistance of the team.

Brian was handcuffed and was brought to the office of 7RCIDU together with the seized *shabu*. The arrest was recorded in a police blotter. The two sachets of *shabu* were then marked as "BV-01" and "BV-02" by team member SPO1 Noel Triste. The marked sachets of *shabu* were then submitted to the crime laboratory for examination. SPO1 Noel Triste also delivered the laboratory request signed by the Regional Chief of 7RCIDU, Police Senior Superintendent (DSC) Jose Jorge Elizalde Corpuz. Chemistry Report No. D-1632-2006 which was completed at 1400H (or 2:00 o'clock in the afternoon) on October 13, 2004 yielded that the two sachets submitted for examination were indeed positive for Methamp[h]etamine Hydrochloride or *shabu*.[5]

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[5] *Rollo*, pp. 5-7.

Version of the Appellant

Appellant claimed that the charge against him was fabricated; that he was in the area to collect payment for two kilos of mango from a certain Litlit Canupil; that he met seven unidentified persons, four of which asked him if he was Jam Juning; that they introduced themselves as policemen; that they conducted a body search on him; and that they took his money worth ₱900.00.[6]

Appellant's neighbor, Alex Esconas, testified in court that he saw the appellant being held by unidentified persons; that when he approached them, he was told not to intervene; and that he saw the appellant board a brown automobile.[7]

Ruling of the Regional Trial Court

On November 14, 2008, the RTC rendered Judgment finding the appellant guilty of the charge against him, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, the Court hereby finds [appellant] BRIAN VILLAHERMOSO guilty beyond reasonable doubt of the offense charged herein. Accordingly, the Court sentences him to suffer the penalty of life imprisonment and a fine of ₱500,000.00.[8]

Ruling of the Court of Appeals

Appellant elevated the case to the CA.

On January 28, 2013, the CA rendered the assailed Decision affirming the RTC Judgment.

Appellant moved for reconsideration but the CA denied the same in its Resolution[9] dated October 29, 2014.

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[6] *Id*. at 7.

[7] *Id*.

[8] CA *rollo*, p. 18.

[9] *Id*. at 145-146; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob.

Hence, appellant filed the instant appeal.

On July 22, 2015, the Court required both parties to file their respective supplementary briefs; however, they opted not to file the same.[10]

Our Ruling

The appeal is bereft of merit.

The appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt. He puts in issue the alleged failure of the police to conduct prior surveillance and to comply with the Chain of Custody Rule as the seized items were not properly marked, inventoried, and photographed.

The Court is not persuaded.

Jurisprudence has consistently held that "prior surveillance is not a prerequisite for the validity of an entrapment operation x x x especially if the buy-bust team is accompanied to the target area by their informant."[11] Such is the situation in this case. PO2 Villaester, who was designated as the poseur buyer, was assisted by the confidential informant, who contacted the appellant to inform the latter that there was a prospective buyer of "*shabu.*"[12]

As to the Chain of Custody Rule, the Court, taking into consideration the difficulty of complete compliance with the said rule, has considered substantial compliance sufficient "as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers."[13]

In this case, although the marking of the evidence was done at the police station, the Court quotes with approval the discussion of the CA on the matter:

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[10] *Rollo*, pp. 21-22 and 33.

[11] *People v. Abedin*, 685 Phil. 552, 569 (2012).

[12] CA *rollo*, p. 83.

[13] *People v. Morate,* 725 Phil. 556, 571 (2014).

In the instant case the policemen were justified in marking the sachets of *shabu* at their office. [Appellant] was struggling and trying to get away from the police, as testified by defense witness Alex Esconas. [Appellant] himself testified that he even elbowed one of the arresting officers as he was resisting arrest. The priority of the arresting officers is to apprehend the offender. They would have had difficulty, if not impossibility, in marking the *corpus delicti* at that the scene of the crime considering that the [appellant] was quite out of control.[14]

Likewise, the absence of a physical inventory and the lack of a photograph of the seized items are not sufficient justifications to acquit the appellant as the Court in several cases has affirmed convictions despite the failure of the arresting officers to strictly comply with the Chain of Custody Rule as long as the integrity and identity of the *corpus delicti* of the crime are preserved.

In this case, it was established by the testimony of PO2 Villaester that the appellant was apprehended pursuant to a legitimate buy-bust operation; that the appellant was apprised of his constitutional rights; that he was brought to the office of 7RCIDU together with the seized "*shabu*;" that the arrest was recorded in a police blotter; that the two sachets of "*shabu*" were marked as "BV-01" and "BV-02" by SPO1 Noel Triste (SPO1 Triste) in the police station; that the marked sachets were delivered on the same day by SPO1 Triste to the crime laboratory for examination; and that as per Chemistry Report No. D-1632-2006, the two sachets submitted for examination were positive for "*shabu*." Considering the foregoing, there is no reason for the Court to doubt the findings of the CA that the two sachets of "*shabu*" seized from the appellant were the same sachets of "*shabu*" presented in evidence before the RTC.

All told, the RTC and the CA correctly found appellant guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 and accordingly sentenced him to suffer the penalty of life imprisonment and a fine of ₱500,000.00.

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[14] *Rollo*, p. 11.

WHEREFORE, the appeal is **DISMISSED**. The January 28, 2013 Decision of the Court of Appeals in CA-G.R. CEB CR HC No. 01023, which affirmed the November 14, 2008 Judgment of the Regional Trial Court of Cebu City, Branch 17, in Criminal Case No. CBU-78163, finding appellant Brian Villahermoso guilty beyond reasonable doubt of the charge against him is **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 218984. January 24, 2018]

ARMANDO M. TOLENTINO (deceased), herein represented by his surviving spouse MERLA F. TOLENTINO and children namely: MARIENELA, ALYSSA, ALEXA, and AZALEA, all surnamed TOLENTINO, *petitioners, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; JUST CAUSES; DEFIANCE OF RETURN-TO-WORK ORDER OF THE SECRETARY OF LABOR; CONSIDERED AN ILLEGAL ACT WHICH IS A JUST CAUSE TO DISMISS AN EMPLOYEE.— An employee who knowingly defies a return-to-work order issued by the Secretary of Labor is deemed to have committed an illegal act which is a just cause to dismiss the employee under Article 282 of the Labor Code. x x x In fact, it has already been settled that those who participated in

[*] Per raffle dated November 29, 2017.

the 5 June 1998 strike of ALPAP are deemed to have lost their employment status with PAL.

2. **ID.; ID.; ID.; RETIREMENT; REFERS TO THE RESULT OF A BILATERAL ACT OF THE PARTIES, A VOLUNTARY AGREEMENT BETWEEN THE EMPLOYER AND THE EMPLOYEE WHEREBY THE LATTER, AFTER REACHING A CERTAIN AGE, AGREES TO SEVER HIS EMPLOYMENT WITH THE FORMER.—** Tolentino, who did not deny his participation in the strike and his failure to promptly comply with the return-to-work order of the Secretary of Labor, could not claim any retirement benefits because he did not retire – he simply lost his employment status. Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agree to sever his or her employment with the former. It is clear, therefore, Tolentino had not retired from PAL –it was not a result of a voluntary agreement. Tolentino lost his employment status because of his own actions.

3. **ID.; ID.; ID.; ID.; RE-EMPLOYMENT; REGARDED AS A VALID EXERCISE OF THE EMPLOYER'S PREROGATIVE, AS LONG AS IT IS NOT DONE WITH ANTI-UNION MOTIVATION.—** Tolentino was hired again by PAL on 20 July 1998. This was after he reapplied with the company. He also voluntarily completed the probationary period of six months. It was made clear to Tolentino, and he certainly admitted, that he was rehired on the condition that his employment would be as a new hire. Reemployment, on the condition that the employee will be treated as a new employee, is a valid exercised of the employer's prerogative, as long as it is not done with anti-union motivation.

4. **ID.; ID.; ID.; ID.; RETIREMENT BENEFITS, ESPECIALLY THOSE WHICH ARE GIVEN BEFORE THE MANDATORY RETIREMENT AGE, ARE GIVEN AS A FORM OF REWARD FOR SERVICES RENDERED BY THE EMPLOYEE TO THE EMPLOYER.—** On 16 July 1999, or less than one year after he was rehired as a new pilot, Tolentino resigned from PAL. In this instance, Tolentino had voluntarily resigned from work. However, the act of resignation alone does not entitle him to retirement benefits which he claimed under the PAL-ALPAP Retirement Plan. x x x The requirements under

the PAL-ALPAP Retirement Plan must be present at the time the employee resigns or retires from PAL. Unfortunately for Tolentino, when he finally tendered his resignation with PAL, he was no longer compliant with the requirements for the retirement benefit – as a new hire, he only completed less than one year of service. Therefore, he is not entitled to any retirement or resignation benefits under the PAL-ALPAP Retirement Plan. Retirement benefits, especially those which are given before the mandatory retirement age, are given as a form of reward for the services rendered by the employee to the employer. Thus, it would be contrary to the rationale of retirement benefits to reward an employee who was terminated due to just cause, or who committed an act that was enough to merit his dismissal.

5. ID.; ID.; ID.; ID.; EQUITY OF THE RETIREMENT FUND; MAY BE GRANTED ONLY TO THOSE WHO HAVE SATISFACTORILY MET THE REQUISITES FOR RETIREMENT; CASE AT BAR.—[S]imilar to the retirement benefits under the PAL-ALPAP Retirement Plan, it is clear that the pilot must have *retired* first before he receives the full amount of the contribution or the equity of the retirement fund. x x x Tolentino never retired. When he was first separated from work, it was not due to resignation or retirement – he simply lost his employment status as a result of his participation in the illegal strike and failure to promptly comply with the return-to-work order of the Secretary of Labor. When he resigned from work after subsequently being rehired by PAL, it could not be said that he retired as he barely completed one year of service. Simply put, he was not able to satisfy the retirement requirements. As Tolentino was not a retiring pilot, he was not entitled to receive the return of equity in the retirement fund. Only pilots who are retiring – who have satisfactorily met the requisites for retirement – are entitled to the full equity of the contribution. Moreover, since the contribution to the fund was exclusively from PAL, with no participation from the employees, Tolentino is not entitled to any amount from PAL Pilots' Retirement Benefit Plan.

APPEARANCES OF COUNSEL

Medialdea Ata Bello & Guevarra for petitioners.
Laguesma Magsalin Consulta & Gastardo Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Petitioners[1] Merla F. Tolentino, as the surviving spouse of Armando M. Tolentino (Tolentino), and Marienela, Alyssa, Alexa and Azalea, all surnamed Tolentino, as the children of Tolentino, challenge the 30 September 2014 Decision[2] and 10 June 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 132519 which affirmed the 28 June 2013 Decision[4] and 27 August 2013 Resolution[5] of the National Labor Relations Commission (NLRC) and the 14 March 2013 Decision[6] of the Labor Arbiter.

The Facts

Tolentino was hired by respondent Philippine Airlines, Inc. (PAL) as a flight engineer on 22 October 1971. By 16 July 1999, Tolentino had the rank of A340/A330 Captain. As a pilot, Tolentino was a member of the Airline Pilots Association of the Philippines (ALPAP), which had a collective bargaining agreement (CBA) with PAL.

On 5 June 1998, ALPAP members went on strike. On 7 June 1998, the Secretary of Labor issued an Order requiring all striking officers and members of ALPAP to return to work

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[1] On 22 July 2005, petitioners, as heirs of Tolentino, filed with the Labor Arbiter a Notice of Death and Motion for Substitution of Complainant Armando M. Tolentino. *Rollo,* p. 21.

[2] *Id*. at 46-53. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Romeo F. Barza and Ramon A. Cruz concurring.

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

[4] *Id*. at 193-201.

[5] *Id*. at 220-221.

[6] *Id*. at 351-359.

within 24 hours from receipt of the Order and requiring PAL management to accept them under the same terms and conditions of employment prior to the strike. On 8 June 1998, the Secretary of Labor served the Order on the officers of ALPAP. While the union officers and members had until 9 June 1998 to comply with the directive of the Secretary of Labor, some pilots – including Tolentino – continued to participate in the strike.

On 26 June 1998, when Tolentino and other striking pilots returned to work, PAL refused to readmit these returning pilots. Thus, they filed a complaint for illegal lockout against PAL. On 20 July 1998, Tolentino reapplied for employment with PAL as a newly hired pilot, and thus voluntarily underwent the six months probationary period. After less than a year, Tolentino tendered his resignation effective 16 July 1999.

Meanwhile, on 1 June 1999, the Secretary of Labor issued a Resolution declaring the strike conducted by ALPAP on 5 June 1998 illegal for being procedurally infirm and in open defiance of the return-to-work order of 7 June 1998. Members and officers of ALPAP who participated in the strike in defiance of the 7 June 1998 return-to-work order were declared to have lost their employment status. This resolution was affirmed by this Court on 10 April 2002.

Tolentino worked for a foreign airline, and thereafter returned to the Philippines. Upon his return, he informed PAL of his intention of collecting his separation and/or retirement benefits under the CBA. PAL refused to pay Tolentino the separation and/or retirement benefits as stated in the CBA. Tolentino filed his complaint against PAL for non-payment of holiday pay, rest day pay, separation pay, and retirement benefits with prayer for the payment of damages and attorney's fees.

The Ruling of the Labor Arbiter

On 14 March 2013, the Labor Arbiter rendered his Decision dismissing the complaint of Tolentino. The Labor Arbiter found that Tolentino was not entitled to separation pay and other benefits as he was not illegally dismissed, having participated in the illegal strike and defied the return-to-work order of the

Secretary of Labor. The Labor Arbiter also denied the claim for retirement benefits because Tolentino resigned from work less than a year after he was rehired by PAL. The Decision states in part:

> Since it is admitted that complainant participated in a strike prohibited by the law and the Secretary of Labor's Return To Work Order, he was validly dismissed and is therefore not entitled to separation pay. As for his claims for holiday pay and rest day pay, it should be emphasized that he was considered a new hire when he rejoined Philippine Airlines in July 1998. Complainant underwent the probationary period which ended only on January 25, 1999. Six [6] months later, he tendered his resignation effective July 16, 1999. Given these, complainant cannot tuck [sic] in whatever seniority or benefits he had prior to the cessation of his employment on June 9, 1998.[7]

On 4 April 2013, petitioners appealed the Decision of the Labor Arbiter to the NLRC.[8]

<u>The Ruling of the NLRC</u>

On 28 June 2013, the NLRC affirmed the Decision of the Labor Arbiter, finding that Tolentino was not entitled to holiday pay, rest day pay, separation pay, retirement benefits, and moral and exemplary damages.[9] The NLRC found that (1) the severance of Tolentino's employment was not due to any of the authorized causes under the Labor Code of the Philippines; (2) Tolentino was validly terminated from employment because of his participation in the illegal strike; and (3) when he resigned after he reapplied with PAL, he was not able to complete the required period of five years of continuous service under the CBA.

The Motion for Reconsideration[10] was denied by the NLRC in its Resolution dated 27 August 2013.[11] Thereafter, petitioners

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[7] *Id*. at 358.

[8] *Id*. at 575-593.

[9] *Id*. at 251.

[10] *Id*. at 382-398.

[11] *Id*. at 220-221.

filed a petition for *certiorari* under Rule 65 before the CA on 4 November 2013.[12]

The Ruling of the CA

In a Decision dated 30 September 2014, the CA affirmed, with modification, the 28 June 2013 Decision and 27 August 2013 Resolution of the NLRC. The CA found that under the CBA, Tolentino was entitled to the payment of his vacation time and days off earned but not taken. The CA held:

> Considering the foregoing provisions, Tolentino's separation from work entitles him to payment of his vacation time and days off earned but not taken. Tolentino has rendered 25 continuous years of service to respondent company, hence, he is entitled to 27 calendar days of paid annual vacation leave. Furthermore, considering that the CBA only mentions separation from the company to justify the claim for vacation pay, but is silent on the forfeiture of the benefit upon valid termination of an employee from the service, we are constrained to grant the same, in light of the rule that in case of doubt, labor contracts shall be construed in favor of the worker.
>
> WHEREFORE, the June 28, 2013 Decision and August 27, 2013 Resolution of the NLRC are AFFIRMED, with MODIFICATION, ordering private respondent Philippine Airlines, Inc. to pay Tolentino's accrued vacation leave equivalent to 27 calendar days of his salary.[13]

Petitioners filed a Motion for Partial Reconsideration dated 1 November 2014 alleging that Tolentino was entitled to (1) the retirement benefits under the CBA; (2) the return of his equity in the retirement fund under the PAL Pilots' Retirement Benefit Plan; and (3) the payment of moral and exemplarydamages and attorney's fees.[14]

On the other hand, PAL filed its Motion for Partial Reconsideration dated 3 November 2014. In its Motion, PAL argued that Tolentino was not entitled to his supposed accrued

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[12] *Id.* at 656-677.

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

[14] *Id.* at 1209-1217.

vacation leave pay considering that (1) the payment of his alleged benefits had already been dismissed by this Court; (2) he had never prayed for the payment of his vacation leave pay; and (3) the company's policy on forfeiture of benefits and privileges upon the dismissal of an employee prevails over the CBA.[15]

In a Resolution dated 10 June 2015,[16] the CA denied the Motion for Partial Reconsideration filed by petitioners. Hence, this petition.

The Issues

Petitioners seek a partial reversal of the decision of the CA and raise the following arguments:

> [A.] The Honorable Court of Appeals seriously erred and committed grave abuse of discretion when it did not rule that petitioner-heirs are entitled to receive Capt. Tolentino's retirement benefits under the Collective Bargaining Agreement with respondent;
>
> [B.] The Honorable Court of Appeals seriously erred and committed grave abuse of discretion when it failed to rule that petitioner-heirs are entitled to the return of Capt. Tolentino's equity in the retirement fund under the PAL Pilot[s'] Retirement Benefit Plan; and
>
> [C.] The Honorable Court of Appeals seriously erred and committed grave abuse of discretion when it failed to award petitioner-heirs with payment for damages and attorney's fees.[17]

The Ruling of the Court

We deny the petition.

An employee who knowingly defies a return-to-work order issued by the Secretary of Labor is deemed to have committed an illegal act which is a just cause to dismiss the employee under Article 282 of the Labor Code. In *PAL, Inc. v. Acting Secretary of Labor*,[18] we held:

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[15] *Id*. at 1167-1182.

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

[17] *Id.* at 25.

[18] 345 Phil. 756, 759 (1997).

A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption and/or certification is a prohibited activity and thus illegal. The union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act. Stated differently, from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. **The loss of employment status results from the striking employees' own act — an act which is illegal, an act in violation of the law and indefiance of authority.** (Emphasis supplied)

In fact, it has already been settled that those who participated in the 5 June 1998 strike of ALPAP are deemed to have lost their employment status with PAL.[19] In *Rodriguez v. Philippine Airlines, Inc.*,[20] we held:

In the *1st ALPAP case,* the Court upheld the DOLE Secretary's Resolution dated June 1, 1999 declaring that **the strike of June 5, 1998 was illegal and all ALPAP officers and members who participated therein had lost their employment status.** The Court in the *2nd ALPAP case* ruled that even though the dispositive portion of the DOLE Secretary's Resolution did not specifically enumerate the names of those who actually participated in the illegal strike, such omission cannot prevent the effective execution of the decision in the *1st ALPAP case.* The Court referred to the records of the Strike and Illegal Lockout Cases, particularly, the logbook, which it unequivocally pronounced as a "crucial and vital piece of evidence." In the words of the Court in the *2nd ALPAP case,* "[t]he logbook with the heading 'Return-To-Work Compliance/Returnees' bears their individual signature[s] signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. x x x In fine, only those returning pilots, irrespective of whether they comprise the entire Resolution." (Emphasis supplied)

Thus, Tolentino, who did not deny his participation in the strike and his failure to promptly comply with the return-to-

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[19] *Rodriguez v. Philippine Airlines, Inc.*, G.R. No. 178501, 11 January 2016, 778 SCRA 334.

[20] *Id.* at 379-380.

work order of the Secretary of Labor, could not claim any retirement benefits because he did not retire – he simply lost his employment status.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.[21] It is clear, therefore, Tolentino had not retired from PAL – it was not a result of a voluntary agreement. Tolentino lost his employment status because of his own actions.

Admittedly, Tolentino was hired again by PAL on 20 July 1998.[22] This was after he reapplied with the company. He also voluntarily completed the probationary period of six months. It was made clear to Tolentino, and he certainly admitted, that he was rehired on the condition that his employment would be as a new hire.[23] Reemployment, on the condition that the employee will be treated as a new employee, is a valid exercise of the employer's prerogative, as long as it is not done with anti-union motivation. In *Enriquez v. Zamora*,[24] this Court held:

> Enriquez and Ecarma were, therefore, new employees with entirely new seniority rankings when they were readmitted by PAL on January 18, 1971 and January 12, 1971, respectively. Certainly, PAL was merely exercising its prerogative as an employer when it imposed two conditions for the reemployment of petitioners inasmuch as hiring or rehiring policies are matters for the company's management to determine in the absence of an anti-union motivation.[25]

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[21] *Cercado v. Uniprom, Inc.*, 647 Phil. 603 (2010), citing *Magdadaro v. Philippine National Bank*, 610 Phil. 608, 612 (2009); *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, G.R. No. 156644, 28 July 2008, 560 SCRA 115, 132; *Cainta Catholic School v. Cainta Catholic School Employees Union*, 523 Phil. 134, 149 (2006); *Ariola v. Philex Mining Corporation*, 503 Phil. 765, 783 (2005); *Pantranco North Express, Inc. v. NLRC*, 328 Phil. 470, 482 (1996).

[22] *Rollo*, p. 47.

[23] *Id.* at 527.

[24] 230 Phil. 476 (1986).

[25] *Id.* at 488.

On 16 July 1999, or less than one year after he was rehired as a new pilot, Tolentino resigned from PAL. In this instance, Tolentino had voluntarily resigned from work. However, the act of resignation alone does not entitle him to retirement benefits which he claimed under the PAL-ALPAP Retirement Plan. Article VII of the PAL-ALPAP Retirement Plan Rules and Regulations provides:

ARTICLE VII
Retirement Benefits

Section 1. Normal Retirement. (a) Any member who completes twenty (20) years of service as a pilot for PAL or has flown 20,000 hours for PAL shall be eligible for normal retirement. The normal retirement date is the date on which he completes twenty (20) years of service or on which he logs his 20,000 hours as a pilot for PAL. The Member who retires on his normal retirement shall be entitled either (a) to a lump sum payment of ₱100,000.00 or (b) to such termination pay benefits to which he may be entitled under existing laws, whichever is the greater amount

Section 2. Late Retirement. Any Member who remains in the service of the Company after his normal retirement date may retire either at his option or at the option of the Company, and when so retired he shall be entitled either (a) to a lump sum payment of ₱5,000.00 for each completed year of service rendered as a pilot, or (b) to such termination pay benefits to which he may [sic] entitled under existing laws, whichever is the greater amount.

Section 3. Resignation Benefit. Any Member who completes five (5) years of continuous service with the Company may retire a[t] his option. In such event, he shall only be entitled to the following percentage or ₱5,000.00 for each completed year of service as a pilot, multiplied by the applicable percentage as shown below

x x x x x x x x x[26]

Based on the foregoing, Tolentino is not entitled to any of the retirement benefits under the PAL-ALPAP Retirement Plan. He had not completed even one year of his new employment

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[26] *Rollo,* p. 85.

with PAL. The Rules and Regulations of the PAL-ALPAP Retirement Plan provide that the member-pilot must have completed at least five years of continuous service with PAL to be entitled to the resignation benefit. His resignation in July 1999, which was only about a year from when he was rehired by the company, did not qualify him for such resignation benefit.

Petitioners argue that Tolentino had been a pilot for PAL for more than 20 years since his employment on 22 October 1971, and thus he was qualified for normal retirement under the first section of Article VII of the PAL-ALPAP Retirement Plan.

We disagree.

For purposes of the retirement plan, the computation of Tolentino's length of service to the company should be reckoned from the date he was rehired after his own voluntary application as a new pilot. His services from October 1971 to June 1998 cannot be tacked to his new employment starting in July 1998 because the first employment had already been finally terminated – not due to his voluntary resignation or retirement, but because of termination due to just causes. Tolentino joined an illegal strike and defied the return-to-work order of the Secretary of Labor. At this point, he had already lost his employment status with PAL.

Petitioners cannot rely on the case of *Enriquez v. Zamora*[27] to argue that once a pilot meets the requirements under the CBA, the payment of the retirement benefits "ipso facto accrues and may be demanded when the employment relationship is severed, regardless of the reason therefor"[28] because *first*, there was no such declaration in the cited case; *second*, the issue in the case was about the seniority of the returning pilots; and *third*, the case has an entirely different factual milieu from the case at bar. In *Enriquez v. Zamora*,[29] the pilots tendered their

[27] *Supra* note 24.

[28] *Rollo*, p. 30.

[29] *Supra* note 24.

mass resignation while in the present case, no resignation was tendered – Tolentino and the others were terminated because of their participation in an illegal strike and their subsequent non-compliance with the return-to-work order. The Court held that Enriquez was entitled to the retirement benefits because precisely, he retired – he voluntarily severed his employment with PAL. While Enriquez argued that he did not genuinely desire to terminate his employment and that the resignation was tendered as a matter of protest, the fact remained that a resignation was tendered, and PAL had accepted it. On the other hand, in the present case, when Tolentino was first separated from PAL, there was no resignation to speak of – nothing was tendered to PAL for it to accept.

The requirements under the PAL-ALPAP Retirement Plan must be present at the time the employee resigns or retires from PAL. Unfortunately for Tolentino, when he finally tendered his resignation with PAL, he was no longer compliant with the requirements for the retirement benefit – as a new hire, he only completed less than one year of service. Therefore, he is not entitled to any retirement or resignation benefits under the PAL-ALPAP Retirement Plan.

Retirement benefits, especially those which are given before the mandatory retirement age, are given as a form of reward for the services rendered by the employee to the employer.[30] Thus, it would be contrary to the rationale of retirement benefits to reward an employee who was terminated due to just cause, or who committed an act that was enough to merit his dismissal.

Additionally, petitioners argue that Tolentino is also entitled to the equity in the retirement fund under the PAL Pilots' Retirement Benefit Plan, which is separate from the retirement benefits under the PAL-ALPAP Retirement Plan.

While we recognize that the two benefits are indeed separate and distinct from each other, we find that Tolentino is entitled to neither.

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[30] *Pantranco North Express, Inc. v. National Labor Relations Commission*, 328 Phil. 470 (1996).

The PAL Pilots' Retirement Benefit Plan is a retirement fund raised exclusively from the contributions of PAL.[31] Contrary to petitioners' claim that the retirement fund comes from salary deductions,[32] we find that it is non-contributory and there is no financial burden on the pilots for the establishment of this fund. The PAL Pilots' Retirement Benefit Plan specifically provides:

> 2.9 "Retirement Fund" shall mean **the company's contributions to the Trust Fund** established under or in connexion [sic] with this Plan in the Participant[s'] behalf plus/minus earnings/losses and less expenses charged to the Fund and benefit payments previously made. The Retirement Fund shall consist of the participants' equity and the forfeitures.
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> x x x x x x x x x
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> 6.1 **The Plan will be wholly financed by the Company. No contributions will be required from the participants of the Plan.** The funding of the Plan and payment of the benefits hereunder shall be provided for through the medium of a Retirement Fund held by a trustee under an appropriate trust agreement. All contributions made by the Company to the Retirement Fund shall be solely and exclusively for the benefit of the participants or their beneficiaries, and no part of said contributions or its income shall be used for or diverted to purposes other than the exclusive benefit of such employees and their beneficiaries. None whatsoever shall revert to the Company.[33] (Emphasis supplied)

In *Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines*,[34] this Court held:

> The PAL Pilots' Retirement Benefit Plan **is a retirement fund raised from contributions exclusively from petitioner** of amounts equivalent to 20% of each pilot's gross monthly pay. **Upon retirement, each pilot stands to receive the full amount of the contribution.**

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[31] *Rollo*, pp. 1022-1031.

[32] *Id.* at 31.

[33] *Id.* at 1023, 1025-1026.

[34] 424 Phil. 356, 363 (2002).

In sum, therefore, the pilot gets an amount equivalent to 240% of his gross monthly income for every year of service he rendered to petitioner. This is in addition to the amount of not less than ₱100,000.00 that he shall receive under the 1967 Retirement Plan. (Boldfacing and underscoring supplied)

Again, similar to the retirement benefits under the PAL-ALPAP Retirement Plan, it is clear that the pilot must have *retired* first before he receives the full amount of the contribution or the equity of the retirement fund. As earlier established, Tolentino never retired. When he was first separated from work, it was not due to resignation or retirement – he simply lost his employment status as a result of his participation in the illegal strike and failure to promptly comply with the return-to-work order of the Secretary of Labor. When he resigned from work after subsequently being rehired by PAL, it could not be said that he retired as he barely completed one year of service. Simply put, he was not able to satisfy the retirement requirements. As Tolentino was not a retiring pilot, he was not entitled to receive the return of equity in the retirement fund. Only pilots who are retiring – who have satisfactorily met the requisites for retirement – are entitled to the full equity of the contribution. Moreover, since the contribution to the fund was exclusively from PAL, with no participation from the employees, Tolentino is not entitled to any amount from the PAL Pilots' Retirement Benefit Plan.

Further, we find that PAL's Personnel Policies and Procedures Manual,[35] which provides that generally, a dismissed employee forfeits all his entitlements to the company benefits and privileges, is a valid employer policy which is applicable to Tolentino. PAL's assertion that the loss of employment of Tolentino carried with it the forfeiture of his benefits and privileges, which include retirement benefits under the PAL-ALPAP Retirement Plan and the equity in the retirement fund under the PAL Pilots' Retirement Benefit Plan, is meritorious.

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[35] *Rollo*, p. 960.

We also find no reversible error in the denial of Tolentino's claim for damages and attorney's fees. Based on the foregoing, there is no basis to grant any of the damages claimed. Finally, we note that PAL did not question the order for the payment of Tolentino's accrued vacation leave. Thus, this Court will not review the same.

WHEREFORE, the petition is **DENIED**. The assailed 30 September 2014 Decision and 10 June 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 132519 are **AFFIRMED.**

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 222317. January 24, 2018]

ST. PAUL COLLEGE, PASIG, and SISTER TERESITA BARICAUA, SPC, *petitioners, vs.* **ANNA LIZA L. MANCOL and JENNIFER CECILE S. VALERA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS.—** As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by

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

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; PRESENT WHEN THE EMPLOYER COMMITS ACTS THAT ARE CONSIDERED TO BE GRATUITOUS, UNJUSTIFIED, UNWARRANTED AND UNFAIR ON THE PART OF THE EMPLOYEE AND THE LATTER IS LEFT WITH NO OTHER VIABLE RECOURSE BUT TO TERMINATE HER EMPLOYMENT.—** Constructive dismissal arises "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee." In such cases, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment. By definition, constructive dismissal can happen in any number of ways. At its core, however, is the gratuitous, unjustified, or unwarranted nature of the employer's action. As it is a question of whether an employer acted fairly, it is inexorable that any allegation of constructive dismissal be contrasted with the validity of exercising management prerogative.

3. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; TO BE A VALID GROUND FOR TERMINATION OF EMPLOYMENT, THE EMPLOYER MUST PROVE, BY SUBSTANTIAL EVIDENCE, THE CONCURRENCE OF THE EMPLOYEE'S FAILURE TO REPORT FOR WORK FOR NO VALID REASON AND HER CATEGORICAL INTENTION TO DISCONTINUE EMPLOYMENT.— For a termination of employment on the ground of abandonment to be valid, the employer "must prove, by substantial evidence, the concurrence of [the employee's] failure to report for work for no valid reason and his categorical intention to discontinue employment." In this case, there is no proof that respondent Mancol abandoned her work, instead, evidence show that she wanted to return to work but was prevented by the respondents.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioners.
Buenaflor & Mancol Law Offices for respondents.

D E C I S I O N

PERALTA, *J*.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated March 7, 2016 of petitioners St. Paul College, Pasig and Sister Teresita Baricaua, SPC that seeks to reverse and set aside the Decision[1] dated April 16, 2015 and the Resolution[2] dated January 8, 2016, of the Court of Appeals (*CA*) in CA-G.R. SP No. 124501 finding respondents Anna Liza L. Mancol and Jennifer Cecile Valera constructively dismissed by the petitioners.

The facts follow.

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[1] Penned by Associate Justice Edwin D. Sorongon, with the concurrence of then Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ricardo R. Rosario; *rollo,* pp. 45-64.

[2] *Id.* at 81-84.

Respondents Mancol and Valera were both hired as pre-school teachers of petitioner St. Paul College, Pasig (*SPCP*), Mancol having been employed on June 1, 2004 with a monthly basic salary of ₱20,311.50 and Valera having been employed sometime in 2003 with a basic monthly salary of ₱22,044.00.

Mancol, on May 18, 2010, filed a leave of absence for the period May 21 to June 18, 2010 as she was to undergo a fertility check-up in Canada. When she returned to the Philippines, Mancol received a letter dated June 10, 2010 from the Directress of SPCP, petitioner Sister Baricaua, requiring her to explain why she should not be dismissed for taking a leave of absence without approval. On June 21, 2010, Mancol reported back to SPCP, but she was allegedly barred by SPCP and Sister Baricaua from teaching in her class, entering her classroom, being introduced to her students, preparing teaching aids and materials, and going to other offices within the campus. Thus, Mancol alleged that all these acts constitute constructive dismissal.

Valera, on the other hand, took a leave of absence without pay from April 13 to June 11, 2010 to undergo surgical operation for scoliosis. On June 15, 2010, Valera received a letter from Sister Baricaua advising her to file a leave of absence (Sick Leave) for the entire school year 2010-2011; otherwise, she will be reassigned to a higher grade level where the students are more independent learners. The letter also required her to submit a waiver absolving SPCP from any liability in case of any untoward incident that may take place while in the performance of her teaching duties as well as notarized certification of her physician as to her fitness to resume work. Valera, thus, averred that she was constructively dismissed when petitioners stripped her of her teaching load and being forced to take a leave of absence for the school year 2010-2011.

The parties having failed to strike an amicable settlement during the scheduled mandatory conference, respondents filed on June 22, 2010, a complaint for constructive dismissal, non-payment of overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, 13th month pay, nightshift differential overload pay, damages and attorney's fees against

SPCP and Sister Baricaua in her personal and official capacity as Directress of SPCP.

To substantiate their money claims, Mancol and Valera's similar allegations are as follow:

> [Petitioners were] required to work for 40 hours a week or 8 hours of work daily (inclusive of lunch break) from Mondays thru Fridays. As pre-school teacher[s], [their] official time was from 7:15 am to 3:30 pm daily, which is actually 8 hours and 15 minutes of work daily. However, [they were] not paid an overtime pay equivalent to 15 minutes every day.
>
> But the working hours of [petitioners] and other preschool teachers do not end at 3:30 [pm] daily. They extend for at least another 1 ½ hours every day therefrom, or until 5:00 pm, on account of daily meetings required and called by the principal or by her authority under the threat of salary deductions against teachers who refuse or fail to attend the same. Unfortunately, [petitioners were] not paid overtime pay for work rendered beyond 3:30 pm, which is equivalent to about 90 minutes every day, exclusive of the daily 15 minutes overtime already mentioned above.
>
> Meetings or conferences were likewise called by the principal or by her authority daily during lunch break such that [petitioners] and other preschool teachers were left with no choice but to eat their lunch only after said meetings or conferences, which usually end around 1:15 pm.
>
> [Petitioners] and other preschool teachers were likewise required to report for work on weekends for either half day (4 hours minimum) or whole day (8 hours minimum) but without pay. In 2007, this happened on March 3-4 (Saturday & Sunday – Field Demonstrations, whole day); March 10 (Saturday – Thanksgiving Mass, half day); June 16 (Saturday – Pondo ng Pinoy Seminar, whole day); August 11 (Saturday – Parents' Recollection, half day); October 27-28 (Saturday & Sunday – Seminar, whole day); and November 10 (Saturday – Family Day, half day). In 2008, this happened on January 26 (Saturday, Field Demonstration, whole day); June 7 (Saturday – Parents' Orientation, half day); and October 18 (Saturday – Family Day, half day). In 2009, this happened on February 15 (Sunday – Preschool Field Demonstration, whole day); March 15 (Sunday – Kinder 2 Thanksgiving Mass, half day); June 13 (Saturday – Parents' Orientation, half day); July 25 (Saturday – Seminar Workshop with

Scholastic, whole day); August 1 (Saturday, Parents' Recollection, half day); August 19 (Saturday – PTC, half day); February 13 (Saturday – School Fair, whole day); February 14 (Saturday – Preschool Field Demonstration, whole day) and March 13 (Saturday – Kinder 2 Thanksgiving Mass, half day).

Last school year (SY 2009-2010) [SPCP] required [petitioners] and other school teachers to teach in the grade school allegedly because preschool teachers were not rendering the required number of teaching hours/loads on the basis of DepEd Order No. 57, s.2007. A copy of [the] secretary's certification issued by respondents' corporate secretary is hereto attached as Annex "B". On the contrary, however, [petitioners] and other preschool teachers were already rendering actual teaching hours/loads beyond the required teaching hours/load prescribed by the Faculty Manual of 2004. This is also not to mention that DepEd Order No. 57, s.2007 apply only to public institutions, not to respondent SPCP which is a private institution.

The Faculty Manual of 2004 provides for an 18 to 20 hours of actual teaching in a 40-hour work week, which starts at 7:30 am, and beyond that is already considered an extra load with corresponding extra-load pay. As regards proctoring, the same Faculty Manual classified it as "inherent" in a teaching load and does not require extra remuneration. And being "inherent" and also on the basis of its nature, proctoring forms part of actual teaching load. As such, if proctoring is rendered outside of, or in addition to, the 18 to 20 actual teaching hours, then it is properly considered as actual teaching load. This is especially true to preschool teachers who conduct proctoring beyond the 18 to 20 hours of actual teaching.

For purposes of extra-load pay, the Faculty Manual of 2004 provides for a formula: [(Basic/Minimum hours)] x extra hours of the minimum]. The basic monthly salary of complainant Mancol is Php 20,311.50 and the minimum hours is 20 hours per Faculty Manual of 2004. Below are the extra hours/load rendered by the complainant Mancol in both preschool and grade school.

In preschool, [petitioners] rendered about 3.5 hours of actual teaching [hours]/load (8 am – 11:30 am) during Mondays thru Thursdays; 4 hours of actual teaching/load (7:30 am – 11:30 am) during Fridays; 45 minutes of proctoring (7:30 am – 8:00 am and 11:30 am – 11:45 am) during Mondays thru Thursdays; and 30 minutes of proctoring (7:15 am – 7:30 am and 11:30 am – 11:45 am) during Fridays. In short, in preschool, complainant Mancol has indubitably

rendered about 21.5 hours of actual teaching/load in a week, or an excess of 1.5 hours from that of 18-20 hours prescribed under the Faculty Manual of 2004, without being paid thereof for extra load.

Thus, for rendering 21.5 hours of actual teaching [hours]/load, or 1.5 hours in excess of that prescribed in the Faculty Manual of 2004, complainant Mancol is entitled to: [(20,311.50/20) x 1.5] = Php1,523.36 overload pay per week since 2004; [while Valera is entitled to: [(22,044.00/20) x 1.5] = Php1,653.30 overload pay per week since 2004).

Also, in requiring [petitioners] to teach at grade school which was already in excess of the 18-20 hours of actual teaching hours/ load prescribed in the Faculty Manual of 2004, [petitioners were] entitled to overload pay equivalent to the excess thereof for school year 2009-2010. To simplify, [petitioners have] double teaching loads during Mondays, Wednesdays and Thursdays (from 12:35 nn to 1:55 pm equivalent to 240 minutes, or 4 hours); and single loads during Tuesdays and Fridays (from 1:15 nn to 1:55 pm for Tuesday and 12:35 nn to 1:15 [pm] for Friday; equivalent to 80 minutes, or 1.33 hours). As such, in a 5-day work week in grade school, complainant Mancol rendered about 320 minutes, or 5.33 hours of actual teaching [hours]/load. The aforementioned teaching hours/loads in grade school do not reflect the additional time (approximately about 30 minutes every day after class) spent by [petitioners] and other preschool teachers for their respective grade school students for checking papers and proctoring, among others.

Thus, for rendering about 5.33 hours of actual teaching load in grade school for school year 2009-2010, complainant Mancol is entitled to a weekly overload pay of Php5,413.01, in this wise: [(20,311.50/ 20) x 5.33] = Php5,413.01; [while complainant Valera is entitled to a weekly overload pay of Php5,413.01 in this wise [22,044.00/20) x 5.33] = Php5,874.73].

There are four (4) weeks in a month and ten (10) months per school year. Thus, respondents should be held liable for the payment of overload pays mentioned above for forty (40) weeks in a school year.[3]

Herein petitioners deny having terminated Mancol and Valera either actually or constructively. For Mancol, they aver that

[3] *Id.* at 47-50.

she was merely meted a penalty of suspension for one (1) week for taking a leave of absence without the approval of the Directress as explicitly provided in the employee handbook. As for Valera, they insist that she was never dismissed from work but was only advised to take either one (1) year sick leave for her to fully recover from her spine operation or to be assigned to a higher grade level. On the issue of money claims, they aver that the same was already dismissed by the DOLE-NCR Regional Director for lack of basis.

The Labor Arbiter, in a Decision[4] dated January 31, 2011, ruled that respondents were constructively dismissed from their employment and ordered their immediate reinstatement and payment of monetary awards, thus:

WHEREFORE, premises considered, respondents St. Paul College of Pasig, Inc. (sic) and Sister Teresita Baricaua are found jointly and solidarily liable for constructively dismissing complainants Anna Liza L. Mancol and Jennifer Cecile Valera and are hereby ordered to immediately reinstate both of them to their former positions or equivalent positions under the same terms and conditions prevailing prior to their dismissal or at the option of the respondents, to reinstate their names in the payroll also under the same terms and conditions prevailing prior to their constructive dismissal.

Respondents St. Paul College of Pasig, Inc. (sic) and Sister Teresita Baricaua are also ordered to pay complainant Mancol the following: (1) full backwages from the time she was constructively dismissed, or from 21 June 2010, until the time of actual reinstatement, which to date amounts to ₱163,438.30 (2) overtime pay equivalent to 15 minutes every day, and 90 minutes overtime every day on account of mandatory meetings and conferences held beyond 3:30 pm, or a total of 105 minutes every day since 22 June 2007 until 21 June 2010 amounting to ₱166,617.76; (3) overtime pay for work done on weekends based on the records of this case since 22 June 2007, amounting to ₱13,802.59; (4) a weekly overload pay of Php1,523.36 counted from 22 June 2007, representing the amount equivalent to 1.5 hours of actual teaching/load per week rendered in preschool, amounting to ₱178,233.12; (5) a weekly overload pay of ₱5,413.01 for school year 2009-2010, representing the amount equivalent to

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[4] *Id.* at 299-324.

5.33 hours of actual teaching/load per week in grade school, amounting to ₱216,520.40; (6) holiday pay amounting to ₱30,467.25; (7) 13th month pay amounting to ₱50,778.75; and (8) service incentive leave pay amounting to ₱11,540.63. The computation are as follows:

Backwages:	
Basic salary: ₱20,311.50	
6/21/10 – 1/31/11	
₱20,311.50 x 7.3 mos.	₱148,273.95
13th month pay (1/12)	12,356.18
SILP: ₱20,311.50/22 x 5 x 7.3/12 =	2,808.19
	₱163,438.30
Overtime Pay for 105min./day:	
6/22/07 – 6/21/10	
₱923.25/8 x 1.25 = ₱144.2578/ (OT rate)	
₱144.2578 x 1.75 x 22 x 30 =	166,617.76
Overtime pay work on weekends (OT on RD):	
₱20,311.50/22 = ₱923.25/day	
₱923.25/8 = 115.40625 basic hourly rate	
₱115.40625 + (25% of ₱115.40625) =	144.26
Regular OT/hour	
130% of ₱115.40625 = ₱150.0281 (RD OT/hr)	
₱150.0281 x 92 hrs =	13, 802.59
Overload pay in Preschool:	
₱1,523.36 x 117 weeks =	178,233.12
Overload Pay in Grade School:	
₱5,413.01 x 40 weeks =	216,520.40
Holiday Pay:	
6/22/07 – ₱6/21/10	
₱20,311.50/22 = ₱923.25/day	
₱923.25 x 33 days =	30,467.25
13th Month Pay:	
6/22/07 – 6/21/10	
₱20,311.50 x 30/12 =	50,778.75
Service Incentive Leave Pay:	
6/22/07 – 6/21/10	
₱923.25x 5/12 x 30 mos. =	11,540.63
	₱831,398.70

Respondents St. Paul College of Pasig, Inc. (sic) and Sister Teresita Baricaua are likewise ordered to pay complainant Valera the following: (1) full backwages from the time she was constructively dismissed, or from 21 June 2010, until the time of actual reinstatement, which date amounts to ₱177,379.05; (2) overtime pay equivalent to 15 minutes every day, and 90 minutes overtime every day on account of mandatory meetings and conferences held beyond 3:30 pm, or a total of 105 minutes every day since 22 June 2007 until 21 June 2010 amounting to ₱180,829.69; (3) overtime pay for work done on weekends based on the records of this case since 22 June 2007, amounting to ₱14,979.90; (4) a weekly overload pay of Php1,653.30 counted from 22 June 2007, representing the amount equivalent to 1.5 hours of actual teaching/load per week rendered in preschool, amounting to ₱193,436.10; (5) a weekly overload pay of ₱5,874.73 for school year 2009-2010, representing the amount equivalent to 5.33 hours of actual teaching/load per week in grade school, amounting to ₱234,989.20; (6) holiday pay amounting to ₱33,066.00; (7) 13th month pay amounting to ₱55,110.00; and (8) service incentive leave pay amounting to ₱12,525.00. Hereunder is our computation:

Backwages:

Basic salary: ₱22,044.00	
6/21/10 – 1/31/11	
₱22,044.00 x 7.3 mos.	₱160,921.20
13th month pay (1/12)	13,410.10
SILP: ₱20,311.50/22 x 5 x 7.3/12 =	3,047.75
	₱177,379.05

Overtime Pay for 105 min./day:

6/22/07 – 6/21/10	
₱1.002.00/8 x 1.25 = ₱156.5625/hr. (OT rate)	
₱156.5625 x 1.75 x 22 x 30 =	180,829.69

Overtime pay work on weekends (OT on RD):

₱22,044.00/22 = ₱1,002.00/day	
₱1,002.00/8 = 125.25 basic hourly rate	
₱125.25 + (25% of ₱125.25) = 156.5625	
Regular OT/hour	
130% of ₱125.25 = ₱162.825 (RD OT/hr)	
₱162.825 x 92hrs =	14,979.90

Overload pay in Preschool:

₱1,653.30 x 117 weeks =	193,436.10

Overload Pay in Grade School:	
₱5,874.73 x 40 weeks =	234,989.20
Holiday Pay:	
6/22/07 – 6/21/10	
₱22,044.00 = ₱1,002.00/day	
₱1,002.00 x 33 days =	33,066.00
13th Month Pay:	
6/22/07 – 6/21/10	
₱22,044.00 x 30/12 =	55,110.00
Service Incentive Leave Pay:	
6/22/07 – 6/21/10	
₱1,002.00 x 5/12 x 30 mos. =	12,525.00
	₱902,314.94

Lastly, respondents St. Paul College of Pasig, Inc. (sic) and Sister Teresita Baricaua are ordered to pay Mancol and Valera attorney's fees equivalent to ten percent of the total judgment award.

All other claims are denied.

SO ORDERED.[5]

Petitioners elevated the case to the National Labor Relations Commission (*NLRC*) and the latter in its Decision[6] dated September 30, 2011 reversed the decision of the Labor Arbiter, disposing the case as follows:

WHEREFORE, premises considered, the appeal is hereby given due course. The assailed decision dated January 31, 2011 is hereby REVERSED and SET ASIDE and a new one rendered DISMISSING the complaints interposed by the complainants for lack of merit. Complainants are hereby DIRECTED to report for work, if they so desire, within five days from receipt of this decision and for respondents to ACCEPT them without qualifications. The suspension imposed upon complainant Anna Liza Mancol is deemed served.

SO ORDERED.[7]

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[5] *Id*. at 321-324. (Citations omitted)

[6] *Id.* at 388-404.

[7] *Id*. at 403-404.

Aggrieved, respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court with the CA. In its Decision[8] dated April 16, 2015, the CA granted respondent's petition and reversed the decision of the NLRC, thus:

WHEREFORE, the petition is GRANTED. The Decision of the National Labor Relations Commission dated September 30, 2011 in NLRC LAC NO. 06-001594-11(8) is hereby REVERSED and SET ASIDE. Accordingly, the Decision of the Labor Arbiter dated January 31, 2011 is REINSTATED with the following MODIFICATIONS as follows:

1. The award of overtime pay, holiday pay, holiday premium, rest day premium and nightshift differential overload pay are hereby DELETED;

2. Private respondents SPCP and Sister Teresita Baricaua, SPC, are ordered to pay petitioners moral and exemplary damages each in the amount of Php100,000.00 and Php50,000.00, respectively;

3. Private respondents SPCP and Sister Teresita Baricaua, SPC are ordered to pay attorney's fees equivalent to ten percent (10%) of the total monetary award;

4. Private respondents SPCP and Sister Teresita Baricaua, SPC are directed to pay petitioners their accrued wages reckoned from January 31, 2011 until September 30, 2011; and

5. Petitioners are declared not guilty of forum shopping.

SO ORDERED.[9]

Petitioners filed their motion for reconsideration but it was denied by the CA in its Resolution dated January 8, 2016, thus:

WHEREFORE, in view of the foregoing, the Court resolves to:

1. DENY private respondents' Motion for Reconsideration for lack of merit; and

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[8] *Id.* at 45-64.

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

2. CLARIFY and DECLARE that in lieu of reinstatement, the petitioners are entitled to separation pay computed from Anna Liza L. Mancol and Jennifer Cecile Valera's respective first days of employment with St. Paul College, Pasig, up to the finality of this decision at the rate of one month pay per year of service.

The LABOR ARBITER is hereby ORDERED to make a RECOMPUTATION of the total monetary benefits awarded and due to the petitioners in accordance with this Resolution and Our April 16, 2015 Decision.

SO ORDERED.[10]

Hence, the present petition raising the following arguments:

6.01 Contrary to the "Finding of Fact" of the Court of Appeals that Mancol was placed on preventive suspension, Mancol was NEVER SUSPENDED PREVENTIVELY. The story about Mancol's preventive suspension was a pure fabrication of the ponente Mr. Justice Edwin Sorongon and concurred in by Presiding Justice Andres Reyes and Justice Ricardo Rosario. Worse, still, the ponente Mr. Justice Edwin Sorongon attributed this story to the "decision" of the NLRC when [in] truth the NLRC decision NEVER stated that Mancol was preventively suspended. Herein petitioners even humbly begged the Presiding Justice Andres Reyes and Justice Ricardo Rosario to read the NLRC decision and ask the ponente to show them where in the NLRC decision was the statement that Mancol was preventively suspended. Petitioners were hoping against hope that the fabrication of facts was purely the work of the notorious "Madame Arlene" gang of the law clerks and legal researchers in the Court of Appeals. But the three Justices NEVER bothered to remedy or explain this grave falsification of the facts. In other words, the three justices simply decided to COVER UP this falsification. WHY?

6.02 Contrary to the conclusion of the Court of Appeals, the NLRC correctly ruled that there was no constructive dismissal based on the evidence and on the undisputed account of antecedent facts leading to the filing of the labor complaint last June 22, 2010.

6.03 Because respondents were not dismissed from the service, the Court of Appeals erred in affirming the award of "backwages" for

[10] *Id.* at 83.

respondents under the principle of "no work, no pay". Since they had stopped reporting for work beginning June 22, 2010 (for Mancol) and June 16, 2010 (for Valera), up to the present time, they are clearly not entitled to backwages.

6.04 The Court of Appeals erred in awarding separation pay because respondents abandoned their posts as far back as June 2011 and should have been dismissed for CAUSE. Employees dismissed for cause are not entitled to payment of separation pay.

6.05 Neither was it correct for the Court of Appeals to rule that respondents must be paid wages from January 31, 2011 up to September 30, 2011. The ruling is contrary to the evidence on record showing that respondents failed to report for work despite receipt of notice from the petitioners.

6.06 The Court of Appeals further erred in reinstating the labor arbiter's award for unpaid 13th month pay and SIL pay. The ruling has no evidentiary basis as respondents never discussed this cause of action in all the pleadings filed below.

6.07 Finally, the Court of Appeals erred in holding the petitioners solidarily liable to respondents. Petitioner Sr. Teresita was only acting as officer of the petitioner-corporation. Absent showing of malice and bad faith, officers cannot be held liable for damages and money claims of dismissed employees.[11]

In their Comment[12] dated September 14, 2016, respondents argue that the CA correctly ruled that they were constructively dismissed by petitioners and that the latter are solidarily liable to pay each of them their full backwages, separation pay in lieu of reinstatement, 13th month pay, service incentive leave pay, moral damages, exemplary damages, attorney's fees and accrued wages.

The petition lacks merit.

As a general rule, only questions of law raised via a petition for review under Rule 45[13] of the Rules of Court are reviewable

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[11] *Id.* at 24-25.

[12] *Id.* at 532-576.

[13] Section 1, Rule 45 of the Rules of Court, as amended, provides:

by this Court.[14] 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.[15] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[14] *Philippine Transmarine Carriers, Inc., et al. v. Joselito A. Cristino*, G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127, citing *Heirs of Pacencia Racaza v. Abay-Abay*, 687 Phil. 584, 590 (2012).

[15] *Id*., citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al*., 620 Phil. 505, 512 (2009).

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.[16]

Since the factual findings of the NLRC are completely different from that of the Labor Arbiter and the CA, this case falls under one of the exceptions, therefore, this Court may now resolve the issues presented before it.

Constructive dismissal arises "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee."[17] In such cases, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment.[18]

By definition, constructive dismissal can happen in any number of ways. At its core, however, is the gratuitous, unjustified, or unwarranted nature of the employer's action. As it is a question of whether an employer acted fairly, it is inexorable that any allegation of constructive dismissal be contrasted with the validity of exercising management prerogative.[19]

Based on the facts of this case, respondents Mancol and Valera were constructively dismissed. The CA, in affirming the findings of the Labor Arbiter, correctly found that petitioners committed

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

[17] *Tan v. National Labor Relations Commission*, 359 Phil. 499, 511 (1998) [Per *J*. Panganiban, First Division].

[18] *Manalo v. Ateneo de Naga University, et al.*, 772 Phil. 366, 381 (2015).

[19] *Id*. at 382.

acts that are considered to be gratuitous, unjustified, unwarranted and unfair on the part of the respondents, thus:

In case of Valera, she underwent a successful scoliosis operation on April 14, 2010 covered by an approved leave until June 11, 2010. The Human Resource Office assured her that she may report back for work on June 15, 2010 and all she needs to bring is a medical certificate attesting her fitness to go back to work. However, much to her surprise, Sister Baricaua insisted that she should go on leave for one year. When Valera reasoned out her desire to teach, Sister Baricaua uttered harsh remarks: *"Why are you insisting on working? Can't your mom and dad feed you anymore? x x x "Ask help from your brothers and sisters, tell them, 'please help me, I have no work anymore.' I know Jeng, it is hard and painful to accept the truth, but I am sorry, I cannot accept you."* Valera was later on informed by Sister Lota that she has no more teaching load or class to teach with. When Valera submitted her medical certificate, as previously advised, both the Human Resource Office and Sister Baricaua refused to accept the same. Worse, Valera received a letter dated June 2, 2010, from Sister Baricaua accompanied by insults and forcing her to go on leave for 1 year. Not only that, after filing the complaint for illegal dismissal on June 22, 2010, Valera received on June 30, 2010, a letter dated June 28, 2010, requiring her to submit documents and to report for work within the period specified therein, and yet, when Valera reported back for work as instructed on July 5, 2010, she was shocked to know that she was already barred from working in utter contradiction of private respondents' June 28, 2010 letter.

For Mancol's part, she was allegedly prevented from: 1.) teaching in her class; 2.) entering her classroom; 3.) being introduced to her students; 4.) preparing teaching aids and materials; and 5.) going to other offices within the institution when she reported back for work on June 16, 2010, after going through a fertility test in Canada with her husband.

x x x x x x x x x

Case law defines constructive dismissal as a cessation of work because continued employment is rendered impossible, unreasonable or unlikely, when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the

circumstances. It is an act amounting to dismissal but made to appear as if it were not. In fact, the employee who is constructively dismissed may be allowed to keep on coming to work. Constructive dismissal is therefore a *dismissal in disguise.* The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

Both Mancol and Valera constantly attempted to report back to work. However, the private respondents barred them from resuming their work. In case of Mancol, she was prevented from teaching in her class, going inside her classroom, being introduced to her students, preparing teaching aids and materials, and going to other offices within the institution when she reported back for work. Neither the preschool principal nor the Human Resource Office offered any reason for the same. She also exerted every effort to explain that she was on leave for health reasons. She even submitted a copy of a medical certificate issued by her attending physician in Canada and photocopies of her tickets. Valera, on the other hand, submitted her medical certificate stating that she is fit to work before the Human Resource Office. However, Sister Baricaua all the more insisted that she should take a leave of one year; otherwise, she will be reassigned to a higher year level where students are more independent learners. She was also given no teaching load for that academic year.[20]

The above findings of the CA are an affirmation of the earlier findings of the Labor Arbiter, thus:

Respondents cannot impute liability upon complainant Mancol for allegedly taking an absence without leave for health reasons. It must be noted that as early as April 2010, complainant Mancol informed the preschool principal Sister Lota of the fact that she may go on personal leave for a month for health reasons when she secured a Certification of Employment & Compensation issued by respondent SPCP. Also, complainant Mancol immediately applied for personal leave from 21 May 2010 to 18 June 2010 and submitted it to Sister Lota, almost a week before her scheduled flight to Toronto, Canada on 21 May 2010. In fact, Sister Lota recommended the approval of the leave application and immediately referred it to the Office of the Directress, respondent Sister Baricaua. It was due to respondent Sister Baricaua's inaction why Mancol's meritorious leave application was not approved prior to her departure for medical reasons. Thus,

[20] *Rollo*, pp. 54-56. (Citations omitted; italics in the original)

respondents cannot impute liability upon Mancol due to their own inaction or ineptitude.

Respondents' argument that a substitute teacher has been hired to take her place until June 24 because Mancol has been absent from work has no merit. Respondents cannot justify their act of preventing Mancol from assuming her duties and entering the school premises due to such reasons. Mancol did not abandon her work but was prevented from performing it by the respondents.

x x x x x x x x x

As to complainant Valera, this Office likewise gives credence to her sworn statement which supports her allegation that she was constructively dismissed by the respondents.

The records bear out that on 14 April 2010, complainant Valera underwent a successful scoliosis operation and had an approved leave with the respondents until 11 June 2010. That on 25 May 2010, she went to the school premises to decorate her classroom; and on 27 May 2010, respondent Sister Baricaua called a meeting with preschool teachers including Sister Luisita Lota. While respondent Sister Baricaua was informed that complainant Valera was already fit to work and has already started decorating her classroom, respondent Sister Baricaua unjustifiably refused to give any teaching load to complainant Valera. Moreover, on 28 May 2010, complainant Valera asked Ms. Cecile Reyes of the Human Resource Office about her leave status and she was told that her leave is up to 11 June 2010 and she can report back for work and teach at preschool upon showing of a medical certificate that she's fit to work.

However, on 30 May 2010, complainant Valera called Sister Lota and the latter informed her of respondent Sister Baricaua's decision for her to take a leave of absence for one year. Shocked and wanting to get an explanation, complainant Valera talked to respondent Sister Baricaua. The latter insisted that complainant Valera should go on leave for one year and required her to prepare a letter-application for leave for one year as soon as possible. Complainant Valera refused and stated that she wants to resume her duties as a teacher but respondent Sister Baricaua berated her by saying: "Why are you insisting on working? Can't your mom and dad feed you anymore?" and she continued: "Ask help from your brothers and sisters, tell them 'please help me, I have no work anymore.' I know Jeng, it is hard and painful to accept the truth, but I am sorry, I cannot accept you." That on 02 June 2010 around 10:00 am, Ms. Calimbahim

called complainant Valera informing the latter that the former will be taking complainant Valera's place as teacher. During this time complainant Valera's personal things and classroom decors were removed and transferred to another room. On the first day of classes or on 07 June 2010, Sister Lota and the preschool and grade school principal Ms. Arlene Cruz personally confirmed that she is on leave for one year and that she has no more teaching load or class to teach in preschool and grade school. Thereafter, or on 15 June 2010, complainant Valera reported back to work but was not given any teaching load and no class was assigned to her. She went to Ms. Arlene Cruz and submitted the medical certificate stating that she's fit to work (Annex "A" of complainant Valera's Position Paper). However, after reading the medical certificate, Ms. Cruz told complainant Valera once again that she has no more teaching load or class in preschool and grade school. Complainant Valera met again with respondent Sister Baricaua. She personally submitted her medical certificate that she is already fit to work but respondent Baricaua refused to accept the certificate. Instead, respondent Sister Baricaua just gave complainant Valera a letter dated 02 June 2010 (Annex "B" of complainant Valera's Position Paper) degrading her and forcing her to go on leave for one year.

By respondent's own admission, respondent Sister Baricaua in a letter dated June 2, 2010 (Annex "H" of respondents' Position Paper), respondent Sister Baricaua formalized the options she presented to complainant Valera to (1) take a one (1) year sick leave, or (2) agree to an assignment to a higher grade level. This was nothing but a scheme to force complainant to quit her job.

Moreover, respondents do not deny that they did not give any teaching load to complainant Valera after her successful surgery despite her submission of a medical certificate that she is already fit to work. Instead, they tried to justify such act by saying that they were allegedly worried about Valera's health. This is baseless and unsubstantiated precisely because Valera has already proven that she is fit to work.

Obviously, as in the case of complainant Mancol, respondents also wanted to get rid of complainant Valera by making her quit her job because continued employment is rendered impossible, unreasonable or unlikely and because there was a clear discrimination, insensibility, or disdain by the respondents that becomes unbearable to the employee. Indeed, complainant Valera was constructively dismissed.[21]

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[21] *Rollo*, pp. 315-319.

From the above findings alone, it is clear that petitioners employed means whereby the respondents were intentionally placed in situations that resulted in their being coerced into severing their ties with the same petitioners, thus, resulting in constructive dismissal. An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego with his or her continued employment.[22]

As to the claim of petitioners that respondent Mancol was not constructively dismissed but the latter abandoned her job, such was not duly proven. For a termination of employment on the ground of abandonment to be valid, the employer "must prove, by substantial evidence, the concurrence of [the employee's] failure to report for work for no valid reason and his categorical intention to discontinue employment."[23] In this case, there is no proof that respondent Mancol abandoned her work, instead, evidence show that she wanted to return to work but was prevented by the respondents. As aptly found by the Labor Arbiter:

> This Office finds that respondents failed to discharge their burden of proving the existence of the elements of abandonment of work. The records are replete of proof that Mancol had no intention of abandoning her work. On the contrary, she wanted to resume her duties as a teacher. In fact, on or around 21 June 2010, after her medical leave of absence, complainant Mancol reported back for work and was in the school premises at around 6:30 am. However, respondents prevented her from teaching in her class, entering her classroom, being introduced to her students, preparing teaching aids and materials, and going to other offices within the school premises. More importantly, the very next day or on 22 June 2010, Mancol, together with complainant Valera, filed an instant complaint for

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[22] *Emilio S. Agcolicol, Jr. v. Jerwin Casiño,* G.R. No. 217732, June 15, 2016, citing *Mandapat v. Add Force Personnel Services, Inc., et al.,* 638 Phil. 150, 156 (2010).

[23] *Ang v. San Joaquin, Jr., et al.*, 716 Phil. 115, 130 (2013), citing *Martinez v. B & B Fish Broker,* 616 Phil. 661, 666-667 (2009).

constructive dismissal. Thus, the records of this case belie respondents' argument of abandonment of work.[24]

In the same manner, petitioners also failed to prove that respondent Valera abandoned her work, thus:

> We find that respondents failed to discharge their burden of proving the existence of the elements of abandonment of work. The records are replete of proof that Valera had no intention of abandoning her work. On the contrary, she wanted to resume her duties as a teacher. In fact, on 25 May 2010, she went to the school premises to decorate her classroom and insisted on resuming her duties as a teacher when respondents unjustifiably and in bad faith refused to give her any teaching load. Also, complainant Valera also filed the instant complaint for constructive dismissal on 22 June 2010, or a week after 15 June 2010 when complainant Valera reported back to work but was not given any teaching load and no class was assigned to her.[25]

Anent the argument raised by petitioners that the CA erred in ruling that Mancol was placed on preventive suspension, such is no longer relevant due to the above findings proving that respondents Mancol and Valera were indeed constructively dismissed.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated March 7, 2016 of petitioners St. Paul College, Pasig and Sister Teresita Baricaua is **DENIED** for lack of merit. Consequently, the Decision dated April 16, 2015 and the Resolution dated January 8, 2016, of the Court of Appeals in CA-G.R. SP No. 124501, are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), *Jardeleza,*[*] *Caguioa,* and *Tijam,*[**] *JJ.*, concur.

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[24] *Rollo*, p. 316.

[25] *Id*. at 319.

[*] Designated additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, who took no part due to close relation to a party, per Raffle dated January 17, 2018.

[**] Designated Additional Member in lieu of Associate Justice Andres B. Reyes, Jr., who took no part due to prior action in the Court of Appeals, per Raffle dated January 17, 2018.

SECOND DIVISION

[G.R. No. 225929. January 24, 2018]

JOSE V. GAMBITO, *petitioner, vs.* **ADRIAN OSCAR Z. BACENA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; LACHES; MEANS NEGLIGENCE OR OMISSION TO ASSERT A RIGHT WITHIN A REASONABLE TIME, WARRANTING THE PRESUMPTION THAT THE PARTY ENTITLED TO ASSERT IT EITHER HAS ABANDONED IT OR DECLINED TO ASSERT IT.—** Laches is defined as the 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. x x x Bacena has no reason to doubt his own ownership and possession of Lot No. 1331, as established in this case obtained through the right of Castriciones. Moreover, it was Gambito who disturbed that open, continuous, peaceful, adverse and notorious possession of Bacena and his predecessors-in-interest. Thus, Bacena is not expected to assert his right for having possession and title to the land in dispute x x x. Hence, x x x laches cannot apply and it should be Bacena and not Gambito who should invoke laches.

2. **CIVIL LAW; LAND REGISTRATION; FREE PATENT; THE ISSUANCE OF A FREE PATENT OVER A LAND CANNOT AFFECT THE PRIVATE OWNERSHIP OVER THE SAME LAND.—** Private ownership of land—as when there is *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open[,] continuous, exclusive, and notorious possession, by present or previous occupants—is not affected by the issuance of a free patent over the same land. While Gambito assails both the RTC and CA on the principle of laches on the uninterrupted existence of OCT No. R-578 of 98 years, it should be noted that the CA found, it was certain that when the cadastral survey was conducted in 1913

to 1914, there were already two survey claimants, one of which is Castriciones. Thus, OCT No. R-578 should not have included Lot No. 1331, as there was already a supervening event that transpired from the time it was applied for until the title was issued. Moreover, here it established that Castriciones is the previous occupant with open[,] continuous, exclusive, and notorious possession as above contemplated. Hence, OCT No. R-578 issued as a free patent, by application, cannot affect Castriciones' previous occupation with open[,] continuous, exclusive, and notorious possession.

3. **ID.; ID.; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); CONCEPT OF INNOCENT PURCHASER FOR VALUE; CANNOT APPLY TO A DONEE, FOR HE ACQUIRES THE PROPERTY GRATUITOUSLY BY A DEED OF DONATION AND NOT BY PURCHASE.—** Under Section 53 of Presidential Decree No. 1529, known as the Property Registration Decree, in all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void. In this case, Gambito is not an innocent holder for value for the reason that he is a donee acquiring the property gratuitously by a Deed of Donation and not by purchase. Hence, the concept of an innocent purchaser for value cannot apply to him.

4. **ID.; OBLIGATIONS AND CONTRACTS; DAMAGES; AWARDED WHEN THERE IS A FINDING OF ABSENCE OF GOOD FAITH; GOOD FAITH, DEFINED.—** Good faith is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious." x x x In this connection, the RTC in its Decision dated November 21, 2014, laid down its basis in concluding the award for damages finding absence of

> good faith on the part of Gambito x x x. [I]t is evident that Gambito's state of mind had no honesty of intention and had no freedom from knowledge of circumstances which ought to put him upon inquiry.

APPEARANCES OF COUNSEL

Rodolfo F. Taganas, Jr. for petitioner.
Rodolfo Q. Agbayani for respondent.

R E S O L U T I O N

REYES, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated April 8, 2016 and Resolution[3] dated July 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 140980.

The Antecedents

The records show that before the Municipal Trial Court (MTC) of Bayombong, Nueva Vizcaya, Jose V. Gambito (Gambito) filed a complaint for quieting of title, declaration of nullity of title, specific performance and damages over a parcel of land located in La Torre South, Bayombong, Nueva Vizcaya, against Adrian Oscar Z. Bacena (Bacena), one of the defendants therein.

Gambito alleged before the MTC that he is the true and registered owner of a certain parcel of land located in La Torre South, Bayombong, Nueva Vizcaya containing an area of 8,601 square meters, more or less, under Transfer Certificate of Title (TCT) No. T-149954. The said parcel of land was acquired by him through a Deed of Donation executed on July 9, 2008 by his mother, Luz V. Gambito (Luz), who held said property under

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[1] *Rollo*, pp. 3-25.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Romeo F. Barza and Amy C. Lazaro-Javier concurring; *id*. at 70-78.

[3] *Id*. at 31.

TCT No. 92232. Her mother, Luz, acquired the same property from Dominga Pascual (Pascual) and her co-owner, Rosalina Covita (Covita), through a Deed of Sale dated December 16, 1994 which finds its origin from Original Certificate of Title (OCT) No. R-578 issued on March 30, 1916.[4]

Gambito claimed that through his efforts, he discovered that Bacena surreptitiously secured before the Community Environment and Natural Resources Office (CENRO), a patent title, *Katibayan ng Orihinal na Titulo Bilang* P-21362 covering 4,259 sq m, more or less, which was a part and portion of the same lot registered in Gambito's name under TCT No. T-149954. Gambito further alleged that he is aware his parents filed a protest before the CENRO, Bayombong, Nueva Vizcaya on August 31, 2007 against Bacena but the same was later withdrawn by his parents upon realization that said office is not the proper forum and that the order of dismissal was issued on April 8, 2009 and thus there is a need to clear up the cloud cast by the title of Bacena over his ancient title.

Bacena, in his defense, alleged that the folder of Petronila Castriciones (Castriciones), survey claimant of Lot No. 1331, Cad 45, La Torre, Bayombong, Nueva Vizcaya, is supported by the records of the CENRO, Bayombong, Nueva Vizcaya. The title OCT No. P-21362 was regularly issued and was based on authentic documents.[5] On the other hand, the title of Gambito's predecessor-in-interest is evidently null and void *ab initio* because it was derived from a Deed of Sale, dated December 16, 1994 which supposedly signed by vendor Pascual although she was already dead, having died on August 25, 1988 or after a period of seven years. Moreover, the signatory-vendor, Covita denied that she ever signed the Deed of Sale which is supposedly that of her husband, Mariano G. Mateo, supposedly signifying his conformity to the sale, is likewise a fake signature of her husband because he was already dead at the time of the execution of the document having died on June 14, 1980.[6]

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[4] *Id*. at 156.

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

[6] *Id*. at 158.

By way of counterclaim, Bacena prayed, among others, that Gambito's Title (TCT No. T-149954) and that of his predecessor-in-interest, Luz, TCT No. T-92232 and the Deed of Sale, basis of TCT No. T-92232 as null and void; and to declare that title of Bacena, OCT No. P-21262, valid and effective and be cleared/ quieted of any cloud thereto.[7]

Ruling of the MTC

After the parties' presentation of evidence, the MTC rendered a Decision[8] dated March 11, 2014 in favor of Gambito. The MTC considered the defense's position as a collateral attack on Gambito's title.[9] The MTC ruled that the issue on the validity of title, whether or not fraudulently issued, can only be raised in action expressly instituted for that purpose.

Moreover, the MTC ruled that in successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest, and here, the origin of Gambito's title was issued in 1916 and while Bacena's title was only issued on February 25, 1999.[10]

Ruling of the Regional Trial Court

Aggrieved, Bacena appealed before the Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya, Branch 27, which granted the appeal in a Decision[11] rendered on November 21, 2014.

In its ruling, the RTC laid that in an action for quieting of title, it is an indispensable requisite that the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action, which is however wanting at the time Gambito filed his verified Complaint.[12]

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[7] *Id.* at 159.

[8] *Id*. at 156-177.

[9] *Id*. at 175.

[10] *Id*. at 175-176.

[11] *Id*. at 179-188.

[12] *Id*. at 182.

The RTC also noted that Gambito's title was derived through a certificate of title which was based on a falsified Deed of Sale which was made to appear to have been signed by the parties who were long dead at the time of its execution.[13]

Moreover, the RTC found that Bacena's title has become indefeasible and incontrovertible as it has been possessed by Bacena and his predecessors-in-interest and never been occupied by Gambito and his mother.

Contrary to the MTC's ruling, the RTC held that Bacena's counterclaim partakes of a direct attack on Gambito's title.

The RTC likewise found that the title in the name of Bacena was regularly issued as he and his predecessors have been in undisturbed possession, occupation and utilization of Lot No. 1331 as early as October 1, 1913 when it was cadastrally surveyed and even before it; has always been declared for taxation purposes with taxes thereof duly paid yearly; and that as private property, it is not within the jurisdiction of the Bureau of Lands to grant it to public land application.[14]

The RTC awarded damages in favor of Bacena.

Ruling of the CA

On appeal, the CA, in its Decision[15] dated April 8, 2016, affirmed the RTC's Decision dated November 21, 2014. The CA agreed with the findings and ruling of the RTC.

Undaunted, Gambito filed a Motion for Reconsideration of the said decision of the CA which was however denied in its Resolution[16] dated July 19, 2016.

Hence, this petition for review on *certiorari*.

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[13] *Id*. at 183.

[14] *Id*. at 185.

[15] *Id*. at 70-77.

[16] *Id*. at 31-47.

In support of the petition, Gambito assails the decision of the CA claiming that it is not in consonance with law and jurisprudence. The underlying issues presented by Gambito for resolution are as follows, *viz.*:

1. The decision did not properly address the important issue on laches;
2. The decision misapplied the concept of transferee in good faith; and
3. The decision misappreciated the objection on the award for damages.

Ruling of the Court

The petition is denied.

The decision of the CA is in consonance with law and jurisprudence

On the issue of laches, the decision of the CA properly addressed the important issue thereon and the CA correctly held that it should be Bacena and not Gambito who should invoke laches.

Laches is defined as the 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.[17]

It should be noted that the CA found that Bacena has no reason to doubt his own ownership and possession of Lot No. 1331, as established in this case obtained through the right of Castriciones. Moreover, it was Gambito who disturbed that open, continuous, peaceful, adverse and notorious possession of Bacena

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[17] *Pangasinan, et al. v. Disonglo-Almazora, et al.*, 762 Phil. 492, 502-503 (2015).

and his predecessors-in-interest. Thus, Bacena is not expected to assert his right for having possession and title to the land in dispute and the CA is correct when it found that Bacena has no reason to doubt his own ownership and possession of Lot No. 1331. Hence, the Court is in accord with the CA when it held that laches cannot apply and it should be Bacena and not Gambito who should invoke laches.

Private ownership of land—as when there is *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants—is not affected by the issuance of a free patent over the same land.[18]

While Gambito assails both the RTC and CA on the principle of laches on the uninterrupted existence of OCT No. R-578 of 98 years, it should be noted that the CA found, it was certain that when the cadastral survey was conducted in 1913 to 1914, there were already two survey claimants, one of which is Castriciones. Thus, OCT No. R-578 should not have included Lot No. 1331, as there was already a supervening event that transpired from the time it was applied for until the title was issued. Moreover, here it established that Castriciones is the previous occupant with open, continuous, exclusive, and notorious possession as above contemplated. Hence, OCT No. R-578 issued as a free patent, by application, cannot affect Castriciones' previous occupation with open continuous, exclusive, and notorious possession.

On the issue of transferee in good faith, the decision of the CA did not misapply the concept of transferee in good faith.

While Gambito argues that the CA misapplied the concept of transferee in good faith for the reason that bad faith has died when Pascual, inherited the property from Venancio Pascual, We disagree.

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[18] *Rollo*, p. 76, citing *Heirs of Margarita Pabaus v. Heirs of Amanda Yutiamco*, 670 Phil. 151, 167-168 (2011).

Under Section 53 of Presidential Decree No. 1529, known as the Property Registration Decree, in all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

In this case, Gambito is not an innocent holder for value for the reason that he is a donee acquiring the property gratuitously by a Deed of Donation and not by purchase. Hence, the concept of an innocent purchaser for value cannot apply to him.

Moreover, in *Ingusan v. Heirs of Aureliano I. Reyes*,[19] the Court happened to pass upon falsified documents involving properties, thus:

> There is no doubt that the deed of donation of titled property, cancellation of affidavit of loss and agreement of subdivision with sale, being falsified documents, were null and void. It follows that TCT Nos. NT-241155, NT-241156, NT-239747 and NT-239748 which were issued by virtue of these spurious documents were likewise null and void.[20]

In this case, it is an established fact that the fraud referred to by the CA is the fraud on the transfer of the property from Pascual and Covita to Luz on the basis of fake signatures considering that the vendor signatories therein are all dead. As such, by applicability of the foregoing jurisprudence, the deed is considered a forged deed and hence null and void. Thus, Luz's title is null and void which transferred nothing by Deed of Donation to her son Gambito, the petitioner herein. Hence, the CA did not misapply the concept of transferee in good faith by considering the fraud in the transfer of the property to Luz consequently ending up with Gambito.

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[19] 558 Phil. 50 (2007).

[20] *Id*. at 60.

On the issue that the CA decision misappreciated the objection on the award for damages, Gambito's argument that he cannot be in bad faith deserves scant consideration.

Good faith is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry;[21] an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious."[22]

The CA in its resolve as to the award of damages referred to the RTC's basis of the awards. As can be gleaned from the CA's Resolution dated July 19, 2016, *viz.*:

> The trial court discussed the basis of the awards, yet petitioner, aside from his self-serving claim that there was no bad faith, failed to discuss the lack of sufficient basis for the grant of awards.[23]

In this connection, the RTC in its Decision[24] dated November 21, 2014, laid down its basis in concluding the award for damages finding absence of good faith on the part of Gambito by taking a second hard look into the facts and circumstances obtaining on the manner by which the appellee, who was the notary public who notarized the Last Will and Testament and who as expected fully knew the rights of the appellant over the lot in question.[25] Thus, it is evident that Gambito's state of mind had no honesty of intention and had no freedom from knowledge of circumstances which ought to put him upon inquiry. Hence, Gambito's claim that the CA decision misappreciated the objection on the award for damages is incorrect.

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[21] *Wooden v. Civil Service Commission*, 508 Phil. 500, 516 (2005); *De Guzman v. Delos Santos*, 442 Phil. 428, 438 (2002).

[22] *Civil Service Commission v. Maala*, 504 Phil. 646, 654 (2005); *Black's Law Dictionary*, 6th ed., 1990, p. 693.

[23] *Rollo*, p. 47.

[24] *Id*. at 186-187.

[25] *Id*. at 202.

In sum, the Court finds that the decision of the CA is in consonance with law and jurisprudence.

WHEREFORE, in light of the foregoing, the petition is hereby **DENIED**. The Decision dated April 8, 2016 issued by the Court of Appeals in CA-G.R. SP No. 140980 is **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 226103. January 24, 2018]

GENERATO M. HERNANDEZ, *petitioner, vs.* **MAGSAYSAY MARITIME CORPORATION, SAFFRON MARITIME LIMITED AND/OR MARLON R. ROÑO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; REFERRAL TO A THIRD DOCTOR; CONSIDERED MANDATORY AND FAILURE TO FOLLOW THE PROCEDURE RENDERS CONCLUSIVE THE DISABILITY RATING ISSUED BY THE COMPANY-DESIGNATED DOCTOR.—** Under Section 20(A)(3) of the 2010 POEA-SEC, *"[if] a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties."* The provision refers to the declaration of fitness to work or the

degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it. x x x Here, the Court is bound by the Grade 11 disability grading and assessment by the company-designated physician that was timely rendered within the 120-day period. Petitioner neither questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated doctor's competence. x x x [T]he referral to a third physician is mandatory and non-compliance with the procedure may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise. This is especially so if the seafarer failed to explain why recourse to the said remedy was not made. In view of the fact that x x x [petitioner] did not observe the relevant provisions of the POEA-SEC after he received a definitive disability assessment from the company-designated physician, the Court is left without a choice but to uphold the certification issued with respect thereto. Failure to follow the procedure is fatal and renders conclusive the disability rating issued by the company-designated doctor.

2. **ID.; ID.; ID.; ID.; RELIANCE ON THE FINDINGS OF COMPANY-DESIGNATED PHYSICIAN IS JUSTIFIED FOR THEY ARE IN A BETTER POSITION TO FORM AN ACCURATE DIAGNOSIS AND EVALUATION OF THE SEAFARER'S DEGREE OF DISABILITY.—** Reliance on the assessment of the company-designated physician was justified not only by the law governing the parties under the contract, but by the time and resources spent as well as the effort exerted by the company-designated doctor in the examination and treatment of petitioner while still on board and as soon as he was repatriated in the Philippines. x x x Certainly, the assessment of Dr. Agbayani is entitled to great weight and respect, considering that it is more reliable. With his consistent treatment and monitoring of petitioner for several

months, he had acquired detailed knowledge and familiarity as to the latter's health condition. We stress that the reason behind our favorable rulings on the findings of company-designated physicians is not due to their infallibility; rather, it is assumed that they have "closely monitored and actually treated the seafarer" and, therefore, are in a better position to form an accurate diagnosis and evaluation of the seafarers' degree of disability.

APPEARANCES OF COUNSEL

Tolentino & Bautista Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse the April 6, 2016 Decision[1] and August 1, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 140581, which set aside the February 4, 2015 Decision[3] and March 3, 2015 Resolution[4] of the National Labor Relations Commission (*NLRC*), affirming with modification the November 18, 2014 Decision[5] of the Labor Arbiter (*LA*).

The facts[6] appear as follows:

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[1] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Romeo F. Barza (now Presiding Justice of the Court of Appeals) and Amy C. Lazaro-Javier concurring; *rollo*, pp. 11-20.

[2] *Id.* at 22-24.

[3] *Id.* at 106-120.

[4] *Id.* at 122-124.

[5] *Id.* at 237-243, 261-266.

[6] The factual antecedents narrated by the LA was adopted by the NLRC, the CA, and the petitioner (See *rollo*, pp. 12-13, 32-33, 107-108, 237-239).

[Petitioner] alleges: that he has been under the employ of respondent agency since 1991 and was rehired consistently by the said agency (Annex "D"); that on February 28, 2012, he was hired by respondent agency to work on board "MV Saga Sapphire" as Head Wine Waiter for a period of six (6) months with a basic monthly salary of US$623.00 (Annex "B"); that he underwent a thorough pre-employment medical examination by the company[-]designated doctors and was declared "fit for sea duty" (Annex "B"); that he departed on March 3, 2012, to join his assigned vessel and everything went well without any trouble until on November 16, 2012 when he had an accident; that he was then lifting a box of wine when the vessel suddenly rolled causing him to lose his balance; that he fell on the floor with his back hitting the steel pavement; that he felt a sharp snap on his lower back accompanied by extreme pain radiating down to his lower extremities; that the ship doctor gave him a pain reliever and recommended his medical repatriation with a view to physiotherapy; that he was repatriated on December 22, 2012 and upon arrival he reported to respondents' office for post employment medical examination; that he was referred to the company-designated physicians at the Manila Doctors Hospital where he underwent MRI; that the results of the MRI revealed Lumbar Spondylosis, Disc Protrusion, and Disc Bulges; that he underwent extensive physical therapy from January 8, 2013 until his latest medical evaluation on March 11, 2013 and considered [petitioner] for disability assessment of slight rigidity or one[-]third loss of lifting power (Annex "F-3"); that [petitioner] sought consult (sic) from Dr. Rogelio P. Catapang, Jr., Orthopaedic Surgeon and Traumatology expert and in his medical report, he stated:

> *"xxx He has tenderness over the spinal process and para spinal muscle; he has difficulty going up and down the stairs. Straight leg[-]raising noted at the right; no atrophy of the leg muscles. Deep tendon reflexes are normoactive and noted with difficulty of carrying and bending. Patient was advised to continue physiotherapy and to modify activities of daily living, avoid lifting heavy objects and high impact exercises.*
>
> *x x x x x x x x x*
>
> *Mr. Hernandez continues to complain and suffer low back pain. Diagnosis: the pain is made worse by prolonged standing and bending. He has difficulty in climbing up and down the stairs. He has lost his pre-injury capacity and is UNFIT to work back at his previous occupation."*

[Petitioner] further avers that despite the conclusive findings of physical disabilities, his plea for assistance from the respondents was denied alleging that they have no liability whatsoever. His request for sickness allowance was likewise denied. Hence, this present complaint.

Respondents, on the other hand, admitted the fact of [petitioner's] employment on board the vessel "MV Saga Sapphire" as Head Wine Waiter and alleges the following: that the contract was for a term of six (6) months; that [petitioner] joined the vessel on March 2, 2012 and disembarked from the vessel on December 18, 2013 (Annex "2"); that [petitioner] complained of lumbar back pain and was given ibuprofen gel and paracetamol for relief; that the x-ray on his pelvis or lumbar spine showed no abnormality; that he was later on disembarked for medical treatment (Annex "3"); that after his repatriation, [petitioner] was referred to the company physician[,]Dr. Benigno A. Agbayani[,] of the Manila Doctors Hospital who recommended MRI (Annex "4"); that the MRI results showed [petitioner] was suffering Mild Disc Herniation; that on March 8, 2013, [petitioner] was assessed a partial permanent disability grade 11 – slight rigidity or one[-]third loss of lifting power (Annex "6")[.][7]

The LA ruled that petitioner is entitled to permanent total disability benefits because the very nature of the grading of the company-designated physician is a minimum grading based on a purely medical schedule that does not consider the loss of earning capacity. It was noted that even the company-designated doctor had not issued any declaration that petitioner is already "fit to work;" thus, the prognosis of the petitioner's own physician does not contradict the findings of the company-designated doctor, but merely connects it to the question of earning capacity and the loss of profession. For the LA, the fact that petitioner can no longer be employed as a seaman is essentially a total and permanent disability since the principle is that disability is measured by the loss of earning capacity and not on its medical significance. In addition to the payment of permanent total disability benefits in the amount of US$60,000.00, respondents were ordered to pay sickness allowance of US$2,492.00 and

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[7] *Rollo*, pp. 237-239; 261-262.

ten percent (10%) of the total monetary award as attorney's fees.

On appeal, the NLRC deleted the award of sickness allowance. In sustaining petitioner's entitlement to permanent total disability benefits, the NLRC agreed that disability should be interpreted more in relation to the loss of earning capacity. In this case, the certification of petitioner's physician appears to reflect his actual physical condition *vis-a-vis* his work as a seafarer. Since the time he was medically repatriated, he was not able to and could not land a gainful occupation in a job that he was trained or accustomed to do. His true condition is that he has not completely and fully healed. It was noted that medical reports issued by the company-designated doctor do not necessarily bind the NLRC. Even so, respondents' physician refrained from issuing a fit-to-work certification.

For the NLRC, the case of *Splash Philippines, Inc., et al. v. Ruizo,*[8] cited by respondents, finds no application on the following grounds: (1) petitioner was medically repatriated for a work-related illness; (2) a disability grading was issued not by petitioner's own doctor but by the company-designated physician; and (3) petitioner is not guilty of willful refusal to undergo treatment in order to claim disability benefits; hence, there is no need to refer to a third doctor for final assessment. In any case, the NLRC opined that Section 20 (B) (3) of the Philippine Overseas Employment Administration – Standard Employment Contract (POEA-SEC), on the appointment of a third physician, is merely a directory provision.

With regard to respondents' claim that petitioner is guilty of concealment or misrepresentation of a pre-existing illness, the NLRC ruled that there is no evidence presented of a pre-existing medical condition in 2003 even if petitioner recalled that he suffered a particular pain in the lumbar area that year. More importantly, there is no evidence that he knew of any back problem in 2003 or even at the time his pre-employment

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[8] 730 Phil. 162 (2014).

medical examination *(PEME)* was conducted on January 27, 2012. It was noted that not every pain suffered is synonymous to illness or medical condition and that not every pain suffered is required to be disclosed by the seafarer. Lastly, the claim of concealment of a pre-existing illness is futile, since the medical condition suffered by petitioner is established to be caused by his work and not merely aggravated by it.

When the case was elevated to the CA, the appellate court agreed that petitioner is not guilty of fraudulent misrepresentation, considering that lumbar or lower back pain is not one of the pre-existing illness or condition that he was required to disclose. Nonetheless, the CA held that the referral to a third doctor is mandatory in case of conflicting findings between the company-designated physician and the seafarer's chosen doctor. Citing *Phil. Hammonia Ship Agency, Inc., et al. v. Dumadag*,[9] it concluded that while a seafarer has the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. In light of the contrasting diagnoses in this case, petitioner prematurely filed his complaint without regard to the conflict-resolution procedure under the POEA-SEC. The CA, likewise, noted that unlike petitioner's physician who apparently examined him only once, the company-designated doctor examined and treated him for several months, enabling him to acquire familiarity and detailed knowledge of petitioner's medical condition to arrive at a more accurate appraisal of his condition. Finally, according to the appellate court, there is no permanent total disability to speak of because petitioner disembarked from the vessel on December 18, 2012, while the company-designated doctor arrived at an assessment that his disability rating was Grade 11 on March 8, 2013, which is evidently prior to the expiration of the 120-day or 240-day treatment period. The CA disposed:

> **WHEREFORE**, premises considered, the assailed Decision and Resolution of the NLRC are hereby **SET ASIDE,** and in lieu thereof,

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[9] 712 Phil. 507 (2013).

a new one is rendered ordering petitioners to jointly and severally pay private respondent Seven Thousand Four Hundred Sixty[-]Five US Dollars (US$7,465.00) in its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment.

SO ORDERED.[10]

Now before Us, petitioner argues that, in a Rule 65 petition, the CA erred when it proceeded to evaluate the conflicting assessments of the company-designated physician and the seafarer's preferred doctor because it cannot be said that the NLRC committed grave abuse of discretion when its decision was based on substantial evidence that consisted of the medical reports of both physicians showing that he is permanently and totally unfit for further sea duty. It is contended that the third-doctor-referral rule should not be applied in this case since the company-designated physician's reports are biased and doubtful. In issuing a Disability Grade 11, there is failure to explain if petitioner can still resume his previous functions as a seafarer given the fact that he was continuously suffering from persistent low back pain. Further, petitioner asserts that the determination of disability benefits of seamen should be based not only on the disability grading issued by the company-designated doctor or the schedule under Section 32 of the POEA-SEC but also on the provisions of the Labor Code and the Amended Rules on Employees' Compensation. It is emphasized that disability should be viewed on the seafarer's loss of earning capacity and that what is being compensated is not the illness or injury but the incapacity to work.

The petition is denied.

The rulings of the labor authorities are seriously flawed because they were rendered in total disregard of the POEA-SEC provision, which are deemed written in the contract of employment, on the prescribed procedure in the resolution of conflicting disability assessments of the company-designated physician and the seafarer's doctor. There is grave abuse of

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[10] *Rollo*, pp. 19-20. (Emphasis in the original)

discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law between the parties.[11]

It bears to stress that there is no issue as to the compensability of petitioner's health condition since the parties do not dispute that it is work-related. What remains to be resolved is whether he is entitled to the payment of permanent total disability benefits or to that which corresponds to Disability Grade 11 of the POEA-SEC.

Under Section 20(A)(3) of the 2010 POEA-SEC, *"[if] a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties."* The provision refers to the declaration of fitness to work or the degree of disability.[12] It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period.[13] The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the disputed assessment to a third physician.[14] The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.[15] He must actively or

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[11] See *Phil. Hammonia Ship Agency, Inc., et al. v. Dumadag*, *supra* note 9, at 521-522.

[12] *Leonis Navigation Co., Inc. v. Obrero,* G.R. No. 192754, September 7, 2016, 802 SCRA 341, 355.

[13] See *Talaroc v. Arpaphil Shipping Corporation, et al.,* G.R. No. 223731, August 30, 2017, citing *Kestrel Shipping Co., Inc., et al. v. Munar*, 702 Phil. 717, 737-738 (2013). See also *Marlow Navigation Philippines, Inc., et al. v. Osias,* 773 Phil. 428, 446 (2015).

[14] *Leonis Navigation Co., Inc. v. Obrero, supra* note 12.

[15] *Scanmar Maritime Services, Incorporated v. Conag,* G.R. No. 212382, April 6, 2016, 789 SCRA 1, 13 and *Magsaysay Maritime Corp., et al. v. Simbajon,* 738 Phil. 824, 843 (2014).

expressly request for it.[16] In *INC Navigation Co. Philippines, Inc., et al. v. Rosales,*[17] We opined:

> By so acting, Rosales proceeded in a manner contrary to the terms of his contract with INC in challenging the company doctor's assessment; he failed to signify his intent to submit the disputed assessment to a third doctor and to wait for arrangements for the referral of the conflicting assessments of his disability to a third doctor.
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> Significantly, no explanation or reason was ever given for the omission to comply with this mandatory requirement; no indication whatsoever is on record that an earnest effort to secure compliance with the law was made; Rosales immediately filed his complaint with the LA. As we recently ruled in *Bahia Shipping Services, Inc., et al. v. Crisante C. Constantino,* when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and the company thereafter carries the burden of activating the third doctor provision.
>
> **To definitively clarify how a conflict situation should be handled**, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties. In *Bahia*, we said:
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>> In the absence of any request from him (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the

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[16] See *Leonis Navigation Co., Inc. v. Obrero, supra* note 12, at 355.

[17] 744 Phil. 774 (2014).

POEA-SEC provides, can rule with finality on the disputed medical situation.[18]

In *Dumadag*, the seafarer's non-compliance with the conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician. Dumadag pursued his claim without observing the laid-out procedure. He consulted doctors of his choice regarding his disability after the company-designated physician issued a fit-to-work certification for him. According to the Court, there is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent total disability benefits on the strength of his chosen doctors' opinions, without referring the conflicting opinions to a third physician for final determination. The Court considered the filing of the complaint as a breach of Dumadag's contractual obligation and that the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated doctor stands. We have noted that the provision of the POEA-SEC is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

The pronouncement in *Dumadag,* which was subsequently relied upon in a string of cases,[19] is consistent with Our earlier

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[18] *INC Navigation Co. Philippines, Inc., et al. v. Rosales, supra,* at 787-788. (Citation omitted; emphasis in the original).

[19] *Talaroc v. Arpaphil Shipping Corporation, et al.,* G.R. No. 223731, August 30, 2017; *MST Marine Services (Philippines), Inc., et al. v. Asuncion,* G.R. No. 211335, March 27, 2017; *Garino v. Southfield Agencies, Inc., et al.,* G.R. No. 227007, January 9, 2017; *Leonis Navigation Co., Inc. v. Obrero,*G.R. No. 192754, September 7, 2016, 802 SCRA 341; *Scanmar Maritime Services, Incorporated v. Conag,* G.R. No. 212382, April 6, 2016, 789 SCRA 1; *Arboleda, Jr. v. Centennial Transmarine, Inc., et al.,* G.R. No. 221357, January 25, 2016; *Maersk-Filipinas Crewing, Inc., et al. v. Jaleco,* 770 Phil. 50 (2015); *Magsaysay Maritime Corp., et al. v. Panogalinog,* 764 Phil. 212 (2015); *Tagalog v. Crossworld Marine Services, Inc., et al.,*

ruling in *Vergara v. Hammonia Maritime Services, Inc., et al.,*[20] which held:

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x[21]

Here, the Court is bound by the Grade 11 disability grading and assessment by the company-designated physician that was timely rendered within the 120-day period. Petitioner neither questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated doctor's competence. To reiterate what has already been settled, the referral to a third physician is mandatory and non-compliance with the procedure may militate against the

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761 Phil. 270 (2015); *Cagatin v. Magsaysay Maritime Corp., et al.,* 761 Phil. 64 (2015); *Carcedo v. Maine Marine Philippines, Inc., et al.,* 758 Phil. 166 (2015); *Veritas Maritime Corp., et al. v. Gepanaga, Jr.,* 753 Phil. 308 (2015); *Daraug v. KGJS Fleet Management Manila, Inc., et al.,* 750 Phil. 949 (2015); *Montierro v. Rickmers Marine Agency Phils., Inc.,* 750 Phil. 937 (2015); *Bahia Shipping Services, Inc. v. Hipe, Jr.*, 746 Phil. 955 (2014); *INC Navigation Co. Philippines, Inc., et al. v. Rosales, supra* note 17; *Bahia Shipping Services, Inc., et al. v. Constantino*, 738 Phil. 564 (2014); *Magsaysay Maritime Corp., et al. v. Simbajon,* 738 Phil. 824 (2014); *Splash Philippines, Inc., et al. v. Ruizo,* 730 Phil. 162 (2014); and *Ayungo v. Beamko Shipmanagement Corp., et al.,* 728 Phil. 244 (2014).

[20] 588 Phil. 895 (2008).

[21] *Vergara v. Hammonia Maritime Services, Inc., et al., supra,* at 914.

claim for permanent total disability in cases where the company-designated doctor declared otherwise. This is especially so if the seafarer failed to explain why recourse to the said remedy was not made.[22]

Petitioner's filing of his claim before the labor arbiter was premature.[23] In view of the fact that he did not observe the relevant provisions of the POEA-SEC after he received a definitive disability assessment from the company-designated physician, the Court is left without a choice but to uphold the certification issued with respect thereto. Failure to follow the procedure is fatal and renders conclusive the disability rating issued by the company-designated doctor.[24]

Reliance on the assessment of the company-designated physician was justified not only by the law governing the parties under the contract, but by the time and resources spent as well as the effort exerted by the company-designated doctor in the examination and treatment of petitioner while still on board and as soon as he was repatriated in the Philippines.[25]

Based on the Medical Report dated July 13, 2013,[26] it appears that Dr. Catapang conducted his physical examination of petitioner only once and that he merely made his own interpretation of the MRI results of the Lumbar Spine taken on January 21, 2013. While he acknowledged that respondents' company-designated physician examined petitioner and later underwent physiotherapy, he failed to state that reports were regularly issued to update on petitioner's medical condition as

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[22] *Ibarreta v. Philippine Transmarine Carriers, Inc., et al.,* G.R. No. 209796, June 25, 2014 (3rd Division Resolution).

[23] See *Veritas Maritime Corp., et al. v. Gepanaga, Jr., supra* note 19; *Daraug v. KGJS Fleet Management Manila, Inc., et al.,* 750 Phil. 949 (2015); and *INC Navigation Co. Philippines, Inc., et al. v. Rosales, supra* note 17.

[24] *Oriental Shipmanagement Co., Inc., et al. v. Ocangas,* G.R. No. 226766, September 27, 2017.

[25] See *Oriental Shipmanagement Co., Inc., et al. v. Ocangas, supra.*

[26] *Rollo,* pp. 201-203.

well as the particular treatment administered and medicines prescribed to him, which eventually became the basis of Dr. Agbayani's Grade 11 disability assessment on March 8, 2013.[27] Dr. Catapang did not conduct any diagnostic tests or procedures to support his assessment of a permanent total disability. Moreover, petitioner failed to show any bad faith that attended the company-designated doctor's medical reports, or that the same were self-serving and were issued just to allow respondents to avoid liability.[28] Certainly, the assessment of Dr. Agbayani is entitled to great weight and respect, considering that it is more reliable. With his consistent treatment and monitoring of petitioner for several months, he had acquired detailed knowledge and familiarity as to the latter's health condition. We stress that the reason behind our favorable rulings on the findings of company-designated physicians is not due to their infallibility; rather, it is assumed that they have "closely monitored and actually treated the seafarer" and, therefore, are in a better position to form an accurate diagnosis and evaluation of the seafarers' degree of disability.[29]

Contrary to what petitioner wants to believe, the Court agrees with respondents that *Ruizo* applies in the present case. There, We unequivocally stated:

> Earlier, we called attention to a compensation system provided by the POEA-SEC which is often ignored or overlooked in maritime compensation cases. This system is found in Section 32 of the POEA-SEC which provides for a schedule of disability compensation, in conjunction with Section 20(B)6. To our mind, the reason why this compensation system is often ignored or disregarded is the fixation on the 120–day rule and the notion that an "unfit-to-work" or "inability-to-work" assessment should be awarded permanent total disability compensation even when the seafarer is given a disability grading in accordance with Section 32 of the POEA–SEC. x x x A NOTE

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[27] *Id.* at 157.

[28] See *Bahia Shipping Services, Inc., et al. v. Constantino*, *supra* note 19, at 574.

[29] *Leonis Navigation Co., Inc. v. Obrero, supra* note 12, at 351.

in Section 32 of the POEA-SEC declares that ***"any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability."*** Any other grading, therefore, constitutes only as temporary total disability.

Considering that the POEA–SEC embodies the terms and conditions governing the employment of Filipino seafarers onboard ocean–going vessels, it is about time that the schedule of disability compensation under Section 32 is seriously observed. A step towards this direction had already been taken by way of the Court's clarificatory Resolution dated February 12, 2007 in *Crystal Shipping* where we declared that admittedly, the POEA-SEC (1996) ***does not measure disability in terms of number of days but by gradings only***. x x x[30]

The foregoing considered, petitioner must return the excess of the amount he received from respondents. Notably, in accordance with the NLRC Decision modifying the award of the LA, petitioner was given the sum of ₱2,916,012.00, which was the Philippine Peso equivalent of US$66,000.00, as a conditional satisfaction of judgment award. The payment was made to petitioner in order to prevent imminent execution by virtue of the writ of execution and/or garnishment against respondents.[31] Aside from the other terms and conditions of the agreement,[32] petitioner acceded to the following:

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[30] *Splash Philippines, Inc., et al. v. Ruizo, supra* note 8, at 178-179. In relying on the aforesaid pronouncement, *TSM Shipping Phils., Inc., et al. v. Patiño* (G.R. No. 210289, March 20, 2017) recently concluded:

Section 32 of the POEA-SEC provides for a schedule of disability compensation which is often ignored or overlooked in maritime compensation cases. Section 32 laid down a Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illness Contracted, in conjunction with Section 20 (B)(6) which provides that in case of a permanent total or partial disability, the seafarer shall be compensated in accordance with Section 32. Section 32 further declares that any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability. Therefore, any other grading constitutes otherwise. We stressed in *Splash Philippines, Inc. v. Ruizo* that it is about time that the schedule of disability compensation under Section 32 be seriously observed.

[31] *Rollo,* p. 379.

[32] The parties jointly filed a pleading before the NLRC entitled "Conditional

3. That this Conditional Satisfaction of Judgment is without prejudice to herein respondents' Petition for Certiorari pending with the Court of Appeals entitled, **"MAGSAYSAY MARITIME CORPORATION, SAFFRON MARITIME LIMITED AND MARLON R. ROÑO vs. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND GENERATO M. HERNANDEZ"** and/or any appeal/remedy available to both parties.[33]

With the assistance of his own counsel, petitioner expressed his conformity to the stipulation that he would return the money paid to him in the event that the contingency would happen. Since the petition was granted by the CA and affirmed by this Court, he must comply with the undertaking to return the amount in excess of what the CA had awarded. The agreement was fair and binding as the conditional satisfaction of judgment was likewise without prejudice to *"any appeal/remedy available to both parties."* Either of the parties may seek further redress against each other. Both petitioner and respondents may pursue any of the available legal remedies should any eventuality arise in their dispute, *i.e.*, when the CA renders a ruling adverse to their respective interests.[34] To allow petitioner to retain the excess payment would be tantamount to unjust enrichment at the expense of respondents whose entitlement thereto is further buttressed by, and in line with, Section 14, Rule XI of the 2011 NLRC Rules of Procedure which provides:

EFFECT OF REVERSAL OF EXECUTED JUDGMENT. – Where the executed judgment is **totally or partially reversed or annulled** by the **Court of Appeals or the Supreme Court**, the Labor Arbiter shall, on motion, issue such orders of **restitution of the executed award**, except wages paid during reinstatement pending appeal.[35]

Satisfaction of Judgment Award with Urgent Motion to Cancel and Release Appeal Bond (All Without Prejudice to Respondents' Pending Petition for *Certiorari* in the Court of Appeals)" (*Id.* at 379-386).

[33] *Rollo,* p. 380. (Underscoring and emphasis in the original)

[34] See *Philippine Transmarine Carriers, Inc., et al. v. Pelagio,* 766 Phil. 504, 518 (2015).

[35] Emphasis supplied. See *Philippine Transmarine Carriers, Inc. v. Legaspi,* 710 Phil. 838, 849-850 (2013).

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The April 6, 2016 Decision and August 1, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 140581, which set aside the February 4, 2015 Decision and March 3, 2015 Resolution of the National Labor Relations Commission affirming with modification the November 18, 2014 Decision of the Labor Arbiter, are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 226355. January 24, 2018]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **HEIRS OF CIRILO GOTENGCO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENTS; ONCE A JUDGMENT HAS ATTAINED FINALITY, IT CAN NO LONGER BE ALTERED, AMENDED OR MODIFIED; EXCEPTIONS.—** It is a well-established rule that a judgment, once it has attained finality, can never be altered, amended, or modified, even if the alteration, amendment or modification is to correct an erroneous judgment. This is the principle of immutability of judgments—to put an end to what would be an endless litigation. *Interest reipublicae ut sit finis litium.* In the interest of society as a whole, litigation must come to an end. But this tenet admits

several exceptions, these are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

2. **ID.; ACTIONS; LACHES; ELEMENTS.—** [A]side from Gotengco's motion for reconsideration was obviously filed out of time, it was also barred by laches. As defined, laches is the failure or neglect for an unreasonable and unexplained length of time to do that, which, by exercising diligence, could or should have been done earlier. It is the 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 elements of laches are all present, to wit: "1. Conduct on the part of the defendant, or one under whom he claims, giving rise to the situation that led to the complaint and for which the complaint seeks a remedy; 2. Delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; 3. Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and 4. Injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held barred."

3. **ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; A FORMER JUDGMENT CONSTITUTES A BAR, AS BETWEEN THE PARTIES, NOT ONLY AS TO MATTERS EXPRESSLY ADJUDGED, BUT ALL MATTERS THAT COULD HAVE BEEN ADJUDGED AT THE TIME.—** What is applicable in the present case is our ruling in *Urtula v. Republic (Urtula)*, where the Court stood faithfully with the doctrine of *res judicata* and immutability of judgments. x x x According to the Court, the civil action for collection of legal interest was already barred by *res judicata* pursuant to Section 3, Rule 67 of the Rules of Court, which directs the defendant in an expropriation case to present all objections and defenses; otherwise, they are deemed waived. Clearly, Gotengco, in the same manner as Urtula, is already barred by *res judicata* to claim legal interest for failure to timely raise his objection thereto.

Borrowing the words of the Court in *Urtula*, "[a]s the issue of interest could have been raised in the former case but was not raised, *res judicata* blocks the recovery of interest in the present case. It is settled that a former judgment constitutes a bar, as between the parties, not only as to matters expressly adjudged, but all matters that could have been adjudged at the time. It follows that interest upon the unrecoverable interest, which plaintiff also seeks, cannot, likewise, be granted."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Dans Maturan Law Office for respondents.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for review on *certiorari* filed under Rule 45 of the Revised Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated February 26, 2016 and August 9, 2016, respectively, which denied the petition for *certiorari* filed by the Republic of the Philippines, represented by the Department of Public Works and Highways, imputing grave abuse of discretion on the Regional Trial Court (RTC) of Calamba City, Laguna, Branch 35, for amending the Modified Partial Decision[3] dated February 15, 2001, which has become final and executory.

The Antecedents

The facts of this case are undisputed.

On May 16, 1977, the Republic of the Philippines, through the Department of Public Works and Highways (*DPWH*),

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[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan concurring; *rollo*, pp. 49-57.

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

[3] *Id*. at 131-115.

hereinafter referred to as "Republic" for brevity, expropriated the property of respondents Cirilo Gotengco (*Gotengco*), Preciosa B. Garcia (*Garcia*), and Emilia de Jesus (*de Jesus*) for the purpose of constructing the Manila South Expressway Extension, now known as the South Luzon Expressway.[4] The expropriation complaint was filed before the RTC of Calamba City, Laguna, Branch 35, docketed as Civil Case No. 184-83-C.

On January 31, 2000, the RTC rendered a Partial Decision[5] and ordered Republic to pay Gotengco, Garcia, and de Jesus, in the following amounts:

TABLE I:

Property Owner	**Lot Expropriated**	**Just Compensation**
Gotengco	13,637 sq.m. at ₱2,130.00 per sq.m.	₱29,046,810.00
de Jesus	15,000 sq.m. at ₱2,500.00 per sq.m.	₱37,500,000.00
Garcia	23,353 sq.m. at ₱2,130.00 per sq.m.	₱49,741,890.00

On February 22, 2000, Republic moved for the reconsideration of the Partial Decision to correct the land area covered for expropriation, which the RTC granted. In view of the change in the land area, the trial court accordingly adjusted the amount of just compensation, to wit:

TABLE II:

Property Owner	**Lot Expropriated**	**Just Compensation**
Gotengco	12,322 sq.m. at ₱2,130.00 per sq.m.	₱26,245,860.00
de Jesus	16,095 sq.m. at. ₱2,500.00 per sq.m.	₱40,237,500.00
Garcia	23,353 sq.m. at ₱2,130.00 per sq.m.	₱49,741,890.00

In detail, Gotengco's property, totalling to 12,322 square meters, consisted of three (3) separate lots, to wit:

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[4] *Id*. at 103.

[5] *Id*. at 103-108.

TABLE III:

Lot No.	Area	For brevity, shall hereinafter referred to as:
Lot 1735-B	9,704 sq. m.	Lot A
Lot 1735-A-7-A	2,148 sq. m.	Lot B
Lot 1735-C-2	470 sq. m.	Lot C

Thus, the dispositive portion of the Modified Partial Decision dated February 15, 2001 of the RTC reads as:

WHEREFORE, conformably with all the foregoing, the Court hereby rules:

1.) The Partial Decision of January 31, 2000, is hereby modified with respect to its dispositive portion to reads as follows:

Wherefore, premises considered, this Court renders judgment fixing the amount of Two Thousand One Hundred Thirty (Php 2,130.00) Pesos per square meter as the just compensation for the properties of defendants Heirs of Cirilo Gotengco and Preciosa B. Garcia and the amount of Two Thousand Five Hundred (P2,500.00) Pesos as just compensation for the property of defendant Emilia De Jesus in accordance with the areas appearing on the above-quoted survey report, to wit:

Heirs of Cirilo Gotenco

c/o Atty. Gregorio Alcaraz - - - - - - - - - - - - - - - - - 12,322 sq. m.

Emilia De Jesus - - - - - - - - - - - - - - - - - - 16,095 sq. m.

Preciosa B. Garcia - - - - - - - - - - - - - - - - - - 23,353 sq. m.

2) The plaintiff Republic of the Philippines represented by the Department of Public Works and Highways (DPWH) is hereby ordered to pay the above defendants accordingly.

SO ORDERED.[6]

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[6] *Rollo*, p. 115.

After the Modified Partial Decision had lapsed into finality, Gotengco, de Jesus, and Garcia, jointly moved for its execution, which the RTC approved on March 30, 2001. Accordingly, Republic and Gotengco executed a Deed of Absolute Sale[7] on one of the three lots of the latter's expropriated property, Lot A, covered by TCT No. T-334198, in the amount of ₱20,669,520.00. In three separate installments, Republic paid Gotengco the following amounts:

Table IV:

Date of Payment	Amount
July 2002	₱4,068,111.40
October 4, 2004	₱ 8,931,733.88
October 24, 2012	₱ 7,669,520.00

Hence, as the total amount of just compensation was ₱26,245,860.00 and the amount paid was only ₱20,669,365.28,[8] Republic had ₱5,576,494.72[9] balance left to pay Gotengco.

Nine years after the promulgation of the Modified Partial Decision, Gotengco filed an Omnibus Motion[10] dated May 19, 2010, pleading for the payment of accrued interest on the just compensation, computed from the date of finality of judgment until fully paid and to compel Carmela Alcaraz Nonato, the person in possession of the title covering Lot A, to surrender the same; otherwise, said title be declared null and void and a new title be issued in the name of Republic. Republic having filed no opposition thereto, the RTC, on July 20, 2010, granted the omnibus motion and ordered Republic to pay Gotengco the balance of the just compensation with interest at 6% per annum counted from July 15, 1977, the date of the actual taking, until fully paid, to which Republic also posed no motion for reconsideration.

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[7] *Id*. at 120-122.

[8] See Table IV.

[9] *Rollo*, p. 390; *Compare* with *rollo*, pp. 55 and 390.

[10] *Id*. at. 123-128.

Subsequently, Gotengco filed a Motion for Writ of Execution Re Payment of Interest[11] to the RTC, which Republic opposed.[12] It contended that Gotengco was already estopped by laches from claiming legal interest because he failed to raise such matter as early as when the Partial Decision was rendered and waited until it has lapsed into finality. In reply, Gotengco posited that it was Republic which was estopped from questioning his claim to legal interest[13] because it previously agreed that he was entitled to payment of interest as shown in Republic's Comment dated October 14, 1999. Disputing that Gotengco had misconstrued its statement, Republic explained in its Rejoinder, quoting its Comment dated February 16, 1999, that while it mentioned that the value of the just compensation was reasonable and acceptable, it clarified that interest should no longer be awarded.[14]

On May 6, 2013, the RTC granted the motion and amended the Modified Partial Decision.[15] The RTC determined the interest rate was inadvertently excluded and the Modified Partial Decision had to be amended and modified in the interest of justice. Notwithstanding the granting of the motion, RTC took note of Gotengco's lapse that even in his omnibus motion, he did not pray for the award of legal interest as the "prayer was merely for the payment of interest at legal rate, computed from the date of finality of judgment until the entire amount of just compensation is paid in full."[16] But the lapse Republic committed also did not escape the RTC. The RTC observed that besides Republic's failure to oppose the omnibus motion, it also failed to file any motion for reconsideration of the July 20, 2010 Order. The dispositive portion of the Order[17] dated May 6, 2013 ordering

[11] *Id*. at 131-134.

[12] *Id*. at 139-145.

[13] *Id.* at 146-150.

[14] *Id*. at 156-158.

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

[16] *Id*. at 165.

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

Republic to pay interest at the legal rate of 6% per annum reads as:

> WHEREFORE, the Order dated 20 July 2010 is amended and modified with respect to the order of plaintiff for the payment of interest and should now read, as prayed for by the movants in their Omnibus Motion, as follows:
>
> 'Plaintiff is ordered to pay interest at the legal rate of 6% per annum from the date of finality of judgment, until the entire amount of just compensation is paid in full.
>
> Meanwhile, the resolution of the Motion for Execution re Payment of Interest filed by movant Heirs of Cirilo Gotengco is held in abeyance pending finality of this Order.
>
> SO ORDERED.[18]

Republic filed a motion for reconsideration, but it was denied.[19]

Aggrieved, Republic filed before the CA a petition for *certiorari* through Rule 65 of the Rules of Court, dated April 4, 2014, imputing grave abuse of discretion on the part of the trial court for modifying a judgment, which has become final and executory. It opined that the RTC exceeded its judicial authority and completely disregarded the well-settled principle of immutability of judgments in modifying the Modified Partial Decision, which had attained finality.

Meanwhile, Republic discovered that Gotengco sold Lots B and C to Mario V. Tiaoqui (Tiaoqui) during the pendency of the case.

The CA Ruling

On February 26, 2016, the CA denied the petition for *certiorari*. It resolved that payment of interest is a matter of law as provided in Section 10, Rule 67 of the Rules of Court[20] and it is against public policy to not impose legal interest. The

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[18] *Id*. at 166.

[19] *Id*. at 197.

[20] Section 10, Rule 67, Rules of Court.

CA, citing *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines (Apo Fruits),*[21] concluded that while the judgment has become final and executory, the court may modify the judgment and impose legal interest. Directly quoting the pronouncement of the Court in the same case, the Court stated, "[w]ithout prompt payment, compensation cannot be considered 'just' if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income."[22] The CA, citing *Apo Fruits* in reference to *Republic v. CA,*[23] explained that for just compensation to be considered as "just", the payment must be prompt and there must be necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken, thus:

> xxx if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.[24]

Since Gotengco was deprived of his property and of its income since its taking on March 30, 2001 (date of execution of judgment),[25] the CA found that legal interest, therefore, should be imposed and, accordingly, adjudged the RTC not guilty of grave abuse of discretion in imposing the payment of 6% legal interest on the amount of just compensation for being in accordance with law and jurisprudence.

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[21] *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 647 Phil. 251 (2010); Resolution, 662 Phil. 572 (2011).

[22] *Rollo*, p. 53.

[23] *Republic of the Phils. v. CA*, 433 Phil. 106, 122-123 (2002).

[24] *Rollo*, p. 54.

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

Hence, the present petition. Republic contends that the appellate court committed a reversible error in finding no grave abuse of discretion amounting to lack or excess in jurisdiction on the part of the trial court when it modified and altered a judgment that had already become final; therefore, violating the doctrine of immutability and finality of judgments. The arguments of Republic as raised in the instant petition are as follows:

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION DATED FEBRUARY 26, 2016 AND RESOLUTION DATED AUGUST 9, 2016, FINDING THAT THERE WAS NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT IN ISSUING THE ORDERS DATED JULY 20, 2010, MAY 6, 2013, AND FEBRUARY 4, 2014, GRANTING LEGAL INTEREST IN FAVOR OF THE RESPONDENT.

I.

THE ORDERS DATED JULY 20, 2010, MAY 6, 2013 AND FEBRUARY 4, 2014 OF THE TRIAL COURT WERE ISSUED WITH GRAVE ABUSE OF DISCRETION, CONSIDERING THAT SUCH ORDERS RUN AFOUL WITH WELL-SETTLED PRINCIPLES AND JURISPRUDENCE REGARDING FINALITY AND IMMUTABILITY OF JUDGMENTS.

II.

THE ORDERS OF THE TRIAL COURT IMPOSING LEGAL INTEREST DUE TO THE ALLEGED DELAY ON THE PART OF THE PETITIONER IN THE PAYMENT OF JUST COMPENSATION, WHICH WERE EFFECTIVELY AFFIRMED BY THE COURT OF APPEALS, WERE ISSUED WITH GRAVE ABUSE OF DISCRETION AND WITHOUT BASIS, CONSIDERING THAT THERE WAS NO DELAY IN PAYMENT.[26]

Meanwhile, pending resolution of the case, Gotengco submitted to the RTC for approval, the Compromise Agreement[27]

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[26] *Id*. at 21-22.

[27] *Id*. at 374-376; 377-378; 387-388; 389-390.

he entered into with Tiaoqui to equally share the remainder of the just compensation amounting to ₱5,576,340.00. On the other hand, Republic manifested its readiness to release the final payment. Finding the compromise agreement valid and not contrary to law, morals, and public policy, the RTC approved the same in an order dated September 23, 2016.[28]

Hence, the sole issue for resolution is whether or not the trial court violated the well-settled doctrine of immutability of judgments in modifying its own decision that had already attained finality to the extent that it granted interest.

The Court's Ruling

The petition is granted.

Immutability of Judgments

It is a well-established rule that a judgment, once it has attained finality, can never be altered, amended, or modified, even if the alteration, amendment or modification is to correct an erroneous judgment.[29] This is the principle of immutability of judgments—to put an end to what would be an endless litigation. *Interest reipublicae ut sit finis litium*. In the interest of society as a whole, litigation must come to an end. But this tenet admits several exceptions, these are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. [30]

Based on the foregoing, the case does not fall within any of the aforesaid exceptions. For the *first* and *second* exceptions, the imposition of the 6% legal interest is neither a mere clerical error nor a *nunc pro tunc* entry because it imposed a considerable

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[28] *Id.* at 389-390.

[29] *FGU Insurance Corporation (now BPI/MS Insurance Corporation) v. RTC, et al.*, 659 Phil. 117, 123 (2011).

[30] *Id.*

burden on the part of Republic. The purpose of the modification was to correct the trial court's purported lapse to impose a legal interest, which the court ought to have rendered, in place of the one it actually erroneously rendered.[31] Indeed, the modification imposed a substantial change on the assailed judgment. As regards the *third* exception, there was neither an allegation nor proof that the judgment was void for what was sought for was the inclusion of the 6% legal interest that was purportedly overlooked by the trial court that ought to have been imposed. Anent the *fourth* exception, there were no supervening events that would render its execution unjust and inequitable. Therefore, the surrounding circumstances of the present case do not warrant the Court's exercise of its ultimate power to abandon the long-held standing rule of immutability of judgments.

Doctrine Laid in *Apo Fruits* is Inapplicable

Not even the Court's pronouncement in the *en banc* decision in the landmark case of *Apo Fruits*[32] where the Court, speaking through Associate Justice Arturo Brion, rendered valid the amendment and modification of the judgment despite its lapse into finality applies to the case at bar. In *Apo Fruits,* the rules of procedure were relaxed in order to serve the ends of justice. Despite the finality of the judgment, due to the existence of extraordinary circumstances, the Court amended and modified the final and executory decision. But the doctrine laid in *Apo Fruits* is the exception and not the general rule. Perhaps a brief introduction of the factual circumstances of *Apo Fruits* would shed light on the controversy.

In *Apo Fruits*, the government, through Land Bank of the Philippines (*Land Bank*), expropriated the private properties of Apo Fruits Corporation (*AFC*) and Hijo Plantation (*Hijo*) pursuant to its agrarian reform program. First of the series of

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[31] *Briones-Vasquez v. Court of Appeals, et al*., 491 Phil. 81, 92 (2005).

[32] *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 647 Phil. 251 (2010); Resolution, 662 Phil. 572 (2011).

decisions of the expropriation proceedings was the trial court's decision dated September 25, 2001 that in addition to the principal obligation to pay just compensation, Land Bank must also pay interest "equivalent to the market interest rates aligned with the 91-day Treasury Bills." Second was the December 5, 2001 RTC Decision, which modified the interest rate to 12% per annum from the time the complaint was filed until finality of the decision. When the case reached the CA, it nullified the ruling of the trial court. Subsequently, in its decision dated February 6, 2007, the Court through the Third Division, affirmed the RTC Decision and imposed legal interest. Thereafter, in its resolution dated December 19, 2007, the Court deleted the 12% legal interest on the ground that there was no delay in the payment of just compensation because Land Bank had deposited pertinent amounts due to AFC and Hijo within 14 months after they filed their complaints for just compensation. Then, in its resolution dated April 30, 2008, the Third Division reiterated this ruling. After the resolution attained finality, an entry of judgment was issued subsequently on May 16, 2008. However, despite the finality of the judgment, in view of the motion for reconsideration of AFC and Hijo, the Court resolved to refer the case to the Court *en banc*. On December 4, 2009, the Court *en banc* denied the motion for reconsideration and sustained the finality of the April 30, 2008 Decision of the Court.

Undaunted, AFC and Hijo filed a second motion for reconsideration, which the Court, this time, granted. In its resolution dated October 12, 2010, the Court reversed itself and ordered Land Bank to pay AFC and Hijo legal interest, computed from the date of taking until Land Bank paid the balance on the principal amount on May 9, 2008. The last of the series of rulings which finally laid to rest the dispute was on April 5, 2011, where the Court adjudged that the power of eminent domain involves public interest and the Court, in its duty to serve and protect the ends of justice, may relax the rules of procedure.

After several drawbacks since the property's taking on December 9, 1996, it took twelve (12) long years thereafter, or

on May 9, 2008, when Land Bank was able to pay AFC and Hijo the total amount of the principal obligation, excluding the legal interest subsequently imposed.

At first glance, the present case seems similar with the factual circumstances in *Apo Fruits* as both cases involve the expropriation of private properties, which controversy invokes the relaxation of the rule of immutability of judgments in the quest to modify an otherwise final and executory decision to include the payment of legal interest. However, contrary to our ruling in *Apo Fruits*, the exception to the immutability of judgment does not apply to the present case. In *Apo Fruits*, we underscore, lest it may cause confusion, that although the assailed decision became final and executory and an entry of judgment was issued after the lapse of 15 days from the issuance of the assailed decision, as to the petitioners, the motion for reconsideration was timely filed as it was filed within 15 days from their receipt of the assailed judgment[33]—a decisive circumstance that does not obtain in the present case.

Estoppel by Laches

The stark differences lie on whether legal interest was imposed by the trial court and the concomitant undertaking of the litigants to protect them from the adverse judgment. In *Apo Fruits*, the RTC categorically ordered the government, though Land Bank, to pay AFC and Hijo just compensation with legal interest.[34] Here, the RTC, as early as in the Partial Decision and even in the subsequent Modified Partial Decision, never adjudicated the payment of such legal interest—it was clear at its inception that legal interest was not imposed. Yet, despite the apparent adverse decision to impose no legal interest, Gotengco chose to acquiesce. It was only after nine (9) long years from finality of the assailed Modified Partial Decision when Gotengco filed

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[33] *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 647 Phil. 251, 265 & 267 (2010).

[34] *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 543 Phil. 497, 507 (2007).

his motion for reconsideration. Such fact, without a doubt, this Court cannot turn a blind eye to.

While, indeed, aside from Gotengco's motion for reconsideration was obviously filed out of time,[35] it was also barred by laches. As defined, laches is the failure or neglect for an unreasonable and unexplained length of time to do that, which, by exercising diligence, could or should have been done earlier. It is the 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.[36] The elements of laches are all present, to wit:

1. Conduct on the part of the defendant, or one under whom he claims, giving rise to the situation that led to the complaint and for which the complaint seeks a remedy;
2. Delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit;
3. Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and
4. Injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held barred.[37]

As borne by the records of the case, Gotengco had notice of the Modified Partial Decision, manifested by the fact that Gotengco himself, together with the other affected owners, moved for the issuance of a writ of execution of the Modified Partial Decision, to which a deed of absolute sale was issued pursuant thereto; hence, he cannot feign ignorance of the rendition of

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[35] Section 1, Rule 37, Rules of Court, in relation to Section 2, Rule 40, Rules of Court.

[36] *Españo, Sr. v. CA, et al.*, 335 Phil. 983, 986 (1997).

[37] *Buenaventura, et al. v. Court of Appeals*, 290-A Phil. 628, 635 (1992) citing *Yusingco v. Ong Hing Lian*, 149 Phil. 688, 710 (1971).

the Modified Partial Decision. Even with the grace period afforded to him by the law, for reasons known only to Gotengco, he squandered his right and, instead, waited nine (9) unreasonable years to disturb the otherwise final and executory Modified Partial Decision. Clearly, estoppel by laches has set in against him.[38] His belated action in asserting his right within a reasonable time to dispute the assailed judgment in the guise of this Court's protection from miscarriage of justice cannot be disregarded.[39] Indeed, Gotengco is guilty of laches.

Verily, while the present case involves a private property expropriated by the government, the exception as applied in *Apo Fruits* does not apply to those who sleep on their rights. *Vigilantibus non dormientibus equitas subvenit*. Equity aids the vigilant, not the ones who sleep over their rights.

The Doctrine of *Urtula v. Republic*[40]

What is applicable in the present case is our ruling in *Urtula v. Republic (Urtula),*[41] where the Court stood faithfully with the doctrine of *res judicata* and immutability of judgments. In *Urtula*, the civil action for collection of legal interest subsequently filed by the defendant was dismissed because the Court, in its judgment in the expropriation case previously promulgated ordering the government to pay Urtula just compensation, failed to award legal interest. According to the Court, the civil action for collection of legal interest was already barred by *res judicata* pursuant to Section 3, Rule 67 of the Rules of Court, which directs the defendant in an expropriation case to present all objections and defences; otherwise, they are deemed waived.[42]

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[38] *Ochagabia, et al. v. Court of Appeals, et al.*, 364 Phil. 233, 240 (1999).

[39] *Republic v. Limbonhai and Sons*, G.R. No. 217956, November 16, 2016.

[40] *Urtula, et al. v. Republic*, 130 Phil. 449 (1968).

[41] *Id*.

[42] Section 3, Rule 67, Revised Rules of Court; *Urtula, et al. v. Republic*, 130 Phil. 449, 454 (1968).

Clearly, Gotengco, in the same manner as Urtula, is already barred by *res judicata* to claim legal interest for failure to timely raise his objection thereto. Borrowing the words of the Court in *Urtula*, "[a]s the issue of interest could have been raised in the former case but was not raised, *res judicata* blocks the recovery of interest in the present case. It is settled that a former judgment constitutes a bar, as between the parties, not only as to matters expressly adjudged, but all matters that could have been adjudged at the time. It follows that interest upon the unrecoverable interest, which plaintiff also seeks, cannot, likewise, be granted."[43]

To affirm the ruling of the appellate court would violate the doctrine of immutability and inalterability of a final judgment and would concede to the evils the doctrine seeks to prevent, namely: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist.[44] Indeed, to rule otherwise would trivialize the time-honored principle of procedural law.

Time and again, the Court has reiterated the maxim that rules of procedure must be faithfully followed and cannot be ignored due to its indispensability for the orderly and speedy discharge of the administration of justice. While rules of procedure may be relaxed to better serve the ends of justice, the Court, however, must take precaution as the exception to this tenet is applied only to the most persuasive of reasons and the most deserving.[45]

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated February 26, 2016 in CA-G.R. SP No. 134944, affirming the Order of the Regional Trial Court

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[43] *Supra* note 40 at 454.

[44] *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 622 Phil. 215, 231 (2009).

[45] *Spouses Bergonia and Castillo v. CA. et al.*, 680 Phil. 334, 344-345 (2012).

dated May 6, 2013, which ordered the Republic to pay Gotengco legal interest at the rate of 6% per annum from the date of finality of judgment until the entire amount of just compensation is paid in full is **REVERSED** and **SET ASIDE**. Accordingly, the Modified Partial Decision dated February 15, 2001 of the Regional Trial Court in Civil Case No. 184-83-C ordering the Republic to pay Gotengco just compensation *sans* legal interest is hereby **REINSTATED**.

SO ORDERED.

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

Martires, J., on official leave.

SECOND DIVISION

[G.R. No. 226400. January 24, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSELITO BRINGCULA *y* FERNANDEZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH RAPE; ELEMENTS.—** The crime of Robbery with Rape is penalized under Article 294 of the Revised Penal Code *(RPC)*, as amended by Section 9 of Republic Act *(R.A.)* No. 7659. Robbery with Rape is a special complex crime under Article 294 of the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime. x x x Thus, to be convicted of robbery with rape, the following

elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY INCONSISTENCIES OF WITNESSES WITH RESPECT TO MINOR DETAILS AND COLLATERAL MATTERS.—** As to the issue raised by appellant that the testimony of AAA is not credible because it was impossible for her to have identified her aggressor because of her inconsistent statements and that she did not disclose the violation committed against her person immediately after the incident, deserves no merit. This Court has ruled in several cases that inconsistencies of witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity or the weight of their testimonies. It would be unfair to expect a flawless recollection from one who is forced to relive the gruesome details of a painful and humiliating experience such as rape. What is clear is that AAA was able to testify in a straightforward manner the incident that took place or on how she was raped x x x.

3. **ID.; ID.; ID.; DELAY IN REVEALING THE COMMISSION OF THE CRIME IS NOT AN INDICATION OF A FABRICATED CHARGE, UNLESS THE DELAY IS UNREASONABLE AND UNEXPLAINED.—** AAA's behavior after the incident, particularly opting not to disclose her ordeal in the hands of the appellant immediately thereafter, is inconsequential. Jurisprudence has established that delay in revealing the commission of rape is not an indication of a fabricated charge, and the same is rendered doubtful only if the delay was unreasonable and unexplained.

4. **ID.; ID.; ALIBI AND DENIAL; REGARDED AS NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.—** Anent the defense of denial and alibi interposed by appellant, such must not be appreciated by the Court. Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail.

An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant.

5. **ID.; CRIMINAL PROCEDURE; ARREST; ANY OBJECTION INVOLVING THE ARREST OF THE ACCUSED MUST BE MADE BEFORE HE ENTERS HIS PLEA, OTHERWISE IT IS DEEMED WAIVED.—** As to the legality of his warrantless arrest, appellant is already estopped from questioning such because it was never raised prior to his having entered a plea of not guilty. Moreover, the rule is that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection. The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.

6. **CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH RAPE; PENALTY IN CASE AT BAR.—** [T]he crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code, as amended by R.A. 7659. Article 294 provides for the penalty of *reclusion perpetua* to death, when the robbery was accompanied by rape. x x x [U]nder Article 63, paragraph 1 of the RPC, the imposable penalty upon appellant is death since the aggravating circumstance of dwelling was duly alleged and proven. However, since the death penalty has been prohibited under R.A. 9346, the penalty of *reclusion perpetua* should be imposed.

7. ID.; ID.; AGGRAVATING CIRCUMSTANCES; DWELLING; APPRECIATED WHEN THE CRIME IS COMMITTED IN THE DWELLING OF THE OFFENDED PARTY PROVIDED THAT THE LATTER HAS NOT GIVEN PROVOCATION THEREFOR.— Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor. In this particular case, robbery with violence was committed in the house of the victim without provocation on her part. In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house. It is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Jim L. Amarga for accused-appellant.

D E C I S I O N

PERALTA, *J*.:

This is to resolve the appeal of appellant Joselito Bringcula y Fernandez that seeks to reverse and set aside the Decision[1] dated April 8, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01294-MIN finding him guilty beyond reasonable doubt of the crime of robbery with rape.

The facts follow.

On the night of May 2, 2011, private complainant AAA was sleeping in her house together with her children, househelper

[1] Penned by Associate Justice Ruben Reynaldo G. Roxas with the concurrence of Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos; *rollo,* pp. 3-16.

and niece. She was awakened at early dawn by the barking of the dog and when she stood up to see if there was any one inside their house, she saw no one and went back to sleep. She was again awakened when a man wearing a mask touched her shoulder and poked a firearm at her neck. The man told her that it was a robbery and that she should keep quiet or else he would kill her. She was able to recognize the voice of the man to be that of appellant Bringcula. Then, she was ordered to lie face down and was hogtied using a shoelace. The appellant took AAA's two bracelets and wedding ring, and asked her where her money was. AAA pointed at her bag inside the *aparador* beside her bed, where she placed her money which the appellant also took.

Appellant, thereafter, made AAA lie on her back and pulled her *pajama* and underwear. He also removed his own clothing including his mask. Appellant proceeded to lick AAA's vagina, kissed her neck, laid on top of her and inserted his penis into her vagina. AAA was unable to cry for help because appellant threatened to kill her if she does. After satisfying his lust, appellant dressed up and took AAA's necklace and two (2) cellular phones. When appellant left, AAA awakened her niece and told her to shout for help. A certain BBB, Barangay Captain CCC, Kagawad EEE and some neighbors arrived at AAA's house and when they asked who the culprit was, she opted not to immediately disclose appellant's identity.

Later in the morning, AAA went to the police station to report the incident and submitted herself for a medical examination.

Thus, the following Information was filed against the appellant:

> That on or about the 2nd day of May, 2011, in __________, municipality of _____________, Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, armed with firearm, by means of force and violence, did then and there wilfully, unlawfully and feloniously, with intent to gain and without the consent of the owner thereof enter the house of AAA and once inside entered the room of AAA and rob, take, and carry away: necklace worth ₱1,000.00, bracelet worth ₱1,500.00, ring worth ₱600.00, two (2) cellular phones worth ₱1,500.00 and cash money in the amount of ₱5,000.00 with a total value of ₱9,600, Philippine currency, belonging to AAA;

That on the occasion of the said robbery, accused, prompted by lewd designs, by means of threat and intimidation, did then and there wilfully, unlawfully and feloniously poke the firearm in the neck of AAA, hogtied her, remove her pajama and panty, lick her vagina, place himself on top of her and inserted his penis into her vagina and have sexual intercourse with AAA, against her will.

CONTRARY to and in violation of Article 294(1) of the Revised Penal Code.[2]

Appellant denied the allegations and inteposed alibi as a defense. He claimed that in the evening of May 2, 2011, he was at home sleeping. His testimony was corroborated by his wife who testified that appellant was sleeping beside her on May 2, 2011 around 1 o'clock in the early morning.

The Regional Trial Court (*RTC*),[3] Branch 11, ████████, Bukidnon found appellant guilty beyond reasonable doubt of the crime charged; thus, he was sentenced with the following:

Premises above-considered and with no mitigating or aggravating circumstance, the court finds the accused DDD Guilty beyond reasonable doubt of the special complex crime of Robbery with Rape and hereby sentences him to suffer the penalty of imprisonment of *Reclusion Perpetua*. The preventive detention undergone by the accused at the BJMP, ████████████████ shall be credited to his penalty of imprisonment, the remainder of which he shall serve at the Davao Penal and Prison Farm, B.E. Dujali Davao Del Norte.

Furthermore, the accused is hereby ordered to pay PC the following:

1. ₱9,600.00 Actual damages, if restitution is not feasible with legal interest.
2. ₱75,000.00 Moral damages
3. ₱50,000.00 Exemplary damages
4. Costs of the suits.

SO ORDERED.[4]

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[2] Records, pp. 1-2.

[3] Penned by Judge Jose U. Yamut, Sr.

[4] CA *rollo,* pp. 48-49.

According to the RTC, the elements of the crime charged are present in the case and that the defense of appellant is weak.

The CA affirmed the decision of the RTC with modification that appellant pay AAA ₱75,000.00 as civil indemnity, thus:

WHEREFORE, the appeal is DENIED, the 25 March 2014 Decision of the Regional Trial Court of [redacted], Branch 11, is hereby **AFFIRMED** with **MODIFICATION**. Appellant is **DIRECTED** to pay AAA ₱75,000.00 as civil indemnity, in addition to the other damages awarded by the lower court. Interest at the rate of six percent (6%) *per annum* is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.

SO ORDERED.[5]

The CA agreed with the RTC that the elements of the crime of robbery with rape are present. It also agreed that appellant's defense of denial and alibi must fail. The CA also ruled that the aggravating circumstance of dwelling must be appreciated.

Hence, the present appeal.

Appellant claims that the prosecution failed to prove his guilt beyond reasonable doubt. He contends that his identity was not properly established and that the testimony of AAA is not credible because of its inconsistencies. He also questions the legality of his warrantless arrest.

The crime of Robbery with Rape is penalized under Article 294 of the Revised Penal Code (*RPC*), as amended by Section 9 of Republic Act (*R.A.*) No. 7659. Robbery with Rape is a special complex crime under Article 294 of the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.[6]

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[5] *Rollo,* p. 16.

[6] *People v. Marlon Belmonte, et al.*, G.R. No. 220889, July 5, 2017, citing *People v. Tamayo*, 434 Phil. 642, 654 (2002).

In *People v. Evangelio, et al.*,[7] this Court ruled that:

> For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed by reason or on the occasion of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime. x x x[8]

Thus, to be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[9]

The RTC and the CA were correct in ruling that the elements of robbery with rape are present in this case. As ruled by the CA:

> As to the asportation by appellant of private complainant's personal properties constituting the first three (3) elements of the crime, We find the same sufficiently established by the evidence on records. The prosecution was able to prove that appellant entered the house of private complainant and took her money, some pieces of jewelry and cellphones by means of violence and intimidation. Appellant barged into the house of the victim armed with a weapon, tied her down to immobilize her, and robbed her of some personal belongings. Private complainant saw the perpetrator leaving her house carrying the pieces of jewelry and other items taken from her.
>
> Having established that the personal properties of the [victim were] unlawfully taken by the appellant, intent to gain was sufficiently proven. x x x
>
> x x x x x x x x x

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[7] 672 Phil. 229 (2011).

[8] *Id.* at 245-246, citing *People v. Tamayo, supra* note 6.

[9] *People v. Suyu,* 530 Phil. 569, 596 (2006).

The prosecution was likewise able to establish that appellant raped private complainant on the occasion of the robbery.

Private complainant's account on what appellant did to her was straightforward, candid and carries a disturbing ring of sordid truth. She vividly recounted how appellant forced himself on her and succeeded in having carnal knowledge with her. x x x

x x x x x x x x x

It is a settled rule that the foremost even sometimes, the only consideration in the prosecution for rape is the victim's testimony. The victim's testimony alone, if credible, is sufficient to convict. A rape victim, who testifies in a categorical, straightforward, spontaneous, and frank manner, and remains consistent on all material points, is a credible witness.[10]

The prosecution was also able to establish, based on AAA's testimony, that the robbery preceded the crime of rape and that the latter crime was an incident to the original intent of the appellant to rob AAA, thus:

Q: Now that was the first word asked by the accused that he was looking for money from you, am I right?
A: After he called my attention by touching my shoulder and he tied me, he asked where is the money.

Q: At that time you were already lying on your back or still facing down?
A: I was still lying face down.

Q: But according to you, the first thing that the accused allegedly got from your possession is your wedding ring and your bracelet, am I right?
A: Yes sir because when he ordered me to lay (sic) on my face and tied my hands, he saw the wedding ring and the bracelet and he took it.

Q: And after that, the accused asked you where is your money?
A: Yes sir.

Q: Now, according to you, the accused then removed your pajama, am I right?

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[10] *Rollo,* pp. 9-11.

A: Yes sir.

Q: At that time, what was your position?
A: I was lying on my back.

Q: And you mean to say, you were already face to face looking with (sic) the accused, am I right?
A: Yes sir.

Q: But at that time, the accused was allegedly still concealing his identity with the use of the clothing?
A: No more.

Q: In other words, when you were already lying on your back, you already saw the accused already removing the clothing, to show his identity?
A: Yes sir.[11]

As to the issue raised by appellant that the testimony of AAA is not credible because it was impossible for her to have identified her aggressor because of her inconsistent statements and that she did not disclose the violation committed against her person immediately after the incident, deserves no merit. This Court has ruled in several cases that inconsistencies of witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity or the weight of their testimonies. It would be unfair to expect a flawless recollection from one who is forced to relive the gruesome details of a painful and humiliating experience such as rape.[12] What is clear is that AAA was able to testify in a straightforward manner the incident that took place or on how she was raped, thus:

Q: So he tied your hands behind your back while you were lying down and he undressed himself or he undress you first?
A: He first remove[s] my pajama.

Q: And your underwear?
A: Yes sir.

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[11] TSN, October 29, 2012, pp. 17-18.

[12] *People v. Bautista,* 474 Phil. 531, 555 (2004).

Q: And he followed that up by undressing himself?
A: Yes sir.

Q: Which one was undressed on the part of the accused?
A: He removed all his clothing.

Q: You want to impress to this court that the accused was entirely naked?
A: Yes sir.

Q: That is before he licked your vagina?
A: Yes sir.

Q: Now, when the accused laid on top of you, he was doing such push and pull movement, am I right?
A: Yes sir.[13]

When the testimony of a rape victim is simple and straightforward, unshaken by rigorous cross-examination and unflawed by any serious inconsistency or contradiction, the same must be given full faith and credit.[14]

Also, AAA's behavior after the incident, particularly opting not to disclose her ordeal in the hands of the appellant immediately thereafter, is inconsequential. Jurisprudence has established that delay in revealing the commission of rape is not an indication of a fabricated charge, and the same is rendered doubtful only if the delay was unreasonable and unexplained.[15]

Anent the defense of denial and alibi interposed by appellant, such must not be appreciated by the Court. Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving

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[13] TSN, January 29, 2013, p. 11.

[14] *People v. Sernadilla*, 403 Phil. 125, 140 (2001).

[15] *People v. Suyu, supra* note 9, at 588, citing *People v. Baway*, 402 Phil. 872, 892 (2001).

evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[16] Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant.[17]

As to the legality of his warrantless arrest, appellant is already estopped from questioning such because it was never raised prior to his having entered a plea of not guilty. Moreover, the rule is that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment.[18] Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived.[19] Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.[20] The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.[21] As aptly ruled by the CA:

> In the present case, appellant was arrested on the very same day that the crime was committed. Albeit the arrest was not effected immediately after the incident, this is readily explained by the fact that private complainant opted not tell anyone who [her] assailant was until that morning when she officially filed her complaint in the police station. True enough, she cannot just divulge to her companions

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[16] *People v. Evangelio, et al*., *supra* note 7, at 241, citing *People v. Togahan,* 551 Phil. 997, 1014 (2007).

[17] *Id.,* citing *Gan v. People,* 550 Phil. 133, 157 (2007).

[18] *People v. Bongalon*, 425 Phil. 96 (2002).

[19] *Id.*

[20] *Id.*

[21] *Id.*

that she was raped, a conduct consistent with a woman who had just underwent a grievous ordeal. It was thus only upon the filing of the complaint and on the basis thereof that the police found a reasonable ground to make appellant a suspect of the crime and accordingly caused his arrest. With the fact that appellant and private complainant are neighbors, the latter's identification of the former as her assailant strongly created the probable cause of the guilt of appellant. As such, in the inquest investigation, the Provincial Prosecutor found a probable cause that appellant committed the crime of robbery with rape, thus rendering his arrest without warrant legal.

At any rate, accused-appellant already pleaded not guilty to the crime charged against him during his arraignment without questioning his warrantless arrest. He actively participated in the proceedings before the trial court thereafter. In effect, appellant is deemed to have submitted himself to the jurisdiction of the court and waived any perceived defect or irregularity that may have attended his arrest.

Settled is the rule that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before his arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[22]

As to imposition of the penalty, the crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code, as amended by R.A. 7659.[23] Article 294 provides for the penalty of *reclusion perpetua* to death, when the robbery was accompanied by rape. The provision reads as follows:

Art. 294. Robbery with violence against or intimidation of persons; Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

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[22] *Rollo,* pp. 8-9.

[23] Otherwise known as *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.*

> 1. The penalty of *reclusion perpetua* to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson; x x x

The CA is correct in appreciating the aggravating circumstance of dwelling. Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.[24] In this particular case, robbery with violence was committed in the house of the victim without provocation on her part. In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house.[25] It is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode.[26] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[27] Hence, under Article 63, paragraph 1 of the RPC, the imposable penalty upon appellant is death since the aggravating circumstance of dwelling was duly alleged and proven. However, since the death penalty has been prohibited under R.A. 9346, the penalty of *reclusion perpetua* should be imposed.

As to the award of damages, the amounts must be modified in accordance with *People v. Jugueta*.[28] Since the imposable penalty is death but due to R.A. 9346, the actual penalty imposed is *reclusion perpetua*, the amounts of civil indemnity, moral damages and exemplary damages shall be ₱100,000.00 each. Also, the CA was correct in awarding civil indemnity in view of the finding of rape.[29]

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[24] *People v. Bragat,* 416 Phil. 829, 843 (2001).

[25] *People v. Paraiso*, 377 Phil. 445, 464 (1999).

[26] *People v. Taboga,* 426 Phil. 908, 929 (2002).

[27] *People v. Bragat, supra* note 24.

[28] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[29] *People v. Ortiz*, 614 Phil. 625 (2009).

WHEREFORE, PREMISES CONSIDERED, the Court **DISMISSES** the present appeal and **AFFIRMS** the Decision dated April 8, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01294-MIN finding appellant Joselito Bringcula y Fernandez guilty beyond reasonable doubt of the crime of Robbery with Rape under Article 294 the Revised Penal Code with **MODIFICATION** that the same appellant is **ORDERED** to **PAY** the victim, the amounts of ₱100,00.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages per *People v. Jugueta*,[30] with legal interest on all the said damages awarded at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227577. January 24, 2018]

ANGEL FUELLAS DIZON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; COURTS; SANDIGANBAYAN; HAS APPELLATE JURISDICTION OVER CASES INVOLVING GOVERNMENT EMPLOYEES WITH A SALARY GRADE LOWER THAN 27 AND THE DUTY TO TRANSMIT THE RECORDS OF THE CASE DEVOLVES UPON THE TRIAL COURT; CASE AT BAR.— It is undisputed that petitioner is

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[30] *Supra* note 28.

a low-ranking public officer having a salary grade below 27, whose appeal from the RTC's ruling convicting him of six (6) counts of Malversation of Public Funds Through Falsification of Public Documents falls within the appellate jurisdiction of the *Sandiganbayan*, pursuant to Section 4 (c) of RA 8249 (prior to its amendment by RA 10660) x x x. Thus, since petitioner's case properly falls within the appellate jurisdiction of the *Sandiganbayan*, his appeal was erroneously taken to the CA. This notwithstanding, the Court finds that the foregoing error is not primarily attributable to petitioner, since the duty to transmit the records to the proper court devolves upon the RTC. x x x [P]etitioner did not specify that his appeal be taken to the CA. This was precisely because it was not even his duty to designate to which court his appeal should be taken. Case law states that "[i]n the notice of appeal[,] it is not even required that the appellant indicate the court to which its appeal is being interposed. The requirement is merely directory and failure to comply with it or error in the court indicated is not fatal to the appeal," as it should be in this case. In the case of *Ulep v. People*, the Court held that it was the trial court which was duty bound to forward the records of the case to the proper forum.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J*.:

Before the Court is a petition for review on *certiorari*[1] assailing the Resolutions dated June 16, 2016 [2] and October 6, 2016[3] of

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[1] *Rollo*, pp. 11-35.

[2] *Id*. at 37-39. Penned by Associate Justice Socorro B. Inting with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla concurring.

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

the Court of Appeals (CA) in CA-G.R. CR No. 37292, which denied petitioner Angel Fuellas Dizon's (petitioner) Motion to Endorse the Case to the *Sandiganbayan* (Motion to Endorse).[4]

The Facts

This case stemmed from six (6) separate Informations[5] filed before the Regional Trial Court of Manila, Branch 42 (RTC), respectively docketed as Criminal (Crim.) Case Nos. 09-272518 to 23, charging petitioner of the crime of Malversation of Public Funds through Falsification of Public Documents. The accusatory portion of the Information in Crim. Case No. 09-272518 reads as follows:

That on or about July 4, 2006, in the City of Manila, Philippines, the said accused, being then an employee of the Manila Traffic and Parking Bureau, City of Manila, holding the position of Clerk II, hence, a government and/or public employee, entrusted in the collection of parking fees from various establishments with the corresponding obligation on the part of the accused to remit the collections made by him and submit the triplicate copy of the official receipt to the City Treasurer of Manila and therefore, responsible and accountable for the funds collected and received by him by reason of his duties as such, with intent to defraud the City Government of Manila, did then and there willfully, unlawfully and feloniously commit the crime of malversation of public funds through falsification of public document, in the following manner, to wit: the said accused prepared, forged and falsified and/or caused to be prepared, forged and falsified Official Receipt (OR) No. 3272946 C which is similar and/or an imitation of the Official Receipt No. 3272946 C issued by the City Treasurer of the City of Manila and therefore, a public document, by then and there printing and/or causing to be filled in the blank spaces thereon, consisting, among others, the date "7/4/06" and the amount of Php200.00, thereby making it appear as it did appear, the said O.R. No. 3272946 C in the said amount Php200.00 is genuine as he remitted the sum of Php200.00 to the City Treasurer of Manila and submitted the triplicate copy of said receipt in the said amount of Php200.00, when in truth and in fact, as the said accused fully

[4] Dated November 25, 2015. *Id*. at 58-64.

[5] Not attached to the *rollo*.

well knew, such is not the case in that said document is an outright forgery because the true and original amount appearing in the original O.R. No. 3272946 is Php12,000.00 and not Php200.00, thus, having the difference of Php11,800.00, and once in possession of the said amount of Php11,800.00, said accused, with intent to defraud and grave abuse of trust and confidence, did then and there willfully, unlawfully and feloniously misappropriate, embezzle and take away from the funds of the City Government of Manila the said amount of Php11,800.00 which he misappropriated, misapplied and converted to his own personal use and benefit, to the damage and prejudice of City Government of Manila, represented by Franklin Gacutan, Jr., in the aforesaid amount of Php11,800.00, Philippine Currency.

Contrary to law.[6]

The Informations in Crim. Case Nos. 09-272519 to 23 are similarly worded with the foregoing, except that they pertain to different official receipts (O.R.), all issued to Golden Fortune Seafood Restaurant,[7] namely: (*a*) in Crim. Case No. 09-272519, O.R. No. 0478598[8] issued on August 7, 2006; (*b*) in Crim. Case No. 09-272520, O.R. No. 0478666 [9] issued on October 10, 2006; (*c*) in Crim. Case No. 09-272521, O.R. No. 0478682[10] issued on October 17, 2006; (*d*) in Crim. Case No. 09-272522, O.R. No. 5069801 issued on November 7, 2006; and (*e*) in Crim. Case No. 09-272523, O.R. No 5442301 issued on February 5, 2007[11] (collectively, subject receipts).

The prosecution averred that petitioner, being then an employee of the Manila Traffic and Parking Bureau of the City of Manila with the position of Special Collecting Officer, was

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[6] *Id*. at 44-45.

[7] See *id*. at 50. "Golden Fortune Kalaw Restaurant" in some parts of the *rollo*.

[8] "O.R. No. 0478596" and "O.R. No. 0478598 G" in some parts of the *rollo*.

[9] "O.R. No. 0478666 G" in some parts of the *rollo*.

[10] "O.R. No. 0478682 G" in some parts of the *rollo*.

[11] *Id*. at 14 and 45-46.

entrusted to collect monthly parking fees from various establishments, and subsequently, forward such fees, together with the triplicate copies of the corresponding O.R.s, to the City Treasurer of Manila.[12] In the course of petitioner's employment, several discrepancies were discovered in the parking receipts which he allegedly signed and issued, whereby the amounts paid, collected, and remitted as parking fees do not match with each other.[13] Thus, the City Legal Office of Manila instructed City Personnel Officer, Redencion Pitajen Caimbon (Caimbon), to conduct a questioned document examination for handwriting comparison and analysis. In conducting the same, she was given the Personnel Data Sheet (PDS) of petitioner as basis for comparison, and thereafter, compared the handwriting on the PDS against the receipts submitted to her for examination.[14] After her analysis, Caimbon issued Questioned Document Report No. 0907-01[15] and thereupon, concluded that the questioned handwritings and the submitted standard handwriting of petitioner reveal a strong indication that they were written by one and the same person.[16] Caimbon, however, admitted that the questioned documents or receipts which were allegedly issued to the payors were not the duplicate or triplicate copies but mere photocopies of the receipts submitted to the City of Manila and to the Commission on Audit.[17]

In his defense, petitioner maintained that he was not the one who signed the O.R.s issued to Golden Fortune Seafood Restaurant.[18] He further explained the process of the City's collection of monthly parking fees; particularly, that upon the execution of the memorandum of agreement between their office

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[12] See *id*. at 51-52.

[13] See *id*. at 45.

[14] *Id*. at 47.

[15] Not attached to the *rollo*.

[16] *Id.*

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

[18] *Id*. at 49.

and the private entity pertaining to parking privileges and payment of fees, a billing statement will be delivered to the establishment, and thereafter, the latter's representative will pay at their office for which he will be issued a receipt.[19] Petitioner, however, admitted that there were instances when he collected the fees directly at the offices of the payors, and added that he was the only collecting officer with respect to the payors covered by the subject O.R.s.[20]

The RTC Ruling

In a Decision[21] dated December 23, 2014, the RTC found petitioner guilty of six (6) counts of Malversation of Public Funds Through Falsification of Public Documents, and thereby, sentenced him to suffer the penalty of six (6) years and ten (10) days of *prision correccional*, as minimum, to ten (10) years and ten (10) days of *prision mayor*, as maximum, for each count, including the penalty of perpetual special disqualification, and to pay a fine of ₱70,800.00.[22] It held that the prosecution was able to prove all the elements of the crime charged, given that: (*a*) petitioner, being Clerk II and then Special Collecting Officer, was a public officer; (*b*) the funds involved are public funds for which he was accountable as they were due to and paid to the City of Manila; (*c*) he has custody and control over the said funds by reason of his office, since he was officially designated to collect the monthly parking fees from various establishments; and (*d*) he has appropriated, taken, or misappropriated the said public funds when he failed to discharge his duty of remitting the same in full.[23] Moreover, it ruled that he falsified the subject receipts in order to commit the crime of Malversation.[24]

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[19] See *id.*

[20] See *id*. at 49-51.

[21] *Id*. at 44-53. Penned by Presiding Judge Dinnah C. Aguila-Topacio.

[22] *Id*. at 53.

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

[24] See *id*. at 52.

Aggrieved, petitioner filed a Notice of Appeal[25] before the RTC, which was acted upon in an Order[26] dated February 2, 2015. Accordingly, the RTC ordered the case to "be elevated to the Appellate Tribunal for appropriate action."

As it turned out; the records were transmitted by the RTC to the CA, which, in turn, sent petitioner a Notice to File Appellant's Brief dated June 22, 2015.[27] Petitioner then filed motions[28] to extend the period within which to file the appellant's brief on account of his counsel's alleged heavy workload: *first*, for an extended period of forty-five (45) days from August 28, 2015 until October 12, 2015, which was granted in a Resolution[29] dated September 7, 2015; *second*, for another extension of thirty (30) days from October 12, 2015 to November 11, 2015, which was granted in a Resolution[30] dated October 21, 2015; and *third*, for a final extended period of fourteen (14) days from November 11, 2015 to November 25, 2015, which was granted in a Resolution[31] dated November 23, 2015.[32]

However, petitioner subsequently noticed that his appeal was erroneously taken to the CA instead of the *Sandiganbayan*, which has appellate jurisdiction over his case pursuant to Section 4 (c) of Republic Act No. (RA) 8249.[33] Thus, to rectify the error, he filed the Motion to Endorse Case to the *Sandiganbayan*,[34] as well as the appellant's brief,[35] before the CA.

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[25] Dated January 6, 2015. *Id*. at 54-55.

[26] *Id*. at 56.

[27] *Id*. at 57.

[28] Not attached to the *rollo*.

[29] *Id*. at 179. Signed by Division Clerk of Court Atty. Dionisio C. Jimenez.

[30] *Id*. at 180.

[31] *Id*. at 181.

[32] *Id*. at 58.

[33] *Id*. at 59.

[34] *Id*. at 58-64.

[35] See Brief for the Accused-Appellant dated November 25, 2015; *id*. at 65-79.

The CA Ruling

In a Resolution[36] dated June 16, 2016, the CA denied petitioner's Motion to Endorse, and consequently, dismissed his appeal for having been erroneously filed.[37] It opined that petitioner should have promptly moved for the endorsement of the case within the original period of fifteen (15) days instead of requesting for numerous extensions and belatedly claiming that the appeal has been filed in the wrong court.[38]

Undaunted, petitioner moved for reconsideration,[39] which was, however, denied in a Resolution[40] dated October 6, 2016; hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in dismissing petitioner's Motion to Endorse.

The Court's Ruling

The petition is meritorious.

It is undisputed that petitioner is a low-ranking public officer having a salary grade below 27, whose appeal from the RTC's ruling convicting him of six (6) counts of Malversation of Public Funds Through Falsification of Public Documents falls within the appellate jurisdiction of the *Sandiganbayan*, pursuant to Section 4 (c) of RA 8249[41] (prior to its amendment by RA 10660[42]), which reads:

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[36] *Id*. at 37-39.

[37] *Id*. at 38.

[38] *Id*.

[39] See Motion for Reconsideration dated July 26, 2016; *id*. at 84-93.

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

[41] Entitled "AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on February 5, 1997.

[42] Otherwise known as "AN ACT STRENGTHENING FURTHER THE

Section 4. Section 4 of the same decree is hereby further amended to read as follows:

x x x x x x x x x

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"In cases where none of the accused are occupying positions corresponding to salary grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military or PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court and municipal circuit trial court as the case may be, pursuant to their respective jurisdiction as provided in *Batas Pambansa Blg*. 129, as amended.

"The *Sandiganbayan* shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders or regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

x x x x x x x x x

In *Quileste v. People*,[43] the Court remarked that:

It may be recalled that this case involves malversation of public funds, punishable under Article 217 of the Revised Penal Code, committed by a low-ranking public officer (with salary grade below SG 27). Thus the case was correctly filed with, and tried by, the RTC, the court that has exclusive original jurisdiction over the case. Upon Quileste's conviction by the RTC, his remedy should have been an appeal to the *Sandiganbayan*, pursuant to Presidential Decree No. (PD) No. 1606, as amended by Republic Act (R.A.) No. 7975 and R.A. No. 8249, specifically Section 4 thereof[.] x x x x[44]

FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE No. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR," approved on April l6, 2015.

[43] 599 Phil. 117 (2009).

[44] *Id*. at 121.

Thus, since petitioner's case properly falls within the appellate jurisdiction of the *Sandiganbayan*, his appeal was erroneously taken to the CA.

This notwithstanding, the Court finds that the foregoing error is not primarily attributable to petitioner, since the duty to transmit the records to the proper court devolves upon the RTC.

To recount, petitioner timely filed a Notice of Appeal before the RTC on January 6, 2015, which reads:

> Accused, with the assistance of the Public Attorney's Office, through the undersigned Public Attorney, respectfully serves notice that he is appealing the Decision rendered in Criminal Cases No. 09-272518-23 which was promulgated on December 23, 2014 for being contrary to law, established jurisprudence, and evidence adduced during trial.[45]

Notably, petitioner did not specify that his appeal be taken to the CA. This was precisely because it was not even his duty to designate to which court his appeal should be taken. Case law states that "[i]n the notice of appeal[,] it is not even required that the appellant indicate the court to which its appeal is being interposed. The requirement is merely directory and failure to comply with it or error in the court indicated is not fatal to the appeal,"[46] as it should be in this case.

In the case of *Ulep v. People*,[47] (*Ulep*) the Court held that it was the trial court which was duty bound to forward the records of the case to the proper forum. Thus, in *Ulep*, the Court granted the plea of the accused therein to remand the case to the RTC for transmission to the *Sandiganbayan*:

> x x x **[P]etitioner's failure to designate the proper forum for her appeal was inadvertent.** The omission did not appear to be a dilatory tactic on her part. Indeed, **petitioner had more to lose had that been the case as her appeal could be dismissed outright for lack of jurisdiction** — which was exactly what happened in the CA.

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[45] *Rollo*, p. 54.

[46] *Heirs of Pizarro, Sr. v. Consolacion*, 244 Phil. 187-194 (1988); citation omitted.

[47] 597 Phil. 580 (2009).

The trial court, on the other hand, was duty bound to forward the records of the case to the proper forum, the Sandiganbayan. It is unfortunate that the RTC judge concerned ordered the pertinent records to be forwarded to the wrong court, to the great prejudice of petitioner. Cases involving government employees with a salary grade lower than 27 are fairly common, albeit regrettably so. The judge was expected to know and should have known the law and the rules of procedure. He should have known when appeals are to be taken to the CA and when they should be forwarded to the Sandiganbayan. He should have conscientiously and carefully observed this responsibility specially in cases such as this where a person's liberty was at stake.

WHEREFORE, the motion is hereby GRANTED. The August 27, 2008 resolution of this Court and the September 25, 2007 and June 6, 2008 resolutions of the Court of Appeals in CA-G.R. CR No. 30227 are SET ASIDE. The Court of Appeals is hereby directed to remand the records of this case, together with all the oral and documentary evidence, to the Regional Trial Court for transmission to the Sandiganbayan.

x x x x x x x x x[48] (Emphases and underscoring supplied)

Indeed, the Court finds no reason why the same ruling should not be made in this case. As earlier mentioned, petitioner duly filed his appeal before the RTC, absent any indication that his case be appealed to either the CA or the *Sandiganbayan*. As noted in *Ulep*, since cases involving government employees with a salary grade lower than 27 are fairly common, the RTC was expected to know that petitioner's case should have been appealed to the *Sandiganbayan*. Unfortunately, the records were wrongly transmitted by the RTC to the CA. Petitioner, however, took the liberty to rectify this error by filing the Motion to Endorse, which the CA nonetheless denied pursuant to Section 2, Rule 50 of the Rules of Court.[49] The CA faulted petitioner for belatedly moving for the endorsement of the case, as the motion was not filed within the original fifteen (15)-day period

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[48] *Id*. at 584-585.

[49] See *Balaba v. People*, 610 Phil. 623, 627 (2009), citing *Melencion v. Sandiganbayan*, 577 Phil. 223, 231 (2008).

to appeal. However, it should be pointed out that the said motion was duly filed within the extended period to appeal, which period the CA itself granted. In fact, it remains apparent that the CA, by granting his motions for extension, had already given petitioner the impression that it had jurisdiction over his appeal. Hence, all things considered, the Court finds that petitioner's filing of the Motion to Endorse beyond the original fifteen (15)-day period—much more the erroneous transmittal of the case to the CA by the RTC—should not be taken against him, else it result in the injudicious dismissal of his appeal.

At any rate, the Court observes that petitioner had raised substantial arguments in his appeal, which altogether justify the relaxation of the rules.

In particular, petitioner proffers that the prosecution should have presented the billing statements issued by the City of Manila during trial, which, by its procedure, would prove the actual amount to be billed from the private entities, and from said amount, the difference from what was collected could be ascertained, *viz.*:

> Q: So what will happen after you gave a copy of the billing statement to any person in that vicinity?
>
> A: **They will pay us what is stated in the billing statement, ma'am**."[50] (Emphasis supplied)

Additionally, petitioner posits that the billing statements are delivered to the private entities and end up being received by their utility personnel. As such, it opens up the possibility that someone other than petitioner could have falsified the subject receipts to make it appear that the employer paid a bigger fee when in fact it did not.[51]

Finally, petitioner points out that the testimony of Caimbon, the handwriting expert witness, should have been considered with more caution, since it appears to be inconsistent with the

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[50] *Rollo*, p. 25. See also TSN dated August 2, 2012; *id*. at 167.

[51] See *id*. at 28-29.

Questioned Document Report No. 0907-01, which she herself issued. In the said Report, it was revealed that "no conclusive opinion can be rendered" on the questioned handwritings, given that the documents submitted by the prosecution were mere photocopies of the original. During trial, Caimbon testified that:

ATTY. GUIYAB:

Q: Madam Witness, in this page 3 of the Questioned Document Report No. 0907-01, the date completed as indicated here is October 2, 2007 on page 3 which I have asked you a while ago, on No. 1, this Questioned Document No. 1 and No.2 are mere photocopies, these are the ones pertaining to page 1 Official Receipt, City of Manila dated February 5, 2007 marked as Q-1, is that correct?

A: As I can recall, this Remarks (sic) was in reference to this conclusion, this one, Questioned Handwriting marked Q-1 to Q-6.

Q: **Your Honor, the answer of the witness when I asked her whether this remarks (sic) pertains to the documents indicated on page 1, the two receipts 5442301 dated February 5, 2007 and Receipt No. 5069801 dated November 3, 2006, those are the two receipts which I was asking on cross to the witness but now Your Honor, the witness is saying that her conclusion indicating that, for emphasis "No conclusive Opinion can be rendered to Question #1 and #2 due to the fact that the submitted Questioned Handwritings were mere photo copies.", pertains to the Conclusion "The Questioned Handwritings marked "Q-1" to "Q-6" inclusive and the submitted standard Handwritings of ANGEL FUELLAS DIZON marked "S1" to S20" inclusive reveal strong INDICATION that it was WRITTEN BY ONE AND THE SAME PERSON.", meaning Madam Witness that the receipts which was (sic) the subject case against Angel Fuellas from Q1 to Q6 as based on your findings were mere photocopies, am I correct?**

A: **Based on my report.**

Q: **So, these are mere photocopies, the questioned documents, meaning, the receipts which was (sic) allegedly issued to the payors not the duplicate copy and the triplicate copy which was submitted to the City of Manila and to the COA, is that correct?**

A: **<u>As appearing in my report.</u>**

x x x x x x[52] (Emphases and underscoring supplied)

In light of the foregoing, the Court therefore finds that a more thorough review and appreciation of the evidence for the prosecution and defense, as well as a proper application of the imposable penalties in the present case by the *Sandiganbayan*, would do well to assuage petitioner that his appeal is decided scrupulously.[53]

In fine, the Court holds that petitioner's Motion to Endorse should be granted. Consequently, the CA Resolutions dated June 16, 2016 and October 6, 2016 are set aside. The CA is hereby directed to remand the records of this case, together with all the oral and documentary evidence, to the RTC for transmission to the *Sandiganbayan*, with reasonable dispatch.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated June 16, 2016 and October 6, 2016 of the Court of Appeals (CA) in CA- G.R. CR No. 37292 are hereby **SET ASIDE**. The CA is hereby directed to **REMAND** the records of this case, together with all the oral and documentary evidence, to the Regional Trial Court of Manila, Branch 42 for transmission to the *Sandiganbayan*, with reasonable dispatch.

SO ORDERED.

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

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[52] *Id*. at 26-28. See also TSN dated October 25, 2011; *id*. at 150-151.

[53] *Cariaga vs. People*, 640 Phil. 272, 279 (2010).

THIRD DIVISION

[G.R. No. 228087. January 24, 2018]

H. VILLARICA PAWNSHOP, INC., HL VILLARICA PAWNSHOP, INC., HRV VILLARICA PAWNSHOP, INC. AND VILLARICA PAWNSHOP, INC., *petitioners, vs.* **SOCIAL SECURITY COMMISSION, SOCIAL SECURITY SYSTEM, AMADOR M. MONTEIRO, SANTIAGO DIONISIO R. AGDEPPA, MA. LUZ N. BARROS-MAGSINO, MILAGROS N. CASUGA and JOCELYN Q. GARCIA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 9903 (THE SOCIAL SECURITY CONDONATION LAW OF 2009); CONDONATION OF PENALTY; COVERS THOSE EMPLOYERS WHO HAVE EXISTING DELINQUENT CONTRIBUTIONS AND/OR HAVE ACCRUED PENALTIES AT THE TIME OF ITS EFFECTIVITY.—** Under R.A. No. 9903 and its IRR, an employer who is delinquent or has not remitted all contributions due and payable to the SSS may avail of the condonation program provided that the delinquent employer will remit the full amount of the unpaid contributions or would submit a proposal to pay the delinquent contributions in installment within the six (6)-month period set by law. Under Section 4 of R.A. No. 9903, once an employer pays all its delinquent contributions within the six month period, the accrued penalties due thereon shall be deemed waived. In the last *proviso* thereof, those employers who have settled their delinquent contributions before the effectivity of the law but still have existing accrued penalties shall also benefit from the condonation program. In that situation, there is still something to condone because there are existing accrued penalties at the time of the effectivity of the law. Section 1 (d) of the IRR defines accrued penalties as those that refer to the **unpaid** three percent (3%) penalty imposed upon any delayed remittance of contribution. **Accordingly, R.A. No. 9903 covers those employers who (1) have existing delinquent contributions and/or (2) have accrued penalties at the time**

of its effectivity. Evidently, there is nothing in R.A. No. 9903, particularly Section 4 thereof, that benefits an employer who has settled their delinquent contributions and/or their accrued penalties **prior** to the effectivity of the law. Once an employer pays all his delinquent contributions and accrued penalties before the effectivity of R.A. No. 9903, it cannot avail of the condonation program because there is no existing obligation anymore. It is the clear intent of the law to limit the benefit of the condonation program to the delinquent employers.

2. **POLITICAL LAW; STATUTES; STATUTORY CONSTRUCTION; PLAIN MEANING RULE; ENJOINS THAT IF THE STATUTE IS CLEAR, PLAIN AND FREE FROM AMBIGUITY, IT MUST BE GIVEN ITS LITERAL MEANING AND APPLIED WITHOUT INTERPRETATION.—** It is the duty of the Court to apply the law the way it is worded. Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language. The courts can only pronounce what the law is and what the rights of the parties thereunder are. Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it. Thus, it is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Parenthetically, the "plain meaning rule" or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule of interpretation is in deference to the plenary power of Congress to make, alter and repeal laws as this power is an embodiment of the People's sovereign will. Accordingly, when the words of a statute are clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers.

3. **ID.; ID.; PROSPECTIVE APPLICATION; LAWS SHOULD ONLY BE APPLIED PROSPECTIVELY UNLESS THE LEGISLATIVE INTENT TO GIVE THEM RETROACTIVE EFFECT IS EXPRESSLY DECLARED OR IS NECESSARILY IMPLIED FROM THE LANGUAGE USED.—** Statutes are generally applied prospectively unless

they expressly allow a retroactive application. It is a basic principle that laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used. Absent a clear contrary language in the text and, that in every case of doubt, the doubt will be resolved against the retroactive operation of laws. Here, R.A. No. 9903 does not provide that, prior to its effectivity, penalties already paid are deemed condoned or waived. What Section 2 of the law provides instead is an availment period of six (6) months after its effectivity within which to pay the delinquent contributions for the existing and corresponding penalties to be waived or condoned. This only means that Congress intends R.A. No. 9903 to apply prospectively only after its effectivity and until its expiration.

4. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 9903 (THE SOCIAL SECURITY CONDONATION LAW OF 2009); CONDONATION OF PENALTY; ALL MONETARY CLAIMS BASED ON CONDONATION SHOULD BE CONSTRUED STRICTLY AGAINST THE APPLICANTS.—** Even if there is doubt as to the import of the term "accrued penalties," condonation laws—especially those relating to social security funds—are construed strictly against the applicants. Social justice in the case of the laborers means compassionate justice or an implementation of the policy that those who have less in life should have more in law. And since it is the State's policy to "promote social justice and provide meaningful protection to [SSS] members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden," Court should adopt a rule of statutory interpretation which ensures the financial viability of the SSS. Here, the State stands to lose its resources in the form of receivables whenever it condones or forgoes the collection of its receivables or unpaid penalties. Since a loss of funds ultimately results in the Government being deprived of its means to pursue its objectives, all monetary claims based on condonation should be construed strictly against the applicants.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; QUASI-LEGISLATIVE POWER; AUTHORIZES ADMINISTRATIVE AGENCIES TO FILL IN THE GAPS OF A STATUTE FOR ITS PROPER AND EFFECTIVE**

IMPLEMENTATION.— The SSS (through the SSC) is empowered to issue the necessary rules and regulations for the effective implementation of R.A. No. 9903. Quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers from the separation of the branches of the government. Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the laws, the rigidity of the theory of separation of governmental powers has, to a large extent, been relaxed by permitting the delegation of greater powers by the legislative and vesting a larger amount of discretion in administrative and executive officials, not only in the execution of the laws, but also in the promulgation of certain rules and regulations calculated to promote public interest. Stated differently, administrative agencies are necessarily authorized to fill in the gaps of a statute for its proper and effective implementation. Hence, the need to delegate to administrative bodies—the principal agencies tasked to execute laws in their specialized fields—the authority to promulgate rules and regulations to implement a given statute and effectuate its policies.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; DOES NOT REQUIRE A UNIVERSAL APPLICATION OF LAWS TO ALL PERSONS OR THINGS WITHOUT DISTINCTION, FOR IT SIMPLY REQUIRES EQUALITY AMONG EQUALS AS DETERMINED ACCORDING TO A VALID CLASSIFICATION.—** There is a substantial distinction between employers who paid prior and subsequent to R.A. No. 9903's effectivity. The equal protection clause guarantees that no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances. However, the concept of equal protection does not require a universal application of the laws to all persons or things without distinction; what it simply requires is equality among equals as determined according to a valid classification. In other words, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and

responsibilities imposed. **It does not forbid discrimination as to things that are different**. Neither is it necessary that the classification be made with mathematical nicety. Congress is given a wide leeway in providing for a valid classification; especially when social or economic legislation is at issue. Hence, legislative classification may properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
SSS Legal Department for respondents.

D E C I S I O N

GESMUNDO, *J*.:

Condonation statutes—being an act of liberality on the part of the State—are strictly construed against the applicants unless the laws themselves clearly state a contrary rule of interpretation.

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioners H. Villarica Pawnshop, Inc., HL Villarica Pawnshop, Inc., HRV Villarica Pawnshop, Inc. and Villarica Pawnshop, Inc., *(petitioners)* seeking to reverse and set aside the Decision[1] dated February 26, 2016 and Resolution[2] dated November 2, 2016, of the Court of Appeals *(CA)* in CA-G.R. SP No. 140916, which affirmed the Resolution[3] dated November 6, 2013, and Order[4] dated January 21, 2015,

[1] Penned by Associate Justice Jhosep Y. Lopez with Associate Justice Ramon R. Garcia and Associate Justice Leoncia R. Dimagiba, concurring; *rollo*, pp. 49-60.

[2] *Id*. at 62-63.

[3] *Id*. at 251-254.

[4] *Id*. at 275-278.

of the Social Security Commission *(SSC)* denying petitioners' claim for refund.

The Antecedents

Petitioners are private corporations engaged in the pawnshop business and are compulsorily registered with the Social Security System *(SSS)* under Republic Act *(R.A.)* No. 8282,[5] otherwise known as the *Social Security Law of 1997*.[6]

In 2009, petitioners paid their delinquent contributions and accrued penalties with the different branches of the SSS in the following manner:

PETITIONER	DELINQUENCY PERIOD	AMOUNT PAID (Contribution and Penalty)	DATE PAID
H. Villarica Pawnshop, Inc.	Jan. 2006 – Oct. 2006	₱1,461,640.24	Apr. 23, 2009
	Jul. 2007 – Dec. 2007		
	Apr. 2007 – Jun. 2007	₱710,199.08	May 1, 2009
	Mar. 2008 – Dec. 2008		
H.L. Villarica Pawnshop, Inc.	Sept. 2005 – Dec. 2006	₱2,544,525.28	Jun. 20, 2009
HRV Villarica Pawnshop, Inc.	Jan. 2009 – May 2009	₱132,176.32	May 18, 2009
Villarica Pawnshop, Inc.	Mar. 2000 – Jun. 2000	₱68,922.03	Feb. 20, 2009
	Jan. 2000 – Jun. 2000	₱21,353.70	Feb. 26, 2009
	Jan. 2005 – Aug. 2005	₱699,850.34	Mar. 2, 2009
	Jan. 1997 – Jan. 2009	₱2,491,998.08	Apr. 7, 2009[7]

On January 7, 2010, Congress enacted R.A. No. 9903, otherwise known as the *Social Security Condonation Law of 2009*, which took effect on February 1, 2010. The said law offered delinquent employers the opportunity to settle, without penalty, their accountabilities or overdue contributions within six (6) months from the date of its effectivity.[8]

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[5] An Act Further Strengthening The Social Security System Thereby Amending For This Purpose, Republic Act No. 1161, As Amended, Otherwise Known As The Social Security Law (May 1, 1997).

[6] Social Security Law, as amended (June 18, 1954).

[7] *Rollo*, p. 325.

[8] Section 4 of R.A. No. 9903.

Consequently, petitioners thru its President and General Manager Atty. Henry P. Villarica, sent separate Letters,[9] all dated July 26, 2010, to the different branches of the SSS seeking reimbursement of the accrued penalties, which they have paid in 2009, thus:

	Amount Claimed
1. Diliman Branch	₱860,452.62[10]
2. Manila Branch	₱1,005,805.28[11]
3. Caloocan Branch	₱5,376.32[12]
4. San Francisco Del Monte Branch	₱3,119,400.15[13]

Invoking Section 4 of R.A. No. 9903 and Section 2 (f) of the SSC Circular No. 2010-004 or the Implementing Rules and Regulations of R.A. No. 9903 *(IRR)*, petitioners claimed that the benefits of the condonation program extend to all employers who have settled their arrears or unpaid contributions even prior to the effectivity of the law.[14]

In a Letter[15] dated August 16, 2010, the SSS – San Francisco Del Monte Branch denied petitioner Villarica Pawnshop, Inc.'s request for refund amounting to ₱3,119,400.15 stating that there was no provision under R.A. No. 9903 allowing reimbursement of penalties paid before its effectivity.[16]

In another Letter[17] dated September 16, 2010, petitioner HRV Villarica Pawnshop, Inc. was likewise informed that its

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[9] *Rollo*, pp. 86-89.

[10] *Id*. at 86.

[11] *Id*. at 87.

[12] *Id*. at 88.

[13] *Id*. at 89.

[14] *Supra* see note 10.

[15] *Rollo*, p. 94.

[16] *Id.*

[17] *Id*. at 93.

application for the refund of the accrued penalty had been denied because R.A. No. 9903 does not cover accountabilities settled prior to its effectivity.[18]

In like manner, the applications for refund filed by petitioners H. Villarica Pawnshop, Inc. and HL Villarica Pawnshop, Inc. were both denied in separate letters dated October 4, 2010[19] and October 15, 2010,[20] respectively, for the same reason of being filed outside the coverage of R.A. No. 9903.[21]

As a result, petitioners filed their respective Petitions[22] before the SSC seeking reimbursement of the 3% per month penalties they paid in 2009 essentially claiming that they were entitled to avail of the benefits under R.A. No. 9903 by reason of equity because "one of the purposes of the law is to favor employers, regardless of the reason for the non-payment of the arrears in contribution;" and that the interpretation of the SSS "is manifestly contrary to the principle that, in enacting a statute, the legislature intended right and justice to prevail."

In its Answer[23] dated March 14, 2012, the SSS prayed for the dismissal of the petitions for utter lack of merit. It maintained that petitioners were not entitled to avail of the condonation program under R.A. No. 9903 because they were not considered delinquent at the time the law took effect in 2010; and that there was nothing more to condone on the part of petitioners

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[18] *Id*.

[19] *Id*. at 90-91.

[20] *Id*. at 92.

[21] *Supra* see note 19.

[22] Docketed as: SSC Case No. 11-19521-11 (*H. Villarica Pawnshop, Inc. v. Social Security System, Amador M. Monteiro and Santiago Dionisio R. Agdeppa*), SSC Case No. 11-19522-11 (*HL Villarica Pawnshop, Inc. v. Social Security System and Ma. Luz N. Barros-Magsino*), SSC Case No. 11-19523-11 (*HRV Villarica Pawnshop, Inc. v. Social Security System and Milagros N. Casuga*) and SSC Case No. 11-19524-11 (*Villarica Pawnshop, Inc. v. Social Security System and Jocelyn Q. Garcia*); *rollo*, pp. 95-162.

[23] *Id.* at 163-169.

for they have settled their obligations even before the enactment of the law. The SSS explained that the term "accrued penalties" had been properly defined as unpaid penalties under the IRR and, considering that laws granting condonation constitute acts of benevolence on the part of the State, they should be strictly construed against the applicant.[24]

The SSC Ruling

In its Resolution[25] dated November 6, 2013, the SSC denied all the petitions for lack of merit. It ruled that petitioners were not entitled to the benefits of the condonation program under R.A. No. 9903 in view of the full payment of their unpaid obligations prior to the effectivity of the law on February 1, 2010. As petitioners did not have unpaid contributions at the time the law took effect, the SSC held that there could be no remission or refund in their favor. The dispositive portion of the said resolution states:

> WHEREFORE, all four (4) petitions filed by petitioners against the SSS are hereby DENIED for lack of merit.
>
> SO ORDERED.[26]

Petitioners filed a motion for reconsideration but it was denied by the SSC in an Order[27] dated January 21, 2015

Undeterred, petitioners appealed before the CA.

The CA Ruling

In its decision dated February 26, 2016, the CA affirmed the ruling of the SSC. It held that the intent of the legislature in enacting R.A. No. 9903 was the remission of the three percent (3%) per month penalty imposed upon delinquent contributions of employers as a necessary consequence of the late payment or non-remittance of SSS contributions. The CA found that

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[24] *Id*. at 167.

[25] *Id.* at 251-254.

[26] *Id*. at 254.

[27] *Id*. at 275-278.

the IRR of R.A. No. 9903 used the word "unpaid" to emphasize the accrued penalty that may be waived therein, thus, it presupposes that there was still an outstanding obligation at the time of the effectivity of the law, which may be extinguished through remission. It highlighted that lawmakers did not include within the sphere of R.A. No. 9903 those employers whose penalties have already been paid prior to its effectivity. The CA added that it would be absurd for obligations that have already been extinguished to be subjected to condonation.

Citing *Mendoza v. People*[28] *(Mendoza),* the CA further ruled that there was no violation of the equal protection clause because there was a substantial distinction between those delinquent employers who paid within the six (6) month period from the effectivity of the law and those who paid outside of the said availment period. It underscored that only the former class was expressly covered by R.A. No. 9903. The CA concluded that petitioners' stand, that those who paid prior to the effectivity of R.A. No. 9903 can avail of the condonation and refund, would open the floodgates to numerous claims for reimbursement before the SSS, which could lead to a depletion of its resources to the detriment of the public's best interest. The *fallo* of the CA ruling reads:

WHEREFORE, foregoing considered, the instant petition is hereby DISMISSED. The Resolution dated November 6, 2013 and the Order dated January 21, 2015 of the Social Security Commission in SSC Case Nos. 11-19521-11, 11-19522-11, 11-19523-11 and 11-19524-11 are AFFIRMED.

SO ORDERED.[29]

Petitioners moved for reconsideration but it was denied by the CA in its resolution dated November 2, 2016. [30]

Hence, this petition anchored on the following grounds:

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[28] 675 Phil. 759, 767 (2011).

[29] *Rollo*, p. 59.

[30] *Id.* at 62-63.

A. WITH ALL DUE RESPECT, THE COURT OF APPEALS ERRED IN RULING THAT RA NO. 9903 DOES NOT INCLUDE PETITIONERS IN ITS COVERAGE, CONSIDERING THAT:

1. SECTION 4 OF RA NO. 9903 EXPRESSLY INCLUDES EMPLOYERS, SUCH AS PETITIONERS, WHO SETTLED (THEIR) ARREARS IN CONTRIBUTIONS BEFORE THE EFFECTIVITY OF THE LAW AND THUS, ARE ENTITLED TO A WAIVER OF THEIR ACCRUED PENALTIES.

2. PRIOR TO RA NO. 9903, EMPLOYERS ARE REQUIRED TO SETTLE THEIR ARREARS IN CONTRIBUTIONS SIMULTANEOUSLY WITH PAYMENT OF THE PENALTY, THUS RENDERING IT IMPOSSIBLE FOR PETITIONERS TO PAY THEIR ARREARS WITHOUT PAYING THE PENALTY

B. WITH ALL DUE RESPECT, THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT SSC CORRECTLY INTERPRETED THE TERM 'ACCRUED' UNDER THE SSS CONDONATION LAW OF 2009 TO MEAN UNPAID. IF THIS INTERPRETATION WERE TO BE UPHELD, THOSE WHO HAVE UNPAID ACCRUED PENALTIES WOULD BE IN A BETTER POSITION THAN THOSE WHO DECIDED TO SETTLE BOTH THE ARREARS IN CONTRIBUTION AND THE ACCRUED PENALTIES. CERTAINLY, THE LAW NEVER INTENDED INJUSTICE.[31]

Petitioners argue that the last *proviso* of Section 4 of R. A. No. 9903 "clearly extends the benefit of the waiver" to employers who have settled their arrears before the effectivity of the law, hence, to allow the refund of the corresponding penalties paid;[32] that the "equity provision" in Section 4 of R.A. No. 9903 should be interpreted to include a refund of penalties already paid if

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[31] *Id*. at 21-22.

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

such law is to be given any effect;[33] and that a refund should be allowed because there is no substantial distinction between employers who paid their accrued penalties before and after the effectivity of the R.A. No. 9903.[34]

In its Comment,[35] the SSC counters that since petitioners have already paid their unremitted contributions and accrued penalties before the effectivity of R.A. No. 9903, there is nothing left to be condoned or waived; that, at the time of their payment, there was no remission of accrued penalty yet; that R.A. No. 9903 does not contain a provision allowing the reimbursement of accrued penalty which was paid prior to its effectivity; that the CA correctly interpreted the term "accrued penalty" to mean "unpaid" by using the definition provided in Section 1 (d) of the IRR; and that the ruling in *Mendoza* had already recognized that Congress refused to allow a sweeping, non-discriminatory condonation to all delinquent employers when it provided a fixed period for the availment of the condonation program under R.A. No. 9903.[36]

In its Comment,[37] the SSS avers that the payments made by petitioners before the effectivity of R.A. No. 9903 are valid payments which cannot be the subject of reimbursement; that petitioners are no longer considered delinquent employers when R.A. No. 9903 took effect; that petitioners erroneously interpreted the "equity provision" to include a right to a refund of penalties paid; and that laws granting condonation constitute an act of

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[33] *Id*. at 26-33, 350-353.

[34] *Id*. at 25.

[35] *Id*. at 322-335; see Section 5 (b) of Republic Act No. 1161, as amended by Republic Act No. 8282, which states that the [Social Security] Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented by an attorney employed by the Commission, or when requested by the Commission, by the Solicitor General or any public prosecutors.

[36] *Id*. at 307-319.

[37] *Supra* see note 35.

benevolence and should be strictly construed against the applicant.[38]

The Court's Ruling

The petition is bereft of merit.

Sections 2 and 4 of the R.A. No. 9903 specifically provide:

Section 2. *Condonation of Penalty*. — Any employer who is delinquent or has not remitted all contributions due and payable to the Social Security System (SSS), including those with pending cases either before the Social Security Commission, courts or Office of the Prosecutor involving collection of contributions and/or penalties, **may within six (6) months from the effectivity of this Act:**

(a) **remit said contributions**; or

(b) **submit a proposal to pay the same in installments**, subject to the implementing rules and regulations which the Social Security Commission may prescribe: Provided, That the delinquent employer submits the corresponding collection lists together with the remittance or proposal to pay installments: *Provided*, *further*, That upon approval and payment in full or in installments of contributions due and payable to the SSS, all such pending cases filed against the employer shall be withdrawn without prejudice to the refiling of the case in the event the employer fails to remit in full the required delinquent contributions or defaults in the payment of any installment under the approved proposal.

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Section 4. *Effectivity of Condonation*. — The penalty provided under Section 22 (a) of Republic Act No. 8282 shall be condoned by virtue of this Act when and until all the delinquent contributions are remitted by the employer to the SSS: *Provided*, That, in case the employer fails to remit in full the required delinquent contributions, or defaults in the payment of any installment under the approved proposal, within the availment period provided in this Act, the penalties are deemed reimposed from the time the contributions first become

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[38] *Rollo*, pp. 322-333.

due, to accrue until the delinquent account is paid in full: ***Provided*****,** ***further*****, That for reason of equity, employers who settled *arrears* in contributions before the effectivity of this Act shall likewise have their *accrued* penalties waived**. [emphases supplied]

On the other hand, Sections 1 and 2 of the IRR of R.A. No. 9903 state:

Section 1. Definition of Terms. — Unless the context of a certain provision of this Circular clearly indicates otherwise, the term:

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(d) "Accrued penalty" refers to the unpaid three percent (3%) penalty imposed upon any delayed remittance of contribution in accordance with Section 22 (a) of R.A. No. 1161, as amended.

Section 2. Who may avail of the Program. — Any employer who is delinquent or has not remitted all contributions due and payable to the SSS may avail of the Program, including the following:

(a) Those not yet registered with the SSS;

(b) Those with pending or approved proposal under the Installment Payment Scheme of the SSS (Circular No. 9-P) pursuant to SSC Resolution No. 380 dated 10 June 2002;

(c) Those with pending or approved application under the Program for Acceptance of Properties Offered Through Dacion En Pago of the SSS (Circular No. 6-P) pursuant to SSC Resolution No. 29 dated 16 January 2002;

(d) Those with cases pending before the SSC, Courts or Office of the Prosecutor involving collection of contributions and/or penalties;

(e) Those against whom judgment had been rendered involving collection of contributions and/or penalties but have not complied with the judgment, and;

(f) **Those who, before the effectivity of the Act, have settled all contributions but with accrued penalty**. [emphasis supplied]

Under R.A. No. 9903 and its IRR, an employer who is delinquent or has not remitted all contributions due and payable to the SSS may avail of the condonation program provided that

the delinquent employer will remit the full amount of the unpaid contributions or would submit a proposal to pay the delinquent contributions in installment within the six (6)-month period set by law.

Under Section 4 of R.A. No. 9903, once an employer pays all its delinquent contributions within the six month period, the accrued penalties due thereon shall be deemed waived. In the last *proviso* thereof, those employers who have settled their delinquent contributions before the effectivity of the law but still have existing accrued penalties shall also benefit from the condonation program. In that situation, there is still something to condone because there are existing accrued penalties at the time of the effectivity of the law. Section 1 (d) of the IRR defines accrued penalties as those that refer to the **unpaid** three percent (3%) penalty imposed upon any delayed remittance of contribution.

Accordingly, R.A. No. 9903 covers those employers who (1) have existing delinquent contributions and/or (2) have accrued penalties at the time of its effectivity.

Evidently, there is nothing in R.A. No. 9903, particularly Section 4 thereof, that benefits an employer who has settled their delinquent contributions and/or their accrued penalties **prior** to the effectivity of the law. Once an employer pays all his delinquent contributions and accrued penalties before the effectivity of R.A. No. 9903, it cannot avail of the condonation program because there is no existing obligation anymore. It is the clear intent of the law to limit the benefit of the condonation program to the delinquent employers.[39]

Also, the provisions of R.A. No. 9903 and its IRR state that employers may be accorded the benefit of having their accrued penalties waived provided that they *either* remit their delinquent contributions *or* submit a proposal to pay their delinquencies in installments (on the condition that there will be no default in subsequent payments) *within* the "availment period" spanning six (6) months from R.A. No. 9903's effectivity.

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[39] *Mendoza v. People*, 675 Phil. 759, 765-766 (2011).

The Court finds that employers who have paid their unremitted contributions and already settled their delinquent contributions as well as their corresponding penalties **before** R.A. No. 9903's effectivity do not have a right to be refunded of the penalties already paid, which shall be discussed in *seriatim*.

Verba legis interpretation of R.A. No. 9903

It is the duty of the Court to apply the law the way it is worded.[40] Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language.[41] The courts can only pronounce what the law is and what the rights of the parties thereunder are.[42] Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it.[43] Thus, it is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.[44]

Parenthetically, the "plain meaning rule" or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.[45] This rule of interpretation is in deference to the plenary power of Congress to make, alter and repeal laws as this power is an embodiment of the People's sovereign will.[46] Accordingly, when the words of a statute are

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[40] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 400 (2011).

[41] *Security Bank and Trust Company v. Regional Trial Court, etc., et al.*, 331 Phil. 787, 793 (1996).

[42] *Abueva, et al. v. Wood, et al.*, 45 Phil. 612, 633 (1924).

[43] *Resins, Incorporated v. Auditor General, et al.*, 134 Phil. 697, 700 (1968).

[44] *Abello, et al. v. Commissioner of Internal Revenue, et al.*, 492 Phil. 303, 313 (2005).

[45] *Republic, etc. v. Lacap, etc.*, 546 Phil. 87, 99 (2007).

[46] *Cf Ople v. Torres, et al.*, 354 Phil. 948, 966 (1998).

clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers.

Concomitantly, condonation or remission of debt is an act of liberality, by virtue of which, without receiving any equivalent, the creditor renounces the enforcement of the obligation, which is extinguished in its entirety or in that part or aspect of the same to which the remission refers.[47] It is essentially gratuitous for no equivalent is received for the benefit given.[48] Relatedly, waiver is defined as a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it.[49] On the other hand, refund is an act of giving back or returning what was received.[50] In cases of monetary obligations, a claim for refund exists only after the payment has been made and, in the act of doing so, the debtor either delivered excess funds or there exists no obligation to pay in the first place. This right arises either by virtue of *solutio indebiti* as provided for in Articles 2154 to 2163 of the Civil Code or by provision of another positive law, such as tax laws or amnesty laws.[51]

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[47] *Dizon, etc. v. Court of Tax Appeals, et al.*, 576 Phil. 110, 133 (2008).

[48] Tolentino, *Commentaries and Jurisprudence on Civil Code of the Philipines*, Vol. IV, 1991 ed., p. 353.

[49] *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, 684 Phil. 330, 351 (2012).

[50] See: *United States v. Wurts*, 303 U.S. 414 (1938).

[51] See: *Victorias Milling Co., Inc. v. Central Bank of the Philippines*, 121 Phil. 451, 455 (1965).

A plain reading of Section 4 of R.A. No. 9903 shows that it does not give employers who have already settled their delinquent contributions as well as their corresponding penalties the right to a refund of the penalties paid. What was waived here was the amount of accrued penalties that have *not* been paid *prior* to the law's effectivity—it does not include those that have already been settled.

The words "condoned", "waived" and "accrued" are unambiguous enough to be understood and directly applied without any resulting confusion. As discussed earlier, the word "condonation" is the creditor's act of extinguishing an obligation by renunciation and the word "waive" is an abandonment or relinquishment of an existing legal right. On the other hand, the term "accrue" in legal parlance means "to come into existence as an enforceable claim."[52] Thus, the phrases "shall be condoned" and "shall likewise have their accrued penalties waived" under Section 4 of the R.A. No. 9903 can only mean that, at the time of its effectivity, only existing penalties may be extinguished or relinquished. No further interpretation is necessary to clarify the law's applicability.

Prospective application of R.A. No. 9903

Statutes are generally applied prospectively unless they expressly allow a retroactive application. It is a basic principle that laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used.[53] Absent a clear contrary language in the text and, that in every case of doubt, the doubt will be resolved against the retroactive operation of laws.[54]

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[52] See: *Molloy, et al. v. Meier, etc., et al.*, 679 N.W.2d 711 (2004).

[53] *Erectors, Inc. v. National Labor Relations Commission, et al.*, 326 Phil. 640, 646 (1996).

[54] *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*, 623 Phil. 23, 43 (2009).

Here, R.A. No. 9903 does not provide that, prior to its effectivity, penalties already paid are deemed condoned or waived. What Section 2 of the law provides instead is an availment period of six (6) months after its effectivity within which to pay the delinquent contributions for the existing and corresponding penalties to be waived or condoned. This only means that Congress intends R.A. No. 9903 to apply prospectively only after its effectivity and until its expiration.

Interpretation in favor of social justice

Even if there is doubt as to the import of the term "accrued penalties," condonation laws—especially those relating to social security funds—are construed strictly against the applicants.

Social justice in the case of the laborers means compassionate justice or an implementation of the policy that those who have less in life should have more in law.[55] And since it is the State's policy to "promote social justice and provide meaningful protection to [SSS] members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden,"[56] Court should adopt a rule of statutory interpretation which ensures the financial viability of the SSS.

Here, the State stands to lose its resources in the form of receivables whenever it condones or forgoes the collection of its receivables or unpaid penalties. Since a loss of funds ultimately results in the Government being deprived of its means to pursue its objectives, all monetary claims based on condonation should be construed strictly against the applicants. In the case of SSS funds, the Court in *Social Security System v. Commission on Audit*[57] had emphatically explained in this wise:

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[55] *Agabon, et al. v. National Labor Relations Commission, et al.*, 485 Phil. 248, 306 (2004).

[56] Section 2 of R.A. No. 1161, as amended by R.A. No. 8282.

[57] 433 Phil. 946, 952 (2002).

THE FUNDS contributed to the Social Security System (SSS) are not only imbued with public interest, they are part and parcel of the fruits of the workers' labors pooled into one enormous trust fund under the administration of the System designed to insure against the vicissitudes and hazards of their working lives. In a very real sense, the trust funds are the workers' property which they could turn to when necessity beckons and are thus more personal to them than the taxes they pay. It is therefore only fair and proper that **charges against the trust fund be strictly scrutinized for every lawful and judicious opportunity to keep it intact and viable in the interest of enhancing the welfare of their true and ultimate beneficiaries.** [emphasis supplied]

To this end, the Court upholds and abides by this canon of interpretation against applicants of the benefits of R.A. No. 9903 as a recognition to the constitutional policies of freeing the people from poverty through policies that provide adequate social services[58] and affording *full* protection to labor.[59] It is consistent with the congressional intent of placing a primary importance in helping the SSS increase its funds through stimulating cash inflows by encouraging delinquent employers to settle their accountabilities.[60] Thus, R.A. No. 9903 shall be understood as not to include a refund of penalties paid before its effectivity.

It is the essence of judicial duty to construe statutes so as to avoid such a deplorable result of injustice.[61] Simply put, courts are not to give words meanings that would lead to absurd or unreasonable consequences.[62] This is to preserve the intention

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[58] Section 9, Article II of the Constitution.

[59] Section 3, Article XIII of the Constitution.

[60] See Hearing of the Senate Committee on Government Corporations and Public Enterprises Joint With Senate Committee on Labor, Employment and Human Resources Development (Technical Working Group), May 21, 2009, p. 9; see also: Hearing of the House of Representatives Committee on Government Enterprises and Privatization, August 27, 2008, pp. 16-17.

[61] *Bello, et al. v. Court of Appeals, et al.*, 155 Phil. 480, 491 (1974).

[62] *Secretary of Justice, et al. v. Koruga*, 604 Phil. 405, 416 (2009).

of Congress—the branch which possesses the plenary power for all purposes of civil government.[63]

Logically, only existing obligations can be extinguished either by payment, loss of the thing due, remission or condonation, confusion or merger or rights, compensation, novation, annulment of contract, rescission, fulfillment of a resolutory condition, or prescription. Interpreting R.A. No. 9903 in such a way that it extinguishes an obligation which is already extinguished is simply absurd and unreasonable.

Rule-making power of the SSS

The SSS (through the SSC)[64] is empowered to issue the necessary rules and regulations for the effective implementation of R.A. No. 9903.[65] Quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers from the separation of the branches of the government.[66]

Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the laws, the rigidity of the theory of separation of governmental powers has, to a large extent, been relaxed by permitting the delegation of greater powers by the legislative and vesting a larger amount of discretion in administrative and executive officials, not only in the execution of the laws, but also in the promulgation of certain rules and regulations calculated to promote public interest.[67] Stated differently, administrative agencies are necessarily authorized to fill in the gaps of a statute for its proper and effective

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[63] *Kida, etc., et al. v. Senate, etc., et al.*, 675 Phil. 316, 361 (2011).

[64] Sections 3 and 30 of R.A. No. 1161, as amended by R.A. No. 8282.

[65] Section 5 of R.A. No. 9903.

[66] *Cawad, et al. v. Abad, etc., et al.*, 764 Phil. 705, 723 (2015).

[67] *Conference of Maritime Manning Agencies, Inc., et al. v. Philippine Overseas Employment Administration, et al.*, 313 Phil. 592, 606-607 (1995).

implementation. Hence, the need to delegate to administrative bodies—the principal agencies tasked to execute laws in their specialized fields—the authority to promulgate rules and regulations to implement a given statute and effectuate its policies.[68]

In the instant case, Section 30 of the R.A. No. 8282 and Section 5 of R.A. No. 9903 gave the SSS the power to promulgate rules and regulations to define the terms of social security-related laws that may have a likelihood of being subjected to several interpretations. This is exactly what the SSS did when it defined the term "accrued penalties" to mean "unpaid penalties" so as to make it unequivocal and prevent confusion as to the applicability of R.A. No. 9903. More importantly, since the ascription of the meaning of "unpaid penalties" to "accrued penalties" bear a reasonable semblance and justifiable connection, it should not be disturbed and altered by the courts.

Delinquent contributions and penalties may be paid separately

There is no existing statutory or regulatory provision which requires the simultaneous or joint payment of corresponding penalties along with the payment of delinquent contributions. Consequently, it is possible that a class of employers who have settled their delinquent contributions but have not paid the corresponding penalties before the effectivity of R.A. No. 9903, may exist. As adequately pointed out by the SSC:[69]

It is worthy to note **that there is no provision in RA 8282, as amended, nor in any SSS Circular or Office Order that requires employers to settle their arrears in contributions simultaneously with payment of the penalty**. On the contrary, in its sincere effort to be a partner in nation[-]building, along with the State's declared

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[68] *Gerochi, et al. v. Department of Energy, et al.,* 554 Phil. 563, 584 (2007).

[69] *Rollo*, p. 314, citing: SS Circular No. 2011-002 (Issued on February 16, 2011).

policy to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the Philippines, the SSS is empowered to accept, process and approve applications for installment proposal evincing that employers are not required to settle their arrears in contributions simultaneously with the payment of the penalty. [emphasis supplied]

The Court finds that the aforementioned assertion of the SSC is not without any legal basis as Section 4 (c) of the R.A. No. 8282 provides:

Section 4. *Powers and Duties of the Commission and SSS.* –

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(6) To compromise or release, **in whole or in part**, any interest, penalty or any civil liability to SSS in connection with the investments authorized under Section 26 hereof, under such terms and conditions as it may prescribe and approved by the President of the Philippines; and xxx (emphasis supplied)

Based on the foregoing, the SSS—through the SSC—is authorized to address any act that may undermine the collection of penalties due from delinquent employers subject only to the condition in Section 26 of the same law that the potential revenues being compromised "are not needed to meet the current administrative and operational expenses." Thus, petitioners' claim that "a class of employers who simply paid the arrears in contribution but did not settle their penalties due does not exist"[70] is erroneous.

There is no violation of the equal protection clause

There is a substantial distinction between employers who paid prior and subsequent to R.A. No. 9903's effectivity. The equal protection clause guarantees that no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place

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[70] *Id*. at 25.

and in like circumstances.[71] However, the concept of equal protection does not require a universal application of the laws to all persons or things without distinction; what it simply requires is equality among equals as determined according to a valid classification.[72]

In other words, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[73] **It does not forbid discrimination as to things that are different**.[74] Neither is it necessary that the classification be made with mathematical nicety.[75] Congress is given a wide leeway in providing for a valid classification;[76] especially when social or economic legislation is at issue.[77] Hence, legislative classification may properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.[78]

Correspondingly, the primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such

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[71] *Commissioner of Customs, et al. v. Hypermix Feeds Corporation*, 680 Phil. 681, 693 (2012).

[72] *Bartolome v. Social Security System, et al.*, 746 Phil. 717, 730 (2014).

[73] *The Philippine Judges Association, etc., et al. v. Prado, etc., et al.*, 298 Phil. 502, 512-513 (1993).

[74] *Victoriano v. Elizalde Rope Workers' Union, et al.,* 158 Phil. 60, 87 (1974).

[75] *ABAKADA Guro Party List (formerly AASJS) Officers/Members, etc. v. Purisima, etc., et al.*, 584 Phil. 246, 270 (2008).

[76] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 487 Phil. 531, 597 (2004).

[77] *City of Cleburne, Texas, et al. v. Cleburne Living Center, Inc., et al.*, 473 U.S. 432 (1985).

[78] *Anucension, et al. v. National Labor Union, et al.*, 170 Phil. 373, 392 (1977).

application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.[79] In enacting a law, it is the sole prerogative of Congress—not the Judiciary—to determine what subjects or activities it intends to govern limited only by the provisions set forth in the Constitution.

Significantly, petitioners have already paid not only their delinquent contributions but also their corresponding penalties before the enactment and effectivity of R.A. No. 9903. Because of this observation, **petitioners cannot anymore be considered as "delinquent" under the purview of R.A. No. 9903** and are not within the class of "delinquent employers."[80] Simply put, they are **not similarly situated** with other employers who are delinquent at the time of the law's effectivity. Accordingly, Congress may treat petitioners differently from all other employers who may have been delinquent.

Verily, this Court cannot—in the guise of interpretation—modify the explicit language of R.A. No. 9903 in waiving the collection of accrued penalties to also include claims for refund. It obviously violates the *Trias Politica* Principle entrenched in the very fabric of democracy itself. While violation of the equal protection clause may be a compelling ground for this Court to nullify an arbitrary or unreasonable legislative classification, **it may not be used as a basis to extend the scope of a law to classes not intended to be covered**.[81] Therefore, R.A. No. 9903, which waived outstanding penalties, cannot be expanded to allow a refund of those which were already settled before the law's effectivity.

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[79] *Corpuz v. People*, 734 Phil. 353, 416 (2014).

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

[81] *Cf. Lopez, etc., et al. v. Court of Appeals, et al.*, 438 Phil. 351, 362 (2002) where it was stated that courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided or intended by the lawmakers.

Final note

Settling the contributions in arrears within the availment period only entitles delinquent employers to a remission of their corresponding accrued and outstanding penalties—not a refund of the penalties which have already been paid. There is nothing in R.A. No. 9903 which explicitly imposes or even implicitly recognizes a positive or natural obligation on the part of the SSS to return the penalties which have already been settled before its effectivity.

It is absurd to revive obligations that have already been extinguished by payment or performance just to be re-extinguished by condonation or remission so that it may create a resulting obligation on the basis of *solutio indebiti*. More importantly, there is no violation of the equal protection clause because there is a substantial distinction in the classes of employers. Therefore, the Court deems it fitting to deny petitioners' claim for refund for lack of substantial and legal basis.

WHEREFORE, the petition is **DENIED.** The February 26, 2016 Decision and November 2, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 140916 are **AFFIRMED *in toto***.

SO ORDERED.

Bersamin (Acting Chairperson), *Leonen,* and *Jardeleza,*[*] *JJ.,* concur.

Martires, J., on official leave.

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[*] Designated additionl member per raffle dated January 15, 2018.

SECOND DIVISION

[G.R. No. 229404. January 24, 2018]

MARILYN B. ASENTISTA, *petitioner, vs.* **JUPP & COMPANY, INC., AND/OR MR. JOSEPH V. ASCUTIA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; WAGES; SALES COMMISSION MAY BE INCLUDED AS PART OF AN EMPLOYEE'S REMUNERATION.—**[T]he respondents can no longer refute Asentista's entitlement to a discretionary commission since an admission can already be deduced in their position paper. Moreover, the silence of the employment agreement including sales commission as part of remuneration does not affect her entitlement. As provided by Section 97(f) of the Labor Code, employee's wage has been defined as "remuneration of earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee."
2. **ID.; ID.; ID.; IN CASES INVOLVING NON-PAYMENT OF MONETARY CLAIMS OF EMPLOYEES, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE EMPLOYEES RECEIVED THEIR WAGES AND BENEFITS AND THE SAME WERE PAID IN ACCORDANCE WITH LAW.—** It is a settled labor doctrine that in cases involving non-payment of monetary claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law. x x x The rule finds merit in view of the fact that the accessibility over the

employment records, pertinent personnel files, payrolls, remittances, and other similar documents which will show that overtime, differentials, service incentive leave, and other claims have been paid to the employee is exclusively within the custody and absolute control of the employer. Otherwise, the feasibility of proving non-payment of monetary claims or benefits will hardly result to fruition.

3. **CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; UNJUST ENRICHMENT; COMMITTED BY THE EMPLOYER WHEN IT ALLOWED THE USE OF THE COMPANY VEHICLE BY THE EMPLOYEE TO FURTHER THE PERFORMANCE OF HER FUNCTION AS A SALES AGENT THEN UNILATERALLY, WITHOUT CONSENT, DEDUCT CAR PARTICIPATION AND AMORTIZATION PAYMENT TO THE EMPLOYEE'S SALES COMMISSION; CASE AT BAR.—** The Court agrees with the factual findings of NLRC that the respondents and Asentista did not agree on any car participation plan. Since the inception of the complaint, Asentista has been adamant that she did not authorize the respondents to deduct a car plan participation payment from her sales commission. x x x Under the principle of unjust enrichment, no person may unjustly enrich oneself at the expense of another. As embodied in Article 22 of the New Civil Code, *every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.* In this case, the respondents committed unjust enrichment against Asentista when it allowed her to use the company vehicle to further the performance of her function as a sales agent then unilaterally, without any consent, deduct car participation and amortization payment to Asentista's sales commission, to the latter's prejudice.

APPEARANCES OF COUNSEL

Virgilio J. Cabanlet for petitioner.
Jeronimo B. Cumigad for respondents.

D E C I S I O N

REYES, JR., *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 filed by Marilyn B. Asentista (Asentista) seeking to set aside the Decision[2] dated August 31, 2016 and Resolution[3] dated November 17, 2016 of the Court of Appeals (CA), in CA-G.R. SP No. 06747-MIN, which set aside and nullified the Resolutions[4] dated November 28, 2014 and February 27, 2015 of the National Labor Relations Commission (NLRC), ordering respondents JUPP & Company, Inc. (JUPP) and/or its President Joseph V. Ascutia (Ascutia) to pay Asentista her remaining unpaid sales commissions in the amount of ₱210,077.95 plus ten percent (10%) total monetary award as attorney's fees.

Asentista was employed by JUPP as sales secretary on April 16, 2007. On March 14, 2008, she became a regular employee of the company as a sales assistant and was later appointed in July 2010 as a sales agent of JUPP for its Northern Mindanao area. As a sales agent, Asentista became entitled to a sales commission of two percent for every attained monthly quota. However, despite reaching her monthly quota, JUPP failed to give Asentista her earned sales commission despite repeated requests.[5]

Meanwhile in 2011, JUPP, through its Administrative and Finance Officer Malou Ramiro, issued a new Toyota Avanza vehicle to Asentista in view of her sales performance in the Cagayan De Oro area. The ownership of the car, however, remains with the company. Notwithstanding lack of agreement, JUPP deducted car plan participation payment amounting to

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[1] *Rollo,* pp. 11-27.

[2] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring; *id.* at 129-135.

[3] *Id.* at 144-145.

[4] *See* CA Decision dated August 31, 2016, *id.* at 129.

[5] *Id.* at 32.

₱113,000.00 and one year rental payment of ₱68,721.36 from her unpaid sales commission.[6]

On February 4, 2013, Asentista tendered her resignation effective February 28, 2013 and returned the Avanza vehicle to JUPP through Emmanuel P. Pabon.[7] Thereafter, she filed a claim for unpaid commission and refund for car plan deduction based on the computation[8] sent by Ascutia, summarized as follows:

2010————————————	₱ 5,361.61
2011————————————	₱ 178,105.06
2012————————————	₱ 143,295.53
Total Amount:	₱ 334,117.20

Less: ₱85,305.31 (Cash Advances - Asentista's total debts to JUPP)
————————————————

Total Amount: ₱248,811.89
Less: ₱38,733.94 (deposited commission to Asentista's account)
————————————————

Total Sales Commission due: ₱210,077.99

As a result of the respondents' incessant refusal to pay, Asentista filed a complaint against JUPP and Ascutia before the NLRC Regional Arbitration Branch No. 10, Cagayan de Oro City for non-payment for sales commission.[9]

For their part, the respondents opposed the allegations of Asentista, arguing the burden of proof to substantiate her claim for unpaid commission and car participation refund rested upon her. Since the employment agreement signed by Asentista did not include any remuneration for a sales commission and car participation plan, her claim lacked any legal basis for entitlement. Further, Asentista was only allowed to use the Toyota Avanza with car participation during the amortization period

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

[7] *Id*. at 33.

[8] *Id*. at 37-40.

[9] *See* Complaint, *id*. at 28.

for both her personal and official use due to the generosity of JUPP.[10]

On the other hand, JUPP admitted that despite lack of explicit provision in the employment agreement, Asentista was given during her employment discretionary sales commission subject to the sole prerogative of the company. JUPP likewise acknowledged sole discretion to allow Asentista to own the vehicle after the amortization period.[11]

In a Decision[12] dated November 28, 2013, Labor Arbiter (LA) Rammex C. Tiglao dismissed the complaint of Asentista for lack of merit. In so ruling, the LA emphasized the non-entitlement of Asentista to claim for sales commission or refund for amortization payment for the use of the company's car as shown by the employment agreement between JUPP and the complainant. Furthermore, the LA opined on the improbability of omission of the entitlement of unpaid commission in the resignation letter of the complainant, given her six years of employment and educational attainment. Finally, the affidavit and supporting documents of Asentista were disregarded for being self-serving, unreliable and unsubstantial evidence. Thus, it was ruled:

> **WHEREFORE** the instant complaint is **DISMISSED** for lack of merit.
>
> The respondents' counter-claims for exemplary damages and attorney's fees are dismissed for want of jurisdiction and/or lack of merit.[13]

On appeal, the NLRC in a Resolution[14] dated November 28, 2014 reversed the decision of the LA and gave more credence on Asentista's claim for unpaid commission based

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[10] *Id*. at 47-50.

[11] *Id*.

[12] *Id*. at 70-74.

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

[14] *Id*. at 81-88.

on Ascutia's electronic messages. Further, in the absence of express stipulation, the respondents lacked authority to forfeit Asentista's sales commission and apply the same as rentals for the personal use of the vehicle.[15] Accordingly, it was held that:

> WHEREFORE, the appeal is GRANTED.
>
> Respondents are hereby ORDERED to pay Complainant her remaining unpaid sales commissions in the amount of ₱210, 077.95 plus ten percent of the total monetary award as attorney's fees.
>
> SO ORDERED.[16]

The motion for reconsideration filed by the respondents was denied for lack of merit in a Resolution[17] dated February 27, 2015.

Aggrieved, the respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA alleging grave abuse of discretion on the part of NLRC for reversing the ruling of the LA and ordering them to pay the complainant the unpaid sales commissions with additional 10% of the total monetary award as attorney's fees.[18]

In a Decision[19] dated August 31, 2016, the CA ruled favorably on the petition and reinstated the decision of the LA. CA agreed with the respondents that Asentista is not entitled to the grant of sales commission based on the "Job Offer for Regular Status of Employment." Further, the CA rejected the email allegedly sent by Ascutia for being "self-serving, unreliable and unsubstantial evidence."

> "Nowhere could it be read in the contract that private respondent [Asentista] is entitled to the claimed unpaid commission. The Court cannot give credence to the email allegedly sent by petitioner Ascutia

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[15] *Id*. at 86.

[16] *Id*. at 87.

[17] *See* CA Decision dated August 31, 2016, *id*. at 129.

[18] *Id*. at 132.

[19] *Id*. at 129-134.

to private respondent detailing the computation of her claimed unpaid commission. x x x."

Granting the petition, it was held that:

WHEREFORE, the petition is **GRANTED.** The Resolutions dated November 28, 2014 and February 27, 2015 of the National Labor Relations Commission, Eight Division, Cagayan De Oro City is hereby **SET ASIDE and NULLIFIED**, having been issued in grave abuse of discretion. The Decision of the Labor Arbiter dated November 28, 2013 is hereby **REINSTATED.**

SO ORDERED.[20]

Hence, this petition.

Ruling of the Court

Before this Court, Asentista argues entitlement to sales commission and refund for car plan participation and amortization payment. She avers that the respondents can no longer refute her allegations since they have already admitted her entitlement to a discretionary commission and deduction in the amount of ₱113,000.00 and ₱68,721.36 as payment for her car plan participation and amortization payment.

In their Comment, the respondents reiterate their opposition since the employment agreement did not include sales commission as part of her salary and benefits. The respondents likewise refute the evidentiary value of the alleged email messages of Ascutia for being unsubstantiated and unfounded.

The petition is granted.

The Court reverses the CA's ruling that the respondents have sufficiently established Asentista's non-entitlement in view of the absence of any specific provision in her employment agreement including sales commission as part of her remuneration.

At the outset, the respondents can no longer refute Asentista's entitlement to a discretionary commission since an admission

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[20] *Id*. at 134.

can already be deduced in their position paper.[21] Moreover, the silence of the employment agreement including sales commission as part of remuneration does not affect her entitlement. As provided by Section 97(f) of the Labor Code, employee's wage has been defined as "remuneration of earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee."[22]

In *Toyota Pasig, Inc. v. De Peralta*[23] citing *Iran v. NLRC*,[24] the Court affirmed the inclusion of sales commission as part of a salesman's remuneration for services rendered to the company. In explaining the wisdom behind the inclusion, it was held that:

> This definition explicitly includes commissions as part of wages. While commissions are, indeed, incentives or forms of encouragement to inspire employees to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered. In fact, commissions have been defined as the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. The nature of the work of a salesman and the reason for such type of remuneration for services rendered demonstrate clearly that commissions are part of a salesman's wage or salary.[25]

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[21] *See* Position Paper, *id.* at 47.

[22] As cited in *Toyota Pasig, Inc. v. De Peralta,* G.R. No. 213488, November 7, 2016, and *Iran v. NLRC*, 352 Phil. 261 (1998). (Underscoring Ours)

[23] G.R. No. 213488, November 7, 2016.

[24] 352 Phil. 261 (1998).

[25] *Toyota Pasig, Inc. v. De Peralta*, *supra* note 23; and *Iran v. NLRC, id*.

In the same way, the Court cannot subscribe to the assertion of the respondents that the burden of proof to prove monetary claims rests on the employee.

It is a settled labor doctrine that in cases involving non-payment of monetary claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law.[26] As elucidated in *De Guzman v. NLRC, et al.*:[27]

> It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.[28]

The rule finds merit in view of the fact that the accessibility over the employment records, pertinent personnel files, payrolls, remittances, and other similar documents which will show that overtime, differentials, service incentive leave, and other claims have been paid to the employee is exclusively within the custody and absolute control of the employer.[29] Otherwise, the feasibility of proving non-payment of monetary claims or benefits will hardly result to fruition.

In this case, the Court agrees with Asentista that she has already set out the particularities of her unpaid monetary claims

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[26] *Grandteq Industrial Steel Products, Inc. and Abelardo M. Gonzales v. Edna Margallo,* 611 Phil. 612, 629 (2009).

[27] 564 Phil. 600 (2007). See also *Toyota Pasig, Inc. v. De Peralta*, *supra* note 23 and *Grandteq Industrial Steel Products, Inc. and Abelardo M. Gonzales v. Edna Margallo, id.*

[28] *De Guzman v. NLRC, et al.*, *id.* at 614-615.

[29] *Heirs of Manuel H. Ridad, et al. v. Gregorio Araneta Foundation,* 703 Phil. 531, 538 (2013). *See* also *Toyota Pasig, Inc. v. De Peralta*, *supra* note 23.

against the respondents based on the electronic messages of Ascutia. The respondents should have presented evidentiary proof based on the employment records and personnel files that Asentista was already paid of her benefits, instead of attributing the burden of proof back to her.

As held in *Toyota Pasig*,[30] the employer's act of simply dismissing the employee's claim "for being purely self-serving and unfounded without even presenting any tinge or proof showing that respondent (employee) was already paid of such benefits or that she was entitled thereto" was rebutted by the Court.[31] Failure on the part of the employer to discharge the burden tilts the balance in favor of the employee.

Similarly, the Court concurs with Asentista that in the absence of any express stipulation, the respondents cannot deduct car participation and amortization payment from her unpaid sales commission.

The case of *Locsin v. Mekeni*[32] is instructive:

> In the absence of specific terms and conditions governing a car plan agreement between the employer and employee, the former may not retain the installment payments made by the latter on the car plan and treat them as rents for the use of the service vehicle, in the event that the employee ceases his employment and is unable to complete the installment payments on the vehicle. The underlying reason is that the service vehicle was precisely used in the former's business; any personal benefit obtained by the employee from its use is merely incidental.[33]

The Court agrees with the factual findings of NLRC that the respondents and Asentista did not agree on any car participation plan. Since the inception of the complaint, Asentista has been adamant that she did not authorize the respondents to deduct a car plan participation payment from her sales commission.[34]

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[30] *Supra* note 23.

[31] *Id*.

[32] *Locsin v. Mekeni Food Corp.,* 722 Phil. 886 (2013).

[33] *Id*. at 890.

[34] NLRC Resolution, *rollo*, p. 85.

In contrast, the Court disagrees with the justification advanced by the respondents as guided by the principle of equity, since "it would be more equitable if Asentista shares such amount with the company as rentals for the utilization of the company vehicle."[35] Even granting that Asentista was allowed to use the company car even for personal and family use, the sole discretion to transfer ownership of the subject vehicle upon completion of the amortization period remains with the respondents.[36]

Any benefit or privilege enjoyed by Asentista from using the service vehicle was merely incidental and insignificant, because for the most part the vehicle was under the respondents' control and supervision. Given the high monthly quota requirement imposed upon Asentista to generate sales for the company, the service vehicle given to her was an absolute necessity. In truth, the respondents were the ones reaping the full benefits of the vehicle assigned to Asentista in the performance of her function.[37]

Under the principle of unjust enrichment, no person may unjustly enrich oneself at the expense of another.[38] As embodied in Article 22 of the New Civil Code, *every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.*[39]

In this case, the respondents committed unjust enrichment against Asentista when it allowed her to use the company vehicle to further the performance of her function as a sales agent then unilaterally, without any consent, deduct car participation and

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[35] *Id*. at 50.

[36] *Id*. at 47.

[37] *Locsin v. Mekeni Food Corporation, supra* note 32, at 900.

[38] *Grandteq Industrial Steel Products, Inc. and Abelardo M. Gonzales v. Edna Margallo*, *supra* note 26.

[39] *Id*. at 627.

amortization payment to Asentista's sales commission, to the latter's prejudice.

Applying the guiding principles explicated in *Locsin*:[40]

In the absence of specific terms and conditions governing the car plan arrangement between the petitioner and Mekeni, a quasi-contractual relation was created between them. Consequently, Mekeni may not enrich itself by charging petitioner for the use of its vehicle which is otherwise absolutely necessary to the full and effective promotion of its business. It may not, under the claim that petitioner's payments constitute rents for the use of the company vehicle, refuse to refund what petitioner had paid, for the reasons that the car plan did not carry such a condition; the subject vehicle is an old car that is substantially, if not fully, depreciated; the car plan arrangement benefited Mekeni for the most part; and any personal benefit obtained by petitioner from using the vehicle was merely incidental.[41]

Finally, following the legal precepts[42] laid down in *Nacar v. Gallery Frames, et al.*[43] and *Rivero v. Spouses Chua*,[44] the total

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[40] *Supra* note 32.

[41] *Id*. at 890.

[42] I. When an obligation, regardless of its source, *i.e.,* law, contracts, quasi contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the actual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extra judicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly,

amount adjudged in this Decision in favour of Asentista shall further earn legal interest at the rate of six percent (6%) *per annum* computed from its finality until full payment thereof, the interim period being deemed to be a forbearance of credit.

WHEREFORE, after judicious review of the records, the Court resolves to **GRANT** the instant petition and **REVERSE AND SET ASIDE** the Decision dated August 31, 2016 and Resolution dated November 17, 2016 of the Court of Appeals in CA-G.R. SP No. 06747-MIN. The Resolution dated November 28, 2014 of the National Labor Relations Commission is hereby **REINSTATED.** Respondents JUPP & Company, Inc. and/or Joseph V. Ascutia are hereby **ORDERED** to pay Marilyn B. Asentista the amount of ₱210,077.95 plus ten percent (10%) of the total monetary award as attorney's fees and legal interest at the rate of six percent (6%) *per annum* computed from its finality until full payment thereof.

SO ORDERED.

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

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where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executor, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

[43] 716 Phil. 267 (2013).

[44] 750 Phil. 663 (2015).

THIRD DIVISION

[G.R. Nos. 230429-30. January 24, 2018]

LARA'S GIFT AND DECORS, INC., *petitioner, vs.* **PNB GENERAL INSURERS CO., INC. and UCPB GENERAL INSURANCE CO., INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; LIMITED TO RESOLVING ONLY ERRORS OF JURISDICTION, OR ONE WHERE THE ACTS COMPLAINED OF WERE ISSUED WITHOUT OR IN EXCESS OF JURISDICTION.—** In an action for certiorari, the primordial task of the court is to ascertain whether the court *a quo* acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment, such that the act was done in a capricious, whimsical, arbitrary or despotic manner. Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. The jurisdiction of the court in such cases is narrow in scope since it is limited to resolving only errors of jurisdiction, or one where the acts complained of were issued without or in excess of jurisdiction. There is excess of jurisdiction where the court or quasi-judicial body, being clothed with the power to determine the case, oversteps its authority as declared by law. Hence, as long as the court 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.
2. **ID.; JUDICIAL AFFIDAVIT RULE; DESIGNED TO EXPEDITE COURT PROCEEDINGS, FOR IN LIEU OF DIRECT TESTIMONY IN COURT, THE PARTIES ARE**

REQUIRED TO SUBMIT THE JUDICIAL AFFIDAVITS OF THEIR WITNESSES WITHIN A GIVEN PERIOD.— The JA Rule, which took effect on January 1, 2013, was promulgated to address congestion and delays in courts. Designed to expedite court proceedings, it primarily affects the manner by which evidence is presented in court, particularly with regard to the taking of the witnesses' testimonies. Consequently, in lieu of direct testimony in court, the parties are required to submit the judicial affidavits of their witnesses within a given period. Nevertheless, the JA Rule was not devised to supplant or amend existing procedural rules; rather, it is designed to supplement and augment them. In this regard, reference must be made to the Guidelines on Pre-Trial in relation to the Rules on Pre-Trial x x x.

3. **ID.; JUDICIAL AFFIDAVIT RULE AND GUIDELINES ON PRE-TRIAL; DO NOT PROHIBIT THE INTRODUCTION OF ADDITIONAL EVIDENCE DURING TRIAL OTHER THAN THOSE THAT HAD BEEN PREVIOUSLY IDENTIFIED DURING THE PRE-TRIAL, PROVIDED THERE ARE VALID GROUNDS.—** Certainly, the parties are mandated under Sec. 2 of the JA Rule to file and serve the judicial affidavits of their witnesses, together with their documentary or object evidence, not later than five days before pre-trial or preliminary conference x x x. The documentary and testimonial evidence submitted will then be specified by the trial judge in the Pre-Trial Order. Concomitant thereto, Sec. 10 of the same Rule contains a caveat that the failure to timely submit the affidavits and documentary evidence shall be deemed to be a waiver of their submission x x x. It bears to note that Sec. 10 does not contain a blanket prohibition on the submission of additional evidence. However, the submission of evidence beyond the mandated period in the JA Rule is strictly subject to the conditions that: a) the court may allow the late submission of evidence only once; b) the party presenting the evidence proffers a valid reason for the delay; and c) the opposing party will not be prejudiced thereby. Corollary thereto, the Guidelines on Pre-Trial instructs the parties to submit their respective pre-trial briefs at least three (3) days before the pre-trial, containing x x x the documents or exhibits to be presented and to state the purposes thereof x x x. Notwithstanding the foregoing procedural prescription, the same rule confers upon the trial court the

discretion to allow the introduction of additional evidence during trial other than those that had been previously marked and identified during the pre-trial, provided there are valid grounds.

4. **ID.; JUDICIAL AFFIDAVIT RULE; SUPPLEMENTAL JUDICIAL AFFIDAVIT; CAN BE PROPERLY ADMITTED IN EVIDENCE DESPITE ITS BELATED FILING WHEN THERE IS A RESERVATION OF THE RIGHT TO PRESENT ADDITIONAL EVIDENCE; CASE AT BAR.—** With regard to the admission of the 2nd Supplemental Judicial Affidavit, We reiterate the requirements laid down in Sec. 2 of the JA Rule that the parties must file with the court and serve on the adverse party the Judicial Affidavits of their witnesses not later than five days before pre-trial or preliminary conference. While the belated submission of evidence is not totally disallowed, it is still, to reiterate, subject to several conditions, which petitioner failed to comply with. x x x Nevertheless, the Court is constrained to rule that the 2nd Supplemental Judicial Affidavit was properly admitted in evidence by the trial court. As can be gleaned from Page 64 of the Pre-Trial Order, both parties reserved the right to present additional evidence x x x. Clearly, the foregoing reservation is tantamount to a waiver of the application of Secs. 2 and 10 of the JA Rule. That respondents waived their right to object to petitioner's introduction of additional evidence is further reinforced by their counsel's manifestation during the hearing on November 21, 2013 x x x.

APPEARANCES OF COUNSEL

Jeffrey-John L. Zarate and *Seth M. Infante* for petitioner.

Solis Medina Limpingco & Fajardo Law Offices for respondent UCPB Gen. Insurance Co., Inc.

De Guzman San Diego Mejia & Hernandez for respondent PNB Gen. Insurers Co., Inc.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before this Court is a petition for review under Rule 45 of the Rules of Court, seeking to reverse and set aside the March 6, 2017 Amended Decision[1] of the Court of Appeals (CA), Special Former Fifth Division, in CA-G.R. SP Nos. 138321 and 138774. The Amended Decision granted respondents' motions for the reconsideration of the December 21, 2015 Decision[2] of the CA's Former Fifth Division annulling and setting aside the Omnibus Orders dated October 1, 2014 and November 26, 2014 of the Regional Trial Court (RTC) of Makati City, Branch 147, in Civil Case No. 11-238.

Factual Antecedents

Petitioner Lara's Gifts and Decors, Inc. (LGDI) is engaged in the business of manufacturing, selling, and exporting various handicraft items and decorative products. It leased buildings/ warehouses, particularly Buildings R1, R2, R3, R4, Y2, Y3, Y4, and Y4 Annex, from J.Y. & Sons Realty Co., Inc., located at JY & Sons Compound, Philippine Veterans Center, Taguig City, for its business operations. The warehouses leased also served as production and storage areas of its goods and stocks.

The handicraft products, raw materials, and machineries and equipment of petitioner were insured against fire and other allied risks with respondent PNB General Insurers Co., Inc. (PNB Gen) in the total amount of ₱582,000,000 covering the period of February 19, 2007 (4:00 p.m.) to February 18, 2008 (4:00

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[1] Penned by Associate Justice Myra V. Garcia-Fernandez, with the concurrence of Associate Justices Japar B. Dimaampao and Mario V. Lopez; *rollo*, pp. 54-77.

[2] Penned by Associate Justice Noel G. Tijam (now a member of this Court), with the concurrence of Associate Justices Mario V. Lopez and Myra V. Garcia-Fernandez; *id.* at 78-98.

p.m.). The insurance policy, which is in the nature of an "open policy," was covered by Fire Insurance Policy No. FI-NIL-HO-0018666, wherein PNB Gen assumed 55% of the total amount insured. Meanwhile, respondent UCPB General Insurance Co., Inc. (UCPB), as co-insurer, assumed the remaining 45% through Fire Insurance Policy No. HOF07D-FLS072788. The policy was subsequently increased to ₱717,000,000, pursuant to Policy Endorsement No. FI-NIL-HO20070005944A.

On February 19, 2008, approximately four hours before the policy was about to expire, a fire broke out and razed Buildings Y2, Y3, and Y4 of the JY & Sons Compound. Petitioner immediately claimed from the respondents for the loss and damage of its insured properties.

To evaluate and ascertain the amount of loss, respondents engaged the services of Cunningham Lindsey Philippines, Inc. (CLPI), an independent adjuster. CLPI required petitioner to submit supporting documents material for the proper determination of the actual amount of loss; the latter, however, failed to comply with the request. Thereafter, respondents appointed a new adjuster, Esteban Adjusters and Valuer's Inc. (ESTEBAN) to undertake the valuation of the loss. ESTEBAN similarly found petitioner's documents insufficient to properly evaluate and assess the amount of the loss claimed.

Taking into consideration the findings of the independent adjusters and the report of its forensic specialists, respondents denied petitioner's claim for coverage of liability under the insurance policy due, *inter alia*, to the following reasons: 1) violation of Policy Conditions Nos. 13 and 19; 2) misdeclaration/ subsequent exclusion of laser machines from claim for machineries and equipment; and 3) absence of independent and competent evidence to substantiate loss (additional alternative ground for claim on stocks and machineries/equipment).[3]

Resultantly, petitioner filed a Complaint for Specific Performance and Damages against respondents before the

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[3] *Id.* at 57.

Makati City RTC, docketed as Civil Case No. 11-238. The case was raffled to Branch 62 of the trial court.

In its Notice of Pre-Trial Conference,[4] the RTC directed the parties to submit their respective pre-trial briefs, accompanied by the documents or exhibits intended to be presented, at least three days before the scheduled Pre-Trial Conference. It also contained a stern warning that "*no evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the Court for good cause shown.*"

During the Pre-Trial Conference, both parties made admissions and proposed stipulations of facts and issues to simplify the course of the trial. On account of the voluminous documentary exhibits to be presented, identified, and marked, the parties allotted six meetings/conferences just for the pre-marking of exhibits.

After the termination of the Pre-Trial Conference, the RTC issued a Pre-Trial Order dated September 12, 2013, in which the parties were given the opportunity to amend or correct any errors found therein within five days from receipt thereof. *In the same Order, all the parties made a reservation for the presentation of additional documentary exhibits in the course of the trial.*

The parties filed their respective Motions to Amend/Correct Pre-Trial Order.[5] None of the parties, however, sought to amend the Pre-Trial Order for the purpose of submitting additional judicial affidavits of witnesses or the admission of additional documentary exhibits not presented and pre-marked during the Pre-Trial Conference.

Trial on the merits ensued on November 7, 2013. Among the witnesses presented by petitioner are Gina Servita (Servita)

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[4] *Id*. at 115.

[5] *Id*. at 2590-2609.

and Luis Raymond Villafuerte (Mr. Villafuerte). Servita testified on cross-examination that she was able to reconstitute, collect, and/or collate and keep in her possession copies of several commercial documents consisting of purported Purchase Orders (POs), Sales Invoices (SIs), and Delivery Receipts (DRs) (collectively, the Questioned Documents), months after the fire broke out.[6] Mr. Villafuerte, meanwhile, testified on his involvement and participation in the management and operations of petitioner corporation. He further admitted, however, that he had divested his full interest in the management and operations of the company to devote his time as Governor of Camarines Sur from 2004 to 2013. As such, his participation in the business was reduced to a mere advisor of his wife, Mrs. Lara Maria Villafuerte (Mrs. Villafuerte), petitioner corporation's president, who is likewise slated to testify.[7]

During the continuation of Mr. Villafuerte's cross-examination on July 10, 2014, petitioner furnished respondents with a copy of the 2nd Supplemental Judicial Affidavit[8] of Mrs. Villafuerte dated July 9, 2014 (the 1st Supplemental Judicial Affidavit of Mrs. Villafuerte was filed during the Pre-Trial for the re-marking of exhibits). PNB Gen, through a Motion to Expunge,[9] sought to strike from the records the said 2nd Supplemental Judicial Affidavit of Mrs. Villauferte and all documents attached thereto for alleged violation of Administrative Matter No. 12-8-8-SC, otherwise known as the "Judicial Affidavit Rule" (JA Rule) and A.M. No. 03-1-09-SC,[10] or the Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (Guidelines on Pre-Trial). UCPB filed its Manifestation and Motion,[11]

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[6] *Id*. at 59, 3227.

[7] *Id*. During cross-examination.

[8] *Id*. at 187-205.

[9] *Id*. at 267-273.

[10] Promulgated on August 16, 2004.

[11] *Rollo*, pp. 274-277.

adopting *in toto* PNB Gen's Motion. The twin Motions were set to be heard on September 19, 2014.

On September 18, 2014, or a day prior to the hearing of the Motion to Expunge, the re-direct examination of Mr. Villafuerte continued. During the trial, petitioner's counsel produced the Questioned Documents in open court and asked Mr. Villafuerte to identify those documents, seeking to introduce and mark them as exhibits. Respondents immediately objected in open court to the introduction and presentation of the Questioned Documents on the grounds that they were neither touched upon nor covered by the witness' cross-examination, and that the same were being introduced for the first time at this late stage of proceeding, without giving the parties opportunity to verify their relevance and authenticity. They argued that since these documents were not presented, identified, marked, and even compared with the originals during the Pre-Trial Conference, they should be excluded pursuant to the Guidelines on Pre-Trial and JA Rule. The documents are further alleged to be the same documents subject of the respondents' twin Motions to Expunge, i.e., the same Questioned Documents which were never presented, marked, or compared during the various Pre-Trial Conferences of the case, or were never presented to the insurers and adjusters early on.

Ruling of the RTC

On September 18, 2014, the RTC issued an Order[12] overruling the objections of respondents and allowing petitioner to propound questions relating to the Questioned Documents, without prejudice to the hearing on the motions to expunge the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte, to wit:

ACCORDINGLY, the objection interposed by the defendants is overruled, the court allows the plaintiff to ask questions on the documentary evidence being shown to the witness and the witness is allowed to answer questions related or in connection with the said documents. This is without prejudice to the hearing that will be conducted on the manifestation and motion set for tomorrow with

[12] *Id*. at 64-65.

respect to the Supplemental Judicial Affidavit of another witness in the person of Lara Villafuerte.

SO ORDERED.

Aggrieved, respondents moved for the reconsideration of the above-mentioned Order in open court.

On October 1, 2014, the RTC issued an Omnibus Order[13] resolving respondents' motions in this wise:

WHEREFORE, premises considered, the motion for reconsideration of the Order dated September 18, 2014, Motion to Expunge filed on September 11, 2014 and the Manifestation and Motion filed on September 15, 2014 by the defendants are hereby denied for lack of merit.

SO ORDERED.

The RTC allowed Mr. Villafuerte to testify on the contested documentary exhibits, on the ground that both the trial court and the parties are bound by the reservations made for the presentation of additional evidence, and in keeping with the interest of justice that evidence should be liberally allowed to be heard than to be suppressed, subject to the final appreciation of its weight and credence. The Omnibus Order likewise denied UCPB's Motion seeking to expunge from the records the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte and its accompanying exhibits.

Respondents separately moved for the reconsideration of the denial of their motions to expunge, but the trial court denied the same in an Omnibus Order[14] dated November 26, 2014.

Aggrieved, respondents filed a petition for *certiorari*[15] under Rule 65 of the Rules of Court before the CA, imputing grave abuse of discretion amounting to lack or excess of jurisdiction

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[13] *Id*. at 66-67.

[14] *Id*. at 101.

[15] *Id.* at 426-481.

on the part of the trial court in issuing the foregoing October 1, 2014 and November 26, 2014 Omnibus Orders.

Ruling of the Court of Appeals

On December 21, 2015, the CA, through its Former Fifth Division, rendered a Decision, the dispositive portion of which states:

WHEREFORE, both Petitions are DISMISSED. Public Respondent Judge Ronald B. Moreno's (a) September 18, 2014 Order; (b) October 1, 2014 Omnibus Order; and (c) November 26, 2014 Omnibus Order; issued in Civil Case No. 11-238, are hereby AFFIRMED in toto.

SO ORDERED.

In dismissing the petitions, the CA held that the RTC has the discretion, pursuant to Section 7,[16] Rule 132 of the Rules of Court, to allow the Questioned Documents to be presented and admitted in support of Mr. Villafuerte's answers during his cross-examination. Anent the admission of the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte, the CA noted that the records show that "all the parties made reservations" to present "additional documentary exhibits" in the course of the trial, as embodied in the Pre-Trial Order.

Dissatisfied, respondents moved for reconsideration of the CA Decision.

On March 6, 2017, the CA Special Former Fifth Division issued an Amended Decision reversing its initial pronouncement, thus:

WHEREFORE, the motions for reconsideration are granted and the petitions in these cases are granted. The Omnibus Orders of the

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[16] Section 7. *Re-direct examination; its purpose and extent*. — After the cross-examination of the witness has been concluded, he may be re-examined by the party calling him, to explain or supplement his answers given during the cross-examination. On re-direct-examination, questions on matters not dealt with during the cross-examination, may be allowed by the court in its discretion.

Regional Trial Court of Makati City, Branch 147 dated October 1, 2014 and November 26, 2014 are Annulled and Set Aside.

SO ORDERED.

Finding merit in the respondents' contentions, the CA ruled that the RTC erred in allowing the introduction of the 2nd Supplemental Judicial Affidavit in evidence, including the attached Questioned Documents, since petitioner failed to comply with Sections 2 and 10 of the JA Rule which prohibit the presentation, marking and identification of additional exhibits during trial that were not promptly submitted during pre-trial. In addition, the CA declared Mr. Villafuerte as incompetent to testify on the Questioned Documents since he was neither involved in the preparation nor execution thereof; thus, his testimony respecting the documents is hearsay. Accordingly, the CA annulled and set aside the October 1, 2014 and November 26, 2014 RTC Orders.

Hence, the instant petition.

Petitioner, in the main, argues that the introduction of additional documentary evidence during re-direct examination of a witness is not absolutely proscribed by A.M. No. 03-1-09-SC,[17] or the Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (Guidelines in the Conduct of Pre-Trial), and the JA Rule. Petitioner likewise contends that the trial court was well within its discretion to allow the introduction of additional evidence during re-direct examination to explain or supplement the answers of a witness during his or her cross-examination. Anent the submission of the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte, petitioner asserts that the JA Rule allows for the belated submission of judicial affidavits, subject only to applicable penalties.

Respondents, for their part, insist that the allowance of the 2nd Supplemental Judicial Affidavit and its attachments to be introduced into evidence violates the express provisions of the

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[17] Promulgated on August 16, 2004.

JA Rule, Rule 10, Section 6 of the Rules of Court and other procedural rules. They further maintain that the provisions of the Guidelines on Pre-Trial and JA Rule––prohibiting the submission, presentation, and identification of evidence which were not identified, compared, and marked during pre-trial–– are mandatory, and thus, should not have been disregarded by the trial court. They further contend that Mr. Villafuerte should not have been allowed to testify on the Questioned Documents since he does not have personal knowledge of the matters contained therein.

Issue

The sole issue for the resolution of the Court is whether or not the CA erred in disallowing the introduction of additional documentary exhibits during trial and the filing of the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte.

Our Ruling

We find merit in the petition.

In an action for certiorari, the primordial task of the court is to ascertain whether the court *a quo* acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment, such that the act was done in a capricious, whimsical, arbitrary or despotic manner. Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[18] The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[19]

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[18] *Chan v. Court of Appeals*, G.R. No. 159922, April 28, 2005.

[19] *Arnold James Ysidoro v. Hon. Teresita J. Leonardo-De Castro, Hon. Diosdado M. Peralta and Hon. Efren N. De La Cruz, in their official capacities as Presiding Justice and Associate Justices, respectively of the First Division of the Sandiganbayan*, G.R. No. 171513, February 6, 2012, and *People of the Philippines v. First Division of the Sandiganbayan*, G.R. No. 190963, February 6, 2012.

The jurisdiction of the court in such cases is narrow in scope since it is limited to resolving only errors of jurisdiction, or one where the acts complained of were issued without or in excess of jurisdiction.[20] There is excess of jurisdiction where the court or quasi-judicial body, being clothed with the power to determine the case, oversteps its authority as declared by law. Hence, as long as the court 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.

This was the issue the CA was confronted with. Specifically, the CA was called to determine whether the trial court correctly allowed the petitioner to submit the 2nd Supplemental Judicial Affidavit, together with the documentary evidence attached thereto, even though trial had already commenced when it submitted the same, and hence, had not been submitted and pre-marked during the pre-trial.

We agree with the CA Former Fifth Division's December 21, 2015 Decision that the trial court did not gravely abuse its discretion in issuing the assailed Omnibus Orders.

The JA Rule, which took effect on January 1, 2013, was promulgated to address congestion and delays in courts. Designed to expedite court proceedings, it primarily affects the manner by which evidence is presented in court,[21] particularly with regard to the taking of the witnesses' testimonies. Consequently, in lieu of direct testimony in court, the parties are required to submit the judicial affidavits of their witnesses within a given period. Nevertheless, the JA Rule was not devised to supplant or amend existing procedural rules; rather, it is designed to

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[20] *Julie's Franchise Corporation v. Hon. Ruiz*, G.R. No. 180988, August 28, 2009, citing *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610.

[21] *Ng Meng Tam v. China Banking Corporation*, G.R. No. 214054, August 5, 2015.

supplement and augment them. In this regard, reference must be made to the Guidelines on Pre-Trial in relation to the Rules on Pre-Trial, which, interestingly, both parties invoke in support of their respective arguments.

Invoking the avowed objectives of the Guidelines on Pre-Trial and the JA Rule to abbreviate court proceedings, ensure prompt disposition of cases, and decongest court dockets,[22] respondents contend that the submission of the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte and the corresponding documentary evidence will unduly prolong the case and defeat the purposes of these rules.

We are not persuaded.

The JA Rule and the Guidelines on Pre-Trial do not totally proscribe the submission of additional evidence even after trial had already commenced

Certainly, the parties are mandated under Sec. 2 of the JA Rule to file and serve the judicial affidavits of their witnesses, together with their documentary or object evidence, not later than five days before pre-trial or preliminary conference, to wit:

Section 2. *Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies.* — (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

(2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant

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[22] *Bank of the Philippine Islands v. Spouses Genuino*, G.R. No. 208792, July 22, 2015.

or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant. x x x

The documentary and testimonial evidence submitted will then be specified by the trial judge in the Pre-Trial Order. Concomitant thereto, Sec. 10 of the same Rule contains a caveat that the failure to timely submit the affidavits and documentary evidence shall be deemed to be a waiver of their submission, thus:

Section 10. *Effect of non-compliance with the Judicial Affidavit Rule.* — (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. **The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00 at the discretion of the court**. (Emphasis supplied)

It bears to note that Sec. 10 does not contain a blanket prohibition on the submission of additional evidence. However, the submission of evidence beyond the mandated period in the JA Rule is strictly subject to the conditions that: a) the court may allow the late submission of evidence only once; b) the party presenting the evidence proffers a valid reason for the delay; and c) the opposing party will not be prejudiced thereby.

Corollary thereto, the Guidelines on Pre-Trial instructs the parties to submit their respective pre-trial briefs at least three (3) days before the pre-trial, containing, *inter alia*, the documents or exhibits to be presented and to state the purposes thereof, *viz*:

I. Pre-Trial

A. Civil Cases

2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

x x x x x x x x x

d. The documents or exhibits to be presented, stating the purpose thereof. (**No evidence shall be allowed**

> **to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, <u>except if allowed by the court for good cause shown</u>**) x x x. (Emphasis supplied)

Notwithstanding the foregoing procedural prescription, the same rule confers upon the trial court the discretion to allow the introduction of additional evidence during trial other than those that had been previously marked and identified during the pre-trial, provided there are valid grounds.

The trial court precisely exercised this discretion. It allowed the introduction of the Questioned Documents during the re-direct examination of Mr. Villafuerte upon petitioner's manifestation that the same are being presented in response to the questions propounded by PNB Gen's counsel, Atty. Mejia, during the cross-examination:[23]

Atty. Mejia: Did you for instance **submit proofs of purchases of raw materials** for the production of the goods worth ₱330 Million?

Witness: **We have delivery receipts from subcontractors to prove the validity and existence of these because we feel**…

Atty. Mejia: Do these delivery receipts amount to ₱330 Million?

Witness: I do not know the total but as I mentioned earlier, sir, we have already proven proof of loss.

Atty. Mejia: **Did you for instance submit job orders issued by LGD to its subcontractors for the production of the goods worth ₱330 Million**?

Witness: **We have purchase orders that we issued to our subcontractors**.

Atty. Mejia: **Did you issue purchase orders to your subcontractors**?

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[23] *Rollo*, p. 293.

Witness: **Yes, sir**.

Atty. Mejia: Did you submit copies of these purchase orders to your subcontractors?

Witness: I think so.[24] (Emphasis supplied)

To echo the CA's observation, Atty. Mejia first raised the matter of petitioner's issuance and submission of purchase orders to its subcontractors during Mr. Villafuerte's cross-examination.[25] Granting that the line of questioning refers to the fact of petitioner's submission of proofs of purchase of raw materials used for the production of its goods, the existence of such proofs of purchase was injected into the testimony due to Mr. Villafuerte's answers. The Court wishes to point out that Atty. Mejia failed to have Mr. Villafuerte's answers stricken out the records although the same were unresponsive to the questions propounded. Pursuant, therefore, to Sec. 7, Rule 132 of the Rules of Court, Mr. Villafuerte may be examined again by petitioner's counsel to supplement and expound on his answers during the cross-examination:

SEC. 7. *Re-direct examination; its purpose and extent.* – After the cross-examination of the witness has been concluded, he may be re-examined by the party calling him, to explain or supplement his answer given during the cross-examination. On re-direct examination, questions on matters not dealt with during the cross-examination, may be allowed by the court in its discretion.

Respondents understandably take issue on Mr. Villafuerte's competence to testify on the Questioned Documents given his admission that he no longer has any direct participation in the operations and management of petitioner corporation upon divesting his interests thereat in 2004, and that his current participation in the company is only limited to an advisory capacity.[26] Nevertheless, the issues of Mr. Villafuerte's

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[24] Cross-examination of Luis Villafuerte; TSN, July 10, 2014, as reproduced in the CA Decision dated December 21, 2015; *id.* at 90.

[25] *Id*. at 90-91.

[26] TSN, May 8, 2014; *id.* at 3514-3572.

incompetence as a witness to testify on the object and documentary evidence presented and the propriety of presentation of the Questioned Documents, while intimately related, are separate and distinct from each other.

Moreover, to disallow the presentation of the Questioned Documents on the ground of Mr. Villafuerte's incompetence to identify and authenticate the same for lack of personal knowledge is premature at this juncture. Sec. 34, Rule 132 of the Revised Rules on Evidence clearly instructs that:

> Section 34. *Offer of evidence*. — **The court shall consider no evidence which has not been formally offered**. The purpose for which the evidence is offered must be specified. (Emphasis supplied)

Sec. 20[27] of the same Rule, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker. Following Sec. 19[28] of Rule 132, the documents sought to be presented undoubtedly are private in character, and hence, must be identified and

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[27] Section 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (21a)

[28] Section 19. *Classes of Documents*. — For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

authenticated in the manner provided in the Rules. The failure to properly authenticate the documents would result in their inadmissibility.[29] The court, however, can only rule on such issue upon the proponent's formal offer of evidence, which, pursuant to Sec. 35,[30] Rule 132, is made after the presentation of the party's testimonial evidence. The present case clearly has not reached that stage yet when the documents were introduced in court.

The 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte was properly admitted by the trial court.

With regard to the admission of the 2nd Supplemental Judicial Affidavit, We reiterate the requirements laid down in Sec. 2 of the JA Rule that the parties must file with the court and serve on the adverse party the Judicial Affidavits of their witnesses not later than five days before pre-trial or preliminary conference. While the belated submission of evidence is not totally disallowed, it is still, to reiterate, subject to several conditions, which petitioner failed to comply with. Specifically, the records are bereft of any justification, or "good cause," for the filing of the 2nd Supplemental Judicial Affidavit during trial instead of during the pre-trial. Petitioner merely filed and served the affidavit during the hearing on July 10, 2014, without any accompanying motion setting forth any explanation and valid reason for the delay. Further, whether denominated as merely "supplemental," the fact that the affidavit introduces evidence not previously marked and identified during pre-trial qualifies it as new evidence.

Nevertheless, the Court is constrained to rule that the 2nd Supplemental Judicial Affidavit was properly admitted in

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[29] *Salas v. Sta. Mesa Market Corporation*, G.R. No. 157766, July 12, 2007.

[30] Section 35. *When to make offer*. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

evidence by the trial court. As can be gleaned from Page 64 of the Pre-Trial Order, both parties reserved the right to present additional evidence, thus:

All the parties made a reservation for the presentation of additional documentary exhibits in the course of the trial.[31]

Clearly, the foregoing reservation is tantamount to a waiver of the application of Secs. 2 and 10 of the JA Rule. That respondents waived their right to object to petitioner's introduction of additional evidence is further reinforced by their counsel's manifestation during the hearing on November 21, 2013:

Atty. Zarate: May I ask her your honor. Who else is knowledgeable about the documents, Madam Witness?

Witness: The DRs and the Purchase Orders, your honor, were prepared by Lara's Gifts and Decors. They were sent to the subcontractors, your Honor. And then, however, their copies were burned so we now asked the subcontractors to give us copies of the purchase orders that we sent to them so these are the purchase orders, your honor.

x x x x x x x x x

Atty. Zarate: These are the copies of the DRs of the subcontractors, your honor, because our copies were burned by the fire.

Atty. Mejia: Your honor Please, **we will not be objecting to the introduction in evidence of boxes of documents which were prepared by persons who are not before the court** who apparently will not be brought to court for cross-examination by us, provided that there [is] a showing today that these alleged products or supplies delivered have something to do with specific purchase orders that established the contractual obligation to manufacture the 1,081,000 pieces of candle holders.

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[31] *Rollo*, p. 170.

x x x x x x x x x

Atty. Mejia: x x x Now, if they say, later on, they will be able to connect the relevance or materiality, it will be after the presentation of Mrs. Lara Villafuerte whom the witness claims is knowledgeable about these documents, your honor.

Court: …that is why, he is saying, that it will be the President who can testify.

Atty. Mejia: We would rather wait for the President to identify these documents, your Honor.

Court: … that is I believe the manifestation of the counsel.

Atty. Zarate: Yes, I am agreeable to that, your Honor.[32] (Emphasis supplied)

Notably, respondents argued that the parties' respective reservations to allow them to introduce additional evidence do not constitute a waiver of the parties' rights and obligations under the Pre-Trial Order and the Rules. They further maintained that the introduction of additional evidence must be predicated on necessity, and within the bounds of the issues that have been defined, limited, and identified in the Pre-Trial Order.[33] This argument deserves scant consideration.

For one, following the Guidelines on Pre-Trial,[34] the parties are bound by the contents of the Pre-Trial Order. Records do not disclose that the respondents endeavored to amend the Pre-Trial Order to withdraw their assent to their reservation.

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[32] TSN, November 21, 2013, as reproduced in the CA Decision dated December 21, 2015; *id.* at 93.

[33] *Id.* at 956.

[34] I. Pre-Trial

A. Civil Cases

x x x x x x x x x

8. The judge shall issue the required Pre-Trial Order within ten (10) days after the termination of the pre-trial. Said Order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial. x x x

Consequently, they cannot now dispute the contents of the Pre-Trial Order. The evidence sought to be presented are likewise undeniably relevant to the issues raised during the pre-trial, which mainly question petitioner's entitlement to claim the amount of its insurance policy from the respondents and if it has proved the amount of its loss by substantial evidence.

Finally, no less than UCPB, in its Motion to Correct/Amend Pre-Trial Order, moved that the Pre-Trial Order be amended to explicitly include the trial court's ruling that it will allow additional direct testimony of the parties' witnesses to be given in open court so long as they have already submitted their Judicial Affidavits within the reglementary period required by the JA Rule. It appears that the motion was made in connection with UCPB's *motion to allow its own witness to give additional direct testimony in open court*. Herein, respondents do not dispute that petitioner was able to submit the Judicial Affidavit and 1st Supplemental Judicial Affidavit of Mrs. Villafuerte within the period prescribed by the JA Rule. Respondents, therefore, cannot be made to selectively apply the provisions of the rules to the petitioner and then request to be exempted therefrom.

In view of the peculiar factual milieu surrounding the instant case, We rule, *pro hac vice*, that the trial court did not gravely abuse its discretion in allowing the Questioned Documents to be presented in court and in admitting the 2nd Supplemental Judicial Affidavit of petitioner's witness. This notwithstanding, litigants are strictly enjoined to adhere to the provisions of the JA Rule, and to be circumspect in the contents of court documents and pleadings.

WHEREFORE, the petition is **GRANTED**. The assailed Amended Decision of the Court of Appeals in CA-G.R. SP Nos. 138321 and 138774 is hereby **REVERSED** and **SET ASIDE**. The Court of Appeals' December 21, 2015 Decision is **REINSTATED**.

SO ORDERED.

Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

Martires, J., on leave.

SECOND DIVISION

[G.R. No. 233922. January 24, 2018]

MA. VICTORIA M. GALANG, *petitioner, vs.* **PEAKHOLD FINANCE CORPORATION and THE REGISTER OF DEEDS OF CALOOCAN CITY**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; HOW COMMITTED.—** Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another. It can be committed in three (3) ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

2. **ID.; ID.; ID.; THE RULE AGAINST FORUM SHOPPING IS VIOLATED WHEN A FINAL JUDGMENT IN ONE CASE WILL AMOUNT TO *RES JUDICATA* IN ANOTHER OR WHEN THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT.—** [T]o determine whether a party violated the rule against forum shopping, it is essential to ask whether a final judgment in one case will amount to *res judicata* in another or whether the following elements of *litis pendentia* are present: (*a*) identity of parties, or at least such parties as representing the same interests in both actions; (*b*) identity of rights asserted and reliefs prayed for, the relief being founded on the same

facts; and (*c*) the identity of the two (2) preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

APPEARANCES OF COUNSEL

Punzalan & Associates Law Office for petitioner.
Pedro N. Tanchuling for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated April 21, 2017 and the Resolution[3] dated August 29, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 107678, which affirmed the Order[4] dated February 22, 2016 of the Regional Trial Court (RTC) of Caloocan City, Branch 126 (RTC-Br. 126) in Civil Case No. C-22988, dismissing the complaint filed by petitioner Ma. Victoria M. Galang (Galang) for annulment of deed of real estate mortgage and foreclosure proceedings on the ground of forum shopping.

The Facts

This case stemmed from a complaint for annulment of deed of real estate mortgage and foreclosure proceedings[5] filed by Galang against respondent Peakhold Finance Corporation (Peakhold) before the RTC of Caloocan City, Branch 123 (RTC-Br. 123), docketed as Civil Case No. C-22988 (**Annulment**

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[1] *Rollo*, pp. 9-27.

[2] *Id*. at 30-43. Penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Ramon A. Cruz and Eduardo B. Peralta, Jr., concurring.

[3] *Id*. at 44-45.

[4] *Id*. at 186-190. Penned by Presiding Judge Lorenza R. Bordios.

[5] Dated December 2, 2011. *Id*. at 56-59.

Case).[6] Essentially, the complaint alleged that: (*a*) Galang is the registered owner of a 150-square meter (sq. m.) lot located at Deparo, Caloocan City, and covered by Transfer Certificate of Title No. 327548 (subject lot); (*b*) the subject lot was mortgaged to Peakhold without her knowledge and consent; (*c*) Peakhold foreclosed the subject lot, and eventually, acquired the same via an auction sale; and (*d*) as such, the mortgage must be annulled as her signature in the mortgage document was forged/falsified.[7]

While the **Annulment Case** was pending, Peakhold filed an *Ex-Parte* Petition for Issuance of Writ of Possession (*Ex-Parte* Petition)[8] over the subject lot, before the RTC of Caloocan City, Branch 122 (RTC-Br. 122), docketed as LRC Case No. C-6032, to which Galang filed her opposition[9] on June 11, 2012. In a Decision[10] dated November 27, 2012, the RTC-Br. 122 granted Peakhold's *Ex-Parte* Petition, noted Galang's opposition,[11] and ordered the issuance of a writ of possession in favor of Peakhold.[12] Initially, Galang filed a motion for extension of time to file a petition for review[13] before the CA, docketed as CA-G.R. SP No. 128171.[14] Further, Galang filed a Petition for Relief from Judgment[15] before the RTC-Br. 122 (**Petition for Relief Case**) on February 11, 2013, contending that the *Ex-Parte* Petition is not summary in nature and should have been threshed out in

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[6] *Id*. at 56.

[7] See *id*. at 56-57. See also *id*. at 31.

[8] Dated April 2, 2012. *Id*. at 66-71.

[9] See Opposition to the *Ex Parte* Petition for Issuance of Writ of Possession and Counterclaim dated June 8, 2012; *id*. at 83-87.

[10] *Id*. at 89-93. Penned by Presiding Judge Georgina D. Hidalgo.

[11] See *id*. at 91. See also *id*. at 12.

[12] See *id*. at 92. See also *id*. 12 and 33.

[13] Not attached to the *rollo*.

[14] See *rollo*, pp. 101, 124, and 139.

[15] Dated February 6, 2013. *Id*. at 94-100.

an adversarial proceeding, as it essentially deals with the validity of the subject deed.[16] After filing the **Petition for Relief Case**, Galang manifested that he is withdrawing the filing of the intended petition for review before the CA, which was granted on April 24, 2013.[17]

Thus, on May 7, 2013, Peakhold, through a Motion to Dismiss,[18] sought the dismissal of the **Petition for Relief Case** on the ground of forum shopping. In a Resolution[19] dated September 2, 2013, the RTC-Br. 122 granted the said motion, holding that Galang deliberately failed to mention in her Petition for Relief from Judgment that she likewise filed a petition for review before the CA, which had not been effectively withdrawn at the time the **Petition for Relief Case** was filed.[20] With the subsequent denial[21] of the motion for reconsideration,[22] Galang elevated the matter to the CA via a petition for *certiorari* and *mandamus*,[23] docketed as CA-G.R. SP No. 133782 (***Certiorari* Case**).

During the pendency of the ***Certiorari* Case**, the **Annulment Case** was re-raffled to the RTC-Br. 126.[24] Considering the implementation of the writ of possession, Galang was prompted to file a Motion for Leave to Amend Complaint and to Admit Attached Amended Complaint (Amended Complaint)[25] on September 23, 2014, incorporating her additional prayer for

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[16] See *id*. at 12.

[17] See *id*. at 125 and 140.

[18] Dated May 7, 2013. *Id*. at 101-104.

[19] *Id*. at 105-110.

[20] See *id*. at 107 and 110. See also *id*. at 34.

[21] See *id*. at 35 and 125.

[22] Dated September 24, 2013. *Id*. at 111-115.

[23] Dated January 30, 2014. *Id*. at 120-135.

[24] See *id*. at 13 and 35.

[25] Dated September 22, 2014. *Id*. at 169-170.

reconveyance of the subject lot. In response, Peakhold moved to dismiss[26] the **Annulment Case** on the ground of, *inter alia*, forum shopping, since the Amended Complaint failed to disclose that Galang has a pending ***Certiorari*** **Case** before the CA, as well as a complaint for qualified theft (**Criminal Complaint**)[27] against the President of Peakhold and a certain Jocelyn "Gigi" Cortina-Donasco (Donasco) before the Office of the City Prosecutor of Caloocan City (OCP Caloocan).[28]

The RTC-Br. 126 Ruling

Initially, the RTC-Br. 126 issued an Order[29] dated October 12, 2015, denying Peakhold's motion to dismiss. It found that the causes of actions and reliefs prayed for in the **Annulment** and ***Certiorari*** **Cases** are different from those in the **Criminal Complaint**. It further held that, assuming that the Order dismissing the **Petition for Relief Case** is reversed, there is still no violation of the rule against forum shopping, since the prayers/reliefs in the **Annulment Case** are different from those in the **Petition for Relief Case**.[30]

On reconsideration,[31] however, the RTC-Br. 126 issued an Order[32] dated February 22, 2016, finding Galang guilty of forum shopping, considering that the **Petition for Relief Case**, together with the **Annulment** and ***Certiorari*** **Cases**, all have a common cause of action/relief – that is the reconveyance of the subject lot to Galang.[33]

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[26] See motion to dismiss dated February 14, 2015; *id*. at 173-175.

[27] See Affidavit Complaint for Qualified Theft dated February 19, 2013; *id*. at 256-260.

[28] See *id*. at 256. See also *id*. at 173.

[29] *Id*. at 176-182. Penned by Presiding Judge Lorenza R. Bordios.

[30] *Id*. at 180-181.

[31] See motion for reconsideration dated November 9, 2015; *id*. at 183-185a.

[32] *Id*. at 186-190.

[33] See *id*. at 188-190.

Aggrieved, Galang moved for reconsideration,[34] but the same was denied in an Order[35] dated June 20, 2016; hence, the appeal[36] before the CA, docketed as CA-G.R. CV No. 107678.[37]

The CA Ruling

In a Decision[38] dated April 21, 2017, the CA affirmed the RTC-Br. 126 ruling. It held that Galang is guilty of forum shopping as she failed to indicate the pendency of the ***Certiorari* Case** before the CA, as well as the **Criminal Complaint** before the OCP Caloocan in her Amended Complaint in the **Annulment Case**. More significantly, it noticed that there is identity of parties, rights asserted/causes of action, and reliefs prayed for among the aforesaid cases.[39]

Dissatisfied, Galang sought reconsideration[40] thereof, which was denied in a Resolution[41] dated August 29, 2017; hence, the instant petition.

In the interim, the CA issued a Decision[42] dated September 23, 2015, dismissing the ***Certiorari* Case** for lack of merit.[43] While it found Galang not to have committed forum shopping – since the supposed filing of the petition for review, *i.e.*, CA-G.R. SP No. 128171, was simply filed out of oversight – it nevertheless sustained the RTC-Br. 122's dismissal of the

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[34] See motion for reconsideration (Re: Order dated February 22, 2016) dated March 22, 2016; *id*. at 191-196.

[35] *Id*. at 197-206.

[36] See Notice of Appeal dated September 15, 2016; *id*. at 207.

[37] *Id*. at 37.

[38] *Id*. at 30-43.

[39] See *id*. at 41-42.

[40] See motion for reconsideration dated May 19, 2017; *id*. at 46-51.

[41] *Id*. at 44-45.

[42] *Id*. at 137-146. Penned by Associate Justice Rodil V. Zalameda with Associate Justices Stephen C. Cruz and Edwin D. Sorongon, concurring.

[43] *Id*. at 145.

Petition for Relief Case, given that petitioner failed to establish the existence of extrinsic fraud, as in fact, she was able to file her comment and had her day in court. In any event, it could not rule upon the existence of forum shopping, as the petition for review, being the basis of the forum shopping allegation, had already been expunged by the CA.[44] Galang also moved for its reconsideration,[45] but the same was denied in a Resolution[46] dated August 23, 2016.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in finding that Galang committed forum shopping when she failed to declare the pending ***Certiorari* Case** and **Criminal Complaint** in her Amended Complaint in the **Annulment Case**.

The Court's Ruling

The petition is meritorious.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another.[47] It can be committed in three (3) ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer,

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[44] See *id*. at 142-144.

[45] See motion for reconsideration dated October 12, 2015; *id*. at 147-153.

[46] *Id*. at 116-119.

[47] *Agrarian Reform Beneficiaries Association v. Fil-Estate Properties, Inc.*, 766 Phil. 382, 410-411 (2015).

the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[48]

Thus, to determine whether a party violated the rule against forum shopping, it is essential to ask whether a final judgment in one case will amount to *res judicata* in another or whether the following elements of *litis pendentia* are present: (*a*) identity of parties, or at least such parties as representing the same interests in both actions; (*b*) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (*c*) the identity of the two (2) preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[49]

In this instance, Galang filed a total of four (4) cases, namely:

(*a*) the **Annulment Case** seeking to annul the allegedly fraudulent mortgage document involving the subject lot;

(*b*) the **Petition for Relief Case** seeking to set aside the *ex-parte* writ of possession issued in Peakhold's favor;

(*c*) the ***Certiorari* Case** imputing grave abuse of discretion on the part of RTC-Br. 122 in dismissing the **Petition for Relief Case** on the ground of forum shopping; and

(*d*) the **Criminal Complaint** seeking to indict the President of Peakhold and Donasco for the crime of Qualified Theft.

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[48] *Id*. at 411. See also *Bandillion v. La Filipina Uygongco Corporation (LFUC)*, 769 Phil. 806, 828-829 (2015); and *Home Guaranty Corporation v. La Savoie Development Corporation*, 752 Phil. 123, 141-142 (2015), citing *Top Rate Construction and General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 747-748 (2003).

[49] See *Fontana Development Corporation v. Vukasinovic*, G.R. No. 222424, September 21, 2016, 804 SCRA 153, 162.

A judicious perusal of the records reveals that there is no identity of causes of actions and reliefs prayed for among the said cases. As already adverted to, the **Annulment Case** seeks to nullify the mortgage document executed in Peakhold's favor, as well as the subsequent foreclosure proceedings, given that the alleged real estate mortgage covering the subject lot was void for having been executed without Galang's knowledge and consent. In the **Petition for Relief Case**, Galang sought to set aside the *ex-parte* writ of possession, contending that the same should have been threshed out in an adversarial proceeding, since it involves a fictitious deed of real estate mortgage, where the mortgagor therein is supposedly an impostor of Galang; while the ***Certiorari* Case** sought to revive the **Petition for Relief Case** which was dismissed on the ground of forum shopping. Finally, the **Criminal Complaint** involves the determination of whether or not there is probable cause to indict the President of Peakhold and Donasco for Qualified Theft.

Similarly, the issues raised and determined in these cases likewise differ. In the **Annulment Case**, the issue is whether or not the deed of real estate mortgage is void, thereby entitling Galang to the recovery of the subject lot. In the **Petition for Relief Case**, the issue is whether or not extrinsic fraud was actually employed by Peakhold during the *Ex-Parte* Petition proceedings. In the ***Certiorari* Case**, the issue is whether or not the RTC-Br. 122 acted with grave abuse of discretion when it affirmed the dismissal of Galang's **Petition for Relief**. Lastly, in the **Criminal Complaint**, the issue is whether or not there is probable cause to believe that the President of Peakhold and Donasco committed the crime of Qualified Theft and should stand trial therefor.

Given the above, the Court finds that Galang correctly declared in the Amended Complaint in the **Annulment Case** that she did not commence any action or proceeding which involves the same causes of actions, reliefs, and issues in any court, tribunal, or agency at the time she filed the said Amended Complaint, or anytime thereafter. In this light, there is no *litis pendentia*, as the cases essentially involve different causes of

actions, reliefs, and issues. Thus, any judgment rendered in one will not necessarily amount to *res judicata* in the action under consideration. This holds true even if the complaint in the **Annulment Case** was subsequently amended by Galang. Moreover, the cases also differ in their form and nature, for while a ruling in the **Annulment Case** may result in the recovery of ownership and possession of the subject lot, a favorable ruling in the other cases will not have the same effect, considering that: (*a*) the granting of the ***Certiorari*** **Case** will lead to the granting of the **Petition for Relief Case**; (*b*) a favorable result in the **Petition for Relief Case** would end up in the conduct of adversarial proceedings before a writ of possession concerning the subject lot may be issued; and (*c*) the resolution of the **Criminal Complaint** is only determinative of whether or not the President of Peakhold and/or Donasco should be indicted of the crime of Qualified Theft and stand trial therefor.

Accordingly, the CA erred in upholding the dismissal of the **Annulment Case** on the ground of forum shopping. Thus, a revival of the **Annulment Case** and its remand to RTC-Br. 126 is in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated April 21, 2017 and the Resolution dated August 29, 2017 of the Court of Appeals in CA-G.R. CV No. 107678 are hereby **REVERSED** and **SET ASIDE**. Accordingly, Civil Case No. C-22988 is hereby **REVIVED** and **REMANDED** to the Regional Trial Court of Caloocan City, Branch 126 for its resolution on the merits.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 189609. January 29, 2018]

VICTORIA N. RACELIS, in her capacity as administrator, *petitioner, vs.* **SPOUSES GERMIL JAVIER and REBECCA JAVIER,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; LEASE; WHEN A LESSEE ALLOWED TO POSTPONE THE PAYMENT OF RENT.—** A contract of lease is a "consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor." Article 1658 of the Civil Code allows a lessee to postpone the payment of rent if the lessor fails to either (1) "make the necessary repairs" on the property or (2) "maintain the lessee in peaceful and adequate enjoyment of the property leased." This provision implements the obligation imposed on lessors under Article 1654(3) of the Civil Code.

2. **ID.; ID.; ID.; ID.; FAILURE TO MAINTAIN THE LESSEE IN THE PEACEFUL AND ADEQUATE ENJOYMENT OF THE PROPERTY LEASED; REFERS ONLY TO LEGAL POSSESSION.—** The failure to maintain the lessee in the peaceful and adequate enjoyment of the property leased does not contemplate all acts of disturbance. Lessees may suspend the payment of rent under Article 1658 of the Civil Code only if their legal possession is disrupted. x x x Citing *Goldstein*, this Court in *Chua Tee Dee* struck down the lessee's argument and held that "[t]he duty 'to maintain the lessee in the peaceful and adequate enjoyment of the lease for the duration of the contract' mentioned in [N]o. 3 of [Article 1654] is merely a warranty that the lessee shall not be disturbed in his legal, and not physical, possession." Furthermore, this Court found that there was no disturbance in the lessee's legal possession because her right to possess the property was neither questioned nor raised as an issue in any legal proceeding. Hence, she was not entitled to suspend the payment of rent.

3. **ID.; ID.; ID.; ID.; ID.; RULE WILL NOT APPLY WHERE THE LEASE HAD ALREADY EXPIRED; CASE AT BAR.**— In this case, the disconnection of electrical service over the leased premises on May 14, 2004 was not just an act of physical disturbance but one that is meant to remove respondents from the leased premises and disturb their legal possession as lessees. Ordinarily, this would have entitled respondents to invoke the right accorded by Article 1658 of the Civil Code. x x x [T]his rule will not apply in the present case because the lease had already expired when petitioner [lessor] requested for the temporary disconnection of electrical service. Petitioner demanded respondents [lessee] to vacate the premises by May 30, 2004. Instead of surrendering the premises to petitioner, respondents unlawfully withheld possession of the property. Respondents continued to stay in the premises until they moved to their new residence on September 26, 2004. At that point, petitioner was no longer obligated to maintain respondents in the "peaceful and adequate enjoyment of the lease for the entire duration of the contract." Therefore, respondents cannot use the disconnection of electrical service as justification to suspend the payment of rent. Assuming that respondents were entitled to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the Civil Code "to pay the price of the lease according to the terms stipulated." Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract. Moreover, respondents' obligation to pay rent was not extinguished when they transferred to their new residence. Respondents are liable for a reasonable amount of rent for the use and continued occupation of the property upon the expiration of the lease. To hold otherwise would unjustly enrich respondents at petitioner's expense.

4. **ID.; ID.; SALES; ELEMENTS; DELIVERY OF EARNEST MONEY IS NOT CONCLUSIVE PROOF THAT A CONTRACT OF SALE EXISTS.—** Under Article 1482 of the Civil Code, whenever earnest money is given in a contract of sale, it shall be considered as "proof of the perfection of the contract." However, this is a disputable presumption, which prevails in the absence of contrary evidence. The delivery of earnest money is not conclusive proof that a contract of sale exists. The existence of a contract of sale depends upon the

concurrence of the following elements: (1) consent or meeting of the minds; (2) a determinate subject matter; and (3) price certain in money or its equivalent. The defining characteristic of a contract of sale is the seller's obligation to transfer ownership of and deliver the subject matter of the contract. Without this essential feature, a contract cannot be regarded as a sale although it may have been denominated as such.

5. **ID.; ID.; ID.; CONTRACT OF SALE DISTINGUISHED FROM CONTRACT TO SELL.—** In a contract of sale, title to the property passes to the buyer upon delivery of the thing sold. In contrast, in a contract to sell, ownership does not pass to the prospective buyer until full payment of the purchase price. The title of the property remains with the prospective seller. In a contract of sale, the non-payment of the purchase price is a resolutory condition that entitles the seller to rescind the sale. In a contract to sell, the payment of the purchase price is a positive suspensive condition that gives rise to the prospective seller's obligation to convey title. However, non-payment is not a breach of contract but "an event that prevents the obligation of the vendor to convey title from becoming effective." The contract would be deemed terminated or cancelled, and the parties stand "as if the conditional obligation had never existed."

6. **ID.; ID.; ID.; EARNEST MONEY GIVEN IN A CONTRACT TO SELL; ABSENT PROOF OF A CLEAR AGREEMENT TO THE CONTRARY, IT IS INTENDED TO BE FORFEITED IF THE SALE DOES NOT HAPPEN WITHOUT THE SELLER'S FAULT.—** Earnest money, under Article 1482 of the Civil Code, is ordinarily given in a perfected contract of sale. However, earnest money may also be given in a contract to sell. x x x Opportunity cost is defined as "the cost of the foregone alternative." In a potential sale, the seller reserves the property for a potential buyer and foregoes the alternative of searching for other offers. This Court in *Philippine National Bank v. Court of Appeals* construed earnest money given in a contract to sell as "consideration for [seller's] promise to reserve the subject property for [the buyer]." The seller, "in excluding all other prospective buyers from bidding for the subject property . . . [has given] up what may have been more lucrative offers or better deals." Earnest money, therefore, is paid for the seller's benefit. It is part of the purchase price while at the same time

proof of commitment by the potential buyer. Absent proof of a clear agreement to the contrary, it is intended to be forfeited if the sale does not happen without the seller's fault. The potential buyer bears the burden of proving that the earnest money was intended other than as part of the purchase price and to be forfeited if the sale does not occur without the fault of the seller. Respondents were unable to discharge this burden. There is no unjust enrichment on the part of the seller should the initial payment be deemed forfeited. After all, the owner could have found other offers or a better deal. The earnest money given by respondents is the cost of holding this search in abeyance.

APPEARANCES OF COUNSEL

Julio Regino I. Desamito, Jr. for petitioner.
Feir Ramos & Associates Law Office for respondents.

D E C I S I O N

LEONEN, *J.*:

Lessees are entitled to suspend the payment of rent under Article 1658 of the Civil Code if their legal possession is disturbed. Acts of physical disturbance that do not affect legal possession is beyond the scope of this rule.

In a contract to sell, the payment of earnest money represents the seller's opportunity cost of holding in abeyance the search for other buyers or better deals. Absent proof of a clear agreement to the contrary, it should be forfeited if the sale does not happen without the seller's fault. The potential buyer bears the burden of proving that the earnest money was intended other than as part of the purchase price and to be forfeited if the sale does not occur without the seller's fault.

Through this Petition for Review,[1] petitioner Victoria N. Racelis (Racelis) challenges the Court of Appeals, January 13,

[1] *Rollo,* pp. 13-26.

2009 Decision[2] and September 17, 2009 Resolution,[3] which ordered her to reimburse the sum of ₱24,000.00 to respondents Spouses Germil Javier and Rebecca Javier (the Spouses Javier).

Before his death, the late Pedro Nacu, Sr. (Nacu) appointed his daughter, Racelis,[4] to administer his properties,[5] among which was a residential house and lot located in Marikina City.[6] Nacu requested his heirs to sell this property first.[7] Acting on this request, Racelis immediately advertised it for sale.[8]

In August 2001, the Spouses Javier offered to purchase the Marikina property. However, they could not afford to pay the price of ₱3,500,000.00.[9] They offered instead to lease the property while they raise enough money. Racelis hesitated at first but she eventually agreed.[10] The parties agreed on a month-to-month lease and rent of ₱10,000.00 per month.[11] This was later increased to ₱11,000.00.[12] The Spouses Javier used the property as their residence and as the site of their tutorial school, the Niño Good Shepherd Tutorial Center.[13]

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[2] *Id*. at 27-32. The Decision, docketed as CA-G.R. SP No. 98928, was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza of the Tenth Division, Court of Appeals, Manila.

[3] *Id*. at 37. The Resolution was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza of the Former Tenth Division, Court of Appeals, Manila.

[4] *See rollo,* p. 98, stating ". . . Pedro Nacu, deceased father of defendant Victoria N. Racelis . . ."

[5] *Rollo*, pp. 52-53.

[6] *Id.* at 27.

[7] *Id*. at 52.

[8] *Id*. at 42, Complaint.

[9] *Id*. at 104.

[10] *Id.* at 14.

[11] *Id*. at 27.

[12] *Id*. at 83, MTC Decision.

[13] *Id*. at 104.

Sometime in July 2002, Racelis inquired whether the Spouses Javier were still interested to purchase the property. The Spouses Javier reassured her of their commitment and even promised to pay ₱100,000.00 to buy them more time within which to pay the purchase price.[14]

On July 26, 2002, the Spouses Javier tendered the sum of ₱65,000.00 representing "initial payment or goodwill money."[15] On several occasions, they tendered small sums of money to complete the promised ₱100,000.00,[16] but by the end of 2003, they only delivered a total of ₱78,000.00.[17] Meanwhile, they continued to lease the property. They consistently paid rent but started to fall behind by February 2004.[18]

Realizing that the Spouses Javier had no genuine intention of purchasing the property, Racelis wrote to inform them that her family had decided to terminate the lease agreement and to offer the property to other interested buyers.[19] In the same letter, Racelis demanded that they vacate the property by May 30, 2004.[20] Racelis also stated that:

> It is a common practice that earnest money will be forfeited in favor of the seller if the buyer fails to consummate [the] sale after the lapse of a specified period for any reason so that we have the legal right to forfeit your ₱78,000 on account of your failure to pursue the purchase of the property you are leasing. However, as a consideration to you, we undertake to return to you the said amount after we have sold the property and received the purchase price from [the] prospective buyer.[21]

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[14] *Id.* at 42.

[15] *Id*. at 54.

[16] *Id*. at 55.

[17] *Id*. at 28.

[18] *Id*.

[19] *Id*. at 56 and 14.

[20] *Id*.

[21] *Id*. at 56.

The Spouses Javier refused to vacate due to the ongoing operation of their tutorial business. They wrote Racelis on March 16, 2004, informing her of their inability to purchase the property at ₱3,500,000.00 because "Mrs. Rebecca Javier's plan for overseas employment did not materialize."[22] They also informed her that they had "purchased a more affordable lot."[23] They insisted that the sum of ₱78,000.00 was advanced rent and proposed that this amount be applied to their outstanding liability until they vacate the premises.[24]

Disagreeing on the application of the ₱78,000.00, Racelis and the Spouses Javier brought the matter to the barangay for conciliation. Unfortunately, the parties failed to reach a settlement.[25] During the proceedings, Racelis demanded the Spouses Javier to vacate the premises by the end of April 30, 2004.[26] However, the Spouses Javier refused to give up possession of the property and even refused to pay rent for the succeeding months.[27]

On May 12, 2004, Racelis caused the disconnection of the electrical service over the property forcing the Spouses Javier to purchase a generator.[28] This matter became the subject of a complaint for damages filed by the Spouses Javier against Racelis.[29] Racelis was absolved from liability.[30] The Spouses Javier no longer interposed an appeal.[31]

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[22] *Id*. at 57.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 14.

[26] *Id*. at 44-45.

[27] *Id*. at 45.

[28] *Id*. at 98.

[29] *Id*. at 86.

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

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

Meanwhile, Racelis filed a complaint for ejectment against the Spouses Javier before the Metropolitan Trial Court in Marikina City. The case was docketed as Civil Case No. 04-7710.[32]

In her Complaint,[33] Racelis alleged that she agreed to lease the property to the Spouses Javier based on the understanding that they would eventually purchase it.[34] Racelis also claimed that they failed to pay rent from March 2004 to September 2004[35] and the balance of ₱7,000.00 for the month of February, or a total of ₱84,000.00.[36] Racelis prayed that the Spouses Javier be ordered to: (1) vacate the leased premises; (2) pay accrued rent; and (3) pay moral and exemplary damages, and attorney's fees.[37]

In their Answer,[38] the Spouses Javier averred that they never agreed to purchase the property from Racelis because they found a more affordable property at Greenheights Subdivision in Marikina City. They claimed that the amount of ₱78,000.00 was actually advanced rent. [39]

During trial, the Spouses Javier vacated the property and moved to their new residence at Greenheights Subdivision[40] on September 26, 2004.[41] The Metropolitan Trial Court then determined that the only issue left to be resolved was the amount of damages in the form of unpaid rentals to which Racelis was entitled.[42]

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[32] *Id*. at 83.

[33] *Id*. at 41-49.

[34] *Id*. at 42-44.

[35] *Id*. at 29.

[36] *Id*. at 44.

[37] *Id*. at 48.

[38] *Id*. at 63-69.

[39] *Id*. at 64.

[40] *Id*. at 86.

[41] *Id*. at 29.

[42] *Id*. at 88.

On August 19, 2005, the Metropolitan Trial Court rendered a Decision[43] dismissing the complaint. It ruled that the Spouses Javier were entitled to suspend the payment of rent under Article 1658 of the Civil Code due to Racelis' act of disconnecting electric service over the property.[44] The Metropolitan Trial Court declared that the Spouses Javier's obligation had been extinguished. Their advanced rent and deposit were sufficient to cover their unpaid rent.[45]

The Metropolitan Trial Court, however, did not characterize the ₱78,000.00 as advanced rent but as earnest money. Accordingly, Racelis was ordered to return the ₱78,000.00 due to her waiver in the Letter dated March 4, 2004.[46]

On appeal, the Regional Trial Court rendered a Decision[47] reversing the Metropolitan Trial Court August 19, 2005 Decision. The Regional Trial Court held that the Spouses Javier were not justified in suspending rental payments.[48] However, their liability could not be offset by the ₱78,000.00. The Regional Trial Court explained that the parties entered into two (2) separate and distinct contracts—a lease contract and a contract of sale. Based on the evidence presented, the ₱78,000.00 was not intended as advanced rent, but as part of the purchase price of the property.[49] The Regional Trial Court ordered the Spouses Javier

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[43] *Id*. at 83-89. The Decision, docketed as Civil Case No. 04-7710, was penned by Judge Alex E. Ruiz of Branch 75, Metropolitan Trial Court, City of Marikina.

[44] Civil Code, Art. 1658. The lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased.

[45] *Rollo*, p. 88.

[46] *Id*. at 89.

[47] *Id*. at 90-94. The Decision, docketed as SCA No. 05-626-MK and dated January 15, 2007, was penned by Judge Felix P. Reyes of Branch 272, Regional Trial Court, Marikina City.

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

[49] *Id*. at 93-94.

to pay accrued rent and declared that they may recover the ₱78,000.00 in a separate proceeding.[50]

The Spouses Javier moved for reconsideration. In its April 24, 2007 Order,[51] the Regional Trial Court reduced the Spouses Javier's unpaid rentals by their advanced rental deposit. They were ordered to pay ₱54,000.00 instead.[52]

The Spouses Javier appealed the Regional Trial Court January 15, 2007 Decision and April 24, 2007 Order.

On January 13, 2009, the Court of Appeals rendered a Decision[53] declaring the Spouses Javier justified in withholding rental payments due to the disconnection of electrical service over the property.[54] Nevertheless, the Court of Appeals stated that they were not exonerated from their obligation to pay accrued rent. On the other hand, Racelis was bound to return the sum of ₱78,000.00 in view of her waiver. The Court of Appeals, by way of compensation, reduced the liability of the Spouses Javier by their advanced rent and the sum of ₱78,000.00. Accordingly, Racelis was ordered to reimburse the amount of ₱24,000.00 to the Spouses Javier.[55] The dispositive portion of this Decision stated:

> WHEREFORE, in view of the foregoing, the petition is GRANTED. The assailed decision is REVERSED and SET ASIDE. Herein respondent RACELIS is ordered to reimburse herein petitioners in the amount of ₱24,000.00 on the counterclaim.
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> SO ORDERED.[56]

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[50] *Id*. at 94.

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

[52] *Id*. at 96.

[53] *Id*. at 27-31.

[54] *Id*. at 30.

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

[56] *Id*. at 31.

Racelis moved for reconsideration but her motion was denied in the Court of Appeals' September 17, 2009 Resolution.[57]

On November 25, 2009, Racelis filed a Petition for Review[58] before this Court to which the Spouses Javier filed a Comment.[59] On July 1, 2010, Racelis filed a Reply.[60]

Petitioner asserts that the Court of Appeals erred in applying Article 1658 of the Civil Code in favor of respondents. Respondents cannot invoke the right given to lessees under Article 1658 of the Civil Code. Petitioner claims that she was justified in causing the temporary disconnection of electrical service over the property because respondents were remiss in paying rent. However, assuming that respondents were entitled to suspend the payment of rent pursuant to Article 1658 of the Civil Code, petitioner argues that the suspension should only be temporary or for an intervening period.[61]

Petitioner likewise claims that she did not expressly waive her right over the initial payment of ₱78,000.00 but merely extended an offer to reimburse this amount, which respondents rejected. Hence, she is entitled to retain it and it cannot be used to offset respondents' accrued rent.[62]

Respondents do not dispute their liability to pay accrued rent. However, they insist that their liability should be offset by the initial payment of ₱78,000.00. Respondents argue that petitioner waived her right over this amount. Hence, it can be applied to pay their obligation.[63]

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[57] *Id.* at 37. The Resolution was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza of the Former Tenth Division, Court of Appeals, Manila.

[58] *Id.* at 13-26.

[59] *Id.* at 144-148.

[60] *Id.* at 157-160.

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

[62] *Id.* at 21-22.

[63] *Id.* at 144-146.

The issues for this Court's resolution are:

First, whether or not respondents Spouses Germil and Rebecca Javier can invoke their right to suspend the payment of rent under Article 1658 of the Civil Code; and

Second, whether or not the ₱78,000.00 initial payment can be used to offset Spouses Germil and Rebecca Javier's accrued rent.

I

A contract of lease is a "consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor."[64]

Article 1658 of the Civil Code allows a lessee to postpone the payment of rent if the lessor fails to either (1) "make the necessary repairs" on the property or (2) "maintain the lessee in peaceful and adequate enjoyment of the property leased." This provision implements the obligation imposed on lessors under Article 1654(3) of the Civil Code.[65]

The failure to maintain the lessee in the peaceful and adequate enjoyment of the property leased does not contemplate all acts of disturbance.[66] Lessees may suspend the payment of rent under Article 1658 of the Civil Code only if their legal possession is disrupted.[67] In *Goldstein v. Roces*:[68]

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[64] *Lim Si v. Lim*, 98 Phil 868, 870 (1956) [Per *J.* Labrador, First Division].

[65] *Madamba v. Araneta,* 106 Phil. 103, 106 (1959) [Per *J.* Concepcion, *En Banc*]; CIVIL CODE, Art. 1654 (3) provides:

Art. 1654. The lessor is obliged: . . . (3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract.

[66] See *Goldstein v. Roces*, 34 Phil. 562 (1916) [Per *C.J.* Arellano, Second Division].

[67] *Chua Tee Dee v. Court of Appeals,* 473 Phil. 446, 467 (2004) [Per *J.* Callejo, Sr., Second Division].

[68] 34 Phil. 562 (1916) [Per *C.J.* Arellano, Second Division].

Nobody has in any manner disputed, objected to, or placed any difficulties in the way of plaintiff's peaceful enjoyment, or his quiet and peaceable possession of the floor he occupies. The lessors, therefore, have not failed to maintain him in the peaceful enjoyment of the floor leased to him and he continues to enjoy this status without the slightest change, without the least opposition on the part of any one. *That there was a disturbance of the peace or order in which he maintained his things in the leased story does not mean that he lost the peaceful enjoyment of the thing rented.* The peace would likewise have been disturbed or lost had some tenant of the Hotel de Francia, living above the floor leased by plaintiff, continually poured water on the latter's bar and sprinkled his bar-tender and his customers and tarnished his furniture; or had some gay patrons of the hotel gone down into his saloon and broken his crockery or glassware, or stunned him with deafening noises. *Numerous examples could be given to show how the lessee might fail peacefully to enjoy the floor leased by him, in all of which cases he wo[u]ld, of course, have a right of action for the recovery of damages from those who disturbed his peace, but he would have no action against the lessor to compel the latter to maintain him in his peaceful enjoyment of the thing rented. The lessor can do nothing, nor is it incumbent upon him to do anything, in the examples or cases mentioned, to restore his lessee's peace*.

. . . .

> True it is that, pursuant to paragraph 3, of article 1554, the lessor must maintain the lessee in the peaceful enjoyment of the lease during all of the time covered by the contract, and that, in consequence thereof, he is obliged to remove such obstacles as impede said enjoyment; but, as in warranty in a case of eviction (to which doctrine the one we are now examining is very similar, since it is necessary, as we have explained, that the cause of eviction be in a certain manner imputable to the vendor, which must be understood as saying that it must be prior to the sale), *the obstacles to enjoyment which the lessor must remove are those that in some manner or other cast doubt upon the right by virtue of which the lessor himself executed the lease and, strictly speaking, it is this right that the lessor should guarantee to the lessee*.[69] (Citations omitted, emphasis supplied)

[69] *Id*. at 563-566.

The principle in *Goldstein* was reiterated in *Chua Tee Dee v. Court of Appeals*.[70]

In *Chua Tee Dee,* the lease contract stated that the lessor was obliged to "maintain the [lessee] in the quiet peaceful possession and enjoyment of the leased premises during the effectivity of the lease."[71] The lessees were harassed by claimants of the leased property. Hence, the lessee withheld rental payments for the lessor's failure to comply with his contractual obligation.[72]

Citing *Goldstein,* this Court in *Chua Tee Dee* struck down the lessee's argument and held that "[t]he duty 'to maintain the lessee in the peaceful and adequate enjoyment of the lease for the duration of the contract' mentioned in [N]o. 3 of [Article 1654] is merely a warranty that the lessee shall not be disturbed in his legal, and not physical, possession." Furthermore, this Court found that there was no disturbance in the lessee's legal possession because her right to possess the property was neither questioned nor raised as an issue in any legal proceeding. Hence, she was not entitled to suspend the payment of rent.[73]

In this case, the disconnection of electrical service over the leased premises on May 14, 2004[74] was not just an act of physical disturbance but one that is meant to remove respondents from the leased premises and disturb their legal possession as lessees. Ordinarily, this would have entitled respondents to invoke the right accorded by Article 1658 of the Civil Code.

However, this rule will not apply in the present case because the lease had already expired when petitioner requested for the temporary disconnection of electrical service. Petitioner demanded respondents to vacate the premises by May 30, 2004.[75]

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[70] 473 Phil. 446 (2004) [Per *J*. Callejo, Sr., Second Division].

[71] *Id*. at 451.

[72] *Id*. at 463-464.

[73] *Id*. at 467-471.

[74] *Rollo*, p. 29.

[75] *Id.* at 14.

Instead of surrendering the premises to petitioner, respondents unlawfully withheld possession of the property. Respondents continued to stay in the premises until they moved to their new residence on September 26, 2004.[76] At that point, petitioner was no longer obligated to maintain respondents in the "peaceful and adequate enjoyment of the lease for the entire duration of the contract."[77] Therefore, respondents cannot use the disconnection of electrical service as justification to suspend the payment of rent.

Assuming that respondents were entitled to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the Civil Code "to pay the price of the lease according to the terms stipulated."[78] Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract.

Moreover, respondents' obligation to pay rent was not extinguished when they transferred to their new residence. Respondents are liable for a reasonable amount of rent for the use and continued occupation of the property upon the expiration of the lease. To hold otherwise would unjustly enrich respondents at petitioner's expense.

II

Respondents admit their liability to pay accrued rent for the continued use and possession of the property. However, they take exception to the proper treatment of the ₱78,000.00 initial payment. Throughout the proceedings, respondents insist that this amount was intended as advanced rent. Hence, it can be used to offset their obligation.[79]

Respondents' argument is unmeritorious.

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[76] *Id.* at 29.

[77] CIVIL CODE, Art. 1654, par. 3.

[78] CIVIL CODE, Art. 1657, par. 1.

[79] *Rollo*, p. 145.

The ₱78,000.00 initial payment cannot be characterized as advanced rent. First, records show that respondents continued to pay monthly rent until February 2004 despite having delivered the ₱78,000.00 to petitioner on separate dates in 2003.[80] Second, as observed by the Metropolitan Trial Court, respondents indicated in the receipt that the ₱78,000.00 was initial payment or goodwill money. They could have easily stated in the receipt that the ₱78,000.00 was advanced rent instead of denominating it as "initial payment or goodwill money." Respondents even proposed that the initial payment be used to offset their accrued rent.[81]

Both the Metropolitan Trial Court and the Regional Trial Court rejected respondents' assertion that the ₱78,000.00 was advanced rent and characterized it as earnest money.[82]

Under Article 1482 of the Civil Code, whenever earnest money is given in a contract of sale,[83] it shall be considered as "proof of the perfection of the contract."[84] However, this is a disputable presumption, which prevails in the absence of contrary evidence. The delivery of earnest money is not conclusive proof that a contract of sale exists.[85]

The existence of a contract of sale depends upon the concurrence of the following elements: (1) consent or meeting of the minds; (2) a determinate subject matter; and (3) price certain in money or its equivalent.[86] The defining characteristic

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[80] *Id*. at 54-55.

[81] *Id*. at 57.

[82] *Id*. at 89 and 94.

[83] *Chua v. Court of Appeals*, 449 Phil. 25, 43 (2003) [Per *J.* Carpio, First Division].

[84] CIVIL CODE, Art. 1482.

[85] *Philippine National Bank v. Court of Appeals*, 330 Phil. 1048, 1072-1073 (1996) [Per *J.* Hermosisima, Jr., First Division].

[86] *Coronel v. Court of Appeals,* 331 Phil. 294, 308-309 (1996) [Per *J.* Melo, Third Division].

of a contract of sale is the seller's obligation to transfer ownership of and deliver the subject matter of the contract. Without this essential feature, a contract cannot be regarded as a sale although it may have been denominated as such.[87]

In a contract of sale, title to the property passes to the buyer upon delivery of the thing sold. In contrast, in a contract to sell, ownership does not pass to the prospective buyer until full payment of the purchase price. The title of the property remains with the prospective seller.[88]

In a contract of sale, the non-payment of the purchase price is a resolutory condition that entitles the seller to rescind the sale.[89] In a contract to sell, the payment of the purchase price is a positive suspensive condition that gives rise to the prospective seller's obligation to convey title.[90] However, non-payment is not a breach of contract but "an event that prevents the obligation of the vendor to convey title from becoming effective."[91] The contract would be deemed terminated or cancelled, and[92] the parties stand "as if the conditional obligation had never existed."[93]

Based on the evidence on record, petitioner and respondents executed a contract to sell, not a contract of sale. Petitioner reserved ownership of the property and deferred the execution of a deed of sale until receipt of the full purchase price. In her Letter dated March 4, 2004, petitioner stated:

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[87] *Tan v. Benolirao,* 619 Phil. 35, 48-49 (2009) [Per *J.* Brion, Second Division].

[88] *Chua v. Court of Appeals,* 449 Phil. 25, 41-42 (2003) [Per *J.* Carpio, First Division] citing *Philippine National Bank v. Court of Appeals*, 330 Phil. 1048, 1072-1073 (1996) [Per *J.* Hermosisima, Jr., First Division].

[89] *Ayala Life Assurance, Inc. v. Ray Burton Development Corp.,* 515 Phil. 431, 438 (2006) [Per *J.* Sandoval-Gutierrez, Second Division].

[90] *Chua v. Court of Appeals,* 449 Phil. 25, 42 (2003) [Per *J.* Carpio, First Division].

[91] *Id.*

[92] *Diego v. Diego*, 704 Phil. 373, 390-392 (2013) [Per *J.* del Castillo, Second Division].

[93] *Cheng v. Genato*, 360 Phil. 891, 906 (1998) [Per *J.* Martinez, Second Division].

It was our understanding that pending your purchase of the property you will rent the same for the sum of ₱10,000.00 monthly. With our expectation that you will be able to purchase the property during 2002, we did not offer the property for sale to third parties. *We even gave you an extension verbally for another twelve months or the entire year of 2003 within which we could finalize the sale agreement and for you to deliver to us the amount of ₱3.5 Million, the agreed selling price of the property.* However, to this date, we are not certain whether or not you have the capacity to purchase the property. The earnest money of P100,000 that we initially agreed upon only reached ₱78,000 as of date accumulated through several installments during 2003. It is not our intention to wait for a long time to dispose the property since you are very much aware of the situation of my mother.[94] (Emphasis supplied)

In this case, since respondents failed to deliver the purchase price at the end of 2003, the contract to sell was deemed cancelled. The contract's cancellation entitles petitioner to retain the earnest money given by respondents.

Earnest money, under Article 1482 of the Civil Code, is ordinarily given in a perfected contract of sale.[95] However, earnest money may also be given in a contract to sell.

In a contract to sell, earnest money is generally intended to compensate the seller for the opportunity cost of not looking for any other buyers. It is a show of commitment on the part of the party who intimates his or her willingness to go through with the sale after a specified period or upon compliance with the conditions stated in the contract to sell.

Opportunity cost is defined as "the cost of the foregone alternative."[96] In a potential sale, the seller reserves the property for a potential buyer and foregoes the alternative of searching

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[94] *Rollo*, p. 56.

[95] CIVIL CODE, Art. 1482 provides: Article 1482.

Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

[96] See *Reyes v. Valentin*, G.R. No. 194488, February 11, 2015 [Per *J.* Leonen, Second Division].

for other offers. This Court in *Philippine National Bank v. Court of Appeals*[97] construed earnest money given in a contract to sell as "consideration for [seller's] promise to reserve the subject property for [the buyer]."[98] The seller, "in excluding all other prospective buyers from bidding for the subject property . . . [has given] up what may have been more lucrative offers or better deals."[99]

Earnest money, therefore, is paid for the seller's benefit. It is part of the purchase price while at the same time proof of commitment by the potential buyer. Absent proof of a clear agreement to the contrary, it is intended to be forfeited if the sale does not happen without the seller's fault. The potential buyer bears the burden of proving that the earnest money was intended other than as part of the purchase price and to be forfeited if the sale does not occur without the fault of the seller. Respondents were unable to discharge this burden.

There is no unjust enrichment on the part of the seller should the initial payment be deemed forfeited. After all, the owner could have found other offers or a better deal. The earnest money given by respondents is the cost of holding this search in abeyance.

This Court notes that respondents were even unable to meet their own promise to pay the full amount of the earnest money. Of the ₱100,000.00 that respondents committed to pay, only ₱78,000.00 was received in irregular tranches. To rule that the partial earnest money should even be returned is both inequitable and would have dire repercussions as a precedent.

Although petitioner offered to return the earnest money to respondents, it was conditioned upon the sale of the property to another buyer.[100] Petitioner cannot be said to have expressly

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[97] 330 Phil. 1048 (1996) [Per *J*. Hermosisima, First Division].

[98] *Id*. at 1073.

[99] *Id*.

[100] *Rollo*, p. 56.

waived her right to retain the earnest money. Petitioner's offer was even rejected by respondents, who proposed that the earnest money be applied instead to their unpaid rent.[101]

Therefore, respondents' unpaid rent amounting to ₱84,000.00[102] cannot be offset by the earnest money. However, it should be reduced by respondents' advanced deposit of ₱30,000.00. As found by the Regional Trial Court, petitioner failed to establish that respondents' advanced deposit had already been consumed or deducted from respondents' unpaid rent.[103]

WHEREFORE, the Petition for Review is **GRANTED**. The January 13, 2009 Decision and September 17, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 98928 are **REVERSED** and **SET ASIDE**. Respondents Spouses Germil and Rebecca Javier are ordered to pay petitioner Vanessa N. Racelis the sum of ₱54,000.00, representing accrued rentals, with interest at the rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.

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

Martires,[*] *J.,* on official leave.

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[101] *Id*. at 57.

[102] *Id*. at 29.

[103] *Id*. at 96.

[*] On official leave as per letter dated January 18, 2018.

SECOND DIVISION

[G.R. No. 219889. January 29, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN DAGSA *y* BANTAS @ "WING WING,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; VARIANCE DOCTRINE; EVEN THOUGH THE CRIME CHARGED WAS FOR RAPE THROUGH CARNAL KNOWLEDGE, ACCUSED CAN BE CONVICTED OF THE CRIME OF ACTS OF LASCIVIOUSNESS BECAUSE SAID CRIME IS INCLUDED IN THE CRIME OF RAPE.—** [T]he Court agrees with the ruling of the CA that accused-appellant is guilty of the crime of acts of lasciviousness. Under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence, even though the crime charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** The trial court found the testimonies of Michael and Jomie to be straightforward, categorical and convincing. It is settled that 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. 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. Moreover, it has been held that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth. Likewise, jurisprudence has consistently given full weight and credence to a child's testimonies as youth and immaturity are badges of truth and sincerity.

3. **ID.; ID.; ID.; UPHELD IN THE ABSENCE OF ILL-WILL TO TESTIFY AGAINST THE ACCUSED.—** [A]ccused-appellant failed to refute the testimonies of Michael and Jomie who categorically pointed to him as the person who fondled the victim's private organ. He also failed to attribute any improper motive to the child witnesses to falsely testify against him. x x x In the absence of proof to the contrary, the presumption is that the witness was not moved by any ill-will and was untainted by bias, and thus, worthy of belief and credence. Under these circumstances, the rule that where the prosecution eyewitnesses were familiar with both the victim and the accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witnesses for testifying against the accused, then their version of the story deserves much weight, thus applies.

4. **CRIMINAL LAW; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE IN RELATION TO SECTION 5(b), ARTICLE III OF RA 7610, SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT; ELEMENTS.—** The CA found accused-appellant guilty of the crime of acts of lasciviousness, under Article 336 of the RPC, in relation to Section 5 (b), Article III of RA 7610, which defines and penalizes acts of lasciviousness committed against a child, x x x The essential elements of this provision are: 1. The accused commits the act of sexual intercourse or *lascivious conduct.* 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child, whether male or female, is below 18 years of age.

5. **ID.; ID.; ID.; ACCUSED COMMITS THE ACT OF SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT; LASCIVIOUS CONDUCT, DEFINED.—** As to the first element, paragraph (h), Section 2 of the Implementing Rules and Regulations of RA 7610 defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others.

6. **ID.; ID.; ID.; THE SAID ACT IS PERFORMED WITH A CHILD EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE; "OTHER SEXUAL ABUSE" COVERS ALSO ONE WHO ENGAGES IN LASCIVIOUS CONDUCT THROUGH THE COERCION OR INTIMIDATION BY AN ADULT.—** The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. This second element requires evidence proving that: (a) AAA was either exploited in prostitution or subjected to sexual abuse; and (b) she is a child as defined under RA 7610. In the case of *Olivarez v. Court of Appeals,* this Court explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will. Intimidation need not necessarily be irresistible. As in the present case, it is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls, like AAA, who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

7. **ID.; ID.; PENALTY.—** With respect to the proper penalty to be imposed, Section 5(b) of RA 7610 provides that the penalty for lascivious conduct, when the victim is under twelve (12)

years of age, shall be *reclusion temporal* in its medium period, which ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. x x x [I]n the present case, in the absence of any mitigating or aggravating circumstance, the maximum term of the sentence to be imposed shall be taken from the medium period of *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days. On the other hand, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, from the foregoing, the penalty imposed by the CA, x x x should be modified to conform to prevailing jurisprudence. Accordingly, the minimum prison term is reduced to twelve (12) years and one (1) day, while the maximum term is likewise reduced to fifteen (15) years, six (6) months and twenty-one (21) days.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant Edwin Dagsa y Bantas @ "Wing Wing" assailing the Decision[1] of the Court of Appeals (CA), promulgated on August 29, 2014, in CA-G.R. CR-H.C. No. 06087, which affirmed, with modification, the September 21, 2012 Judgment[2] of the Regional Trial Court *(RTC)* of La Trinidad, Benguet, Branch 9, in Criminal Case No. 04-CR-5629, finding accused-appellant guilty beyond reasonable doubt of the crime of rape.

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting, concurring; *rollo,* pp. 3-14.

[2] Dated September 21, 2011 in some parts of the *rollo* and records.

The antecedents are as follows:

On October 11, 2004, the victim, AAA, a young girl who was then four (4) years old, was walking home with two of her classmates after having been dismissed from their class in Kapangan, Benguet. While they were on their way home, herein accused-appellant, who is the cousin of AAA's father, blocked their path and told AAA's classmates to go ahead as he would be giving AAA a candy. AAA's classmates left her and, after walking a little farther, they looked back and saw accused-appellant remove AAA's panty and proceeded to fondle her vagina. Thereafter, when AAA arrived home, her mother, BBB, noticed that the victim immediately removed her panty, saying that she no longer wanted to use it. The following day, while BBB was giving AAA a bath, the latter refused that her vagina be washed claiming that it was painful. Upon her mother's inquiry, AAA replied that accused-appellant played with her vagina and inserted his penis in it. BBB immediately went to talk to AAA's classmates about the incident whereby the said classmates relayed to her what they saw. They then proceeded to the police station to report the incident. AAA's classmates gave their statements, but AAA was not able to give hers as she was too shy. A criminal complaint for rape was eventually filed against accused-appellant. In an Information dated November 25, 2004, the Provincial Prosecutor of Benguet charged accused-appellant with the crime of rape as defined under Article 266-A, paragraph 1(d) and penalized under Article 266-B, paragraph 6(5), both of the Revised Penal Code *(RPC),* as amended by Republic Act No. 8353[3] *(RA 8353),* in relation to Republic Act No. 7610[4] *(RA 7610).* The accusatory portion of the Information reads, thus:

> That on or about the 11th day of October 2004, at Paykek, Municipality of Kapangan, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused,

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[3] Otherwise known as the *"Anti-Rape Law of 1997."*

[4] Otherwise known as the *"Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."*

did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, a minor, four (4) years, four (4) months and twenty-one (21) days of age against her will and consent, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.[5]

Upon arraignment, accused-appellant pleaded not guilty.[6]

The case proceeded to trial where the prosecution presented AAA's mother, AAA's two (2) classmates, the police officer who took the statements of AAA's mother and her classmates, as well as the psychologist who examined AAA. No documentary or object evidence was presented by the prosecution.

After the prosecution rested its case, accused-appellant, through counsel, chose not to adduce evidence in his behalf.

After trial, the RTC rendered its Judgment dated September 21, 2012 finding accused-appellant guilty as charged. The dispositive portion of the trial court's decision reads, thus:

WHEREFORE, accused EDWIN DAGSA y BANTAS alias "WING WING" is hereby found GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE. He is sentenced to suffer the penalty of Reclusion Perpetua and is ordered to pay the private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages. All damages awarded in this case should be imposed with interest at the rate of six (6) percent per annum from the finality of this judgment until fully paid (*People v. Asetre*, G.R. No. 175834, June 8, 2011).

In view of the prison term of the accused which is more than 3 years, he is considered a national prisoner (P.D. 29 and Supreme Court Circular No. 4-92-A), hence, he is ordered transferred to the New Bilibid Prison at Muntinlupa City. By virtue thereof, issue a corresponding commitment order.

SO ORDERED.[7]

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[5] Records, p. 1.

[6] See RTC Order and Certificate of Arraignment, records, pp. 15 and 16.

[7] Records, pp. 131-132.

In convicting accused-appellant, the RTC gave full credence to the testimonies of the prosecution witnesses finding them to be straightforward, categorical, convincing and bearing the hallmark of truth. The trial court concluded that the failure of the accused-appellant to dispute or refute the accusation of rape, coupled with the chain of unbroken circumstantial evidence, leads to no other conclusion than that accused-appellant raped AAA.

Accused-appellant appealed[8] his case with the CA contending that the testimonies of AAA's mother and the police officer who took the statement of the mother are not circumstantial evidence but, in fact, are hearsay evidence because what the mother testified to in open court are the things that her daughter, AAA, told her regarding her supposed rape. In the same manner, the testimony of the police officer was essentially based on the allegations relayed to her by the mother of AAA. Accused-appellant also contended that the testimonies of AAA's classmates, Michael and Jomie, that they saw accused-appellant fondle AAA's vagina, is not sufficient to establish the allegation that accused-appellant raped AAA. As to the testimony of the psychologist, the same is hearsay because if was based on the narration given to her by AAA. Accused-appellant also questions the failure of the prosecution to present the result of the medical examination conducted on AAA, considering the admission of AAA's mother that the child, in fact, underwent such examination. Lastly, accused-appellant attacks the decision of the prosecution not to present the victim as a witness, considering that the psychologist testified that, given a friendly and non-threatening environment, the child-victim could testify in court. Accused-appellant proceeded to conclude that the circumstantial evidence presented by the prosecution is not sufficient to reach the conclusion that he raped AAA.

On August 29, 2014, the CA promulgated its Decision holding that "the combination of all the circumstances presented by the prosecution does not produce a conviction beyond reasonable

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[8] See Notice of Appeal, *id.* at 133.

doubt against [accused-appellant] for the crime of rape."[9] The CA found that the evidence of the prosecution failed to establish that [accused-appellant] had carnal knowledge of AAA."[10] What the classmates of AAA saw was that accused-appellant fondled her vagina. The CA also held that the admission of AAA to her mother that accused-appellant sexually abused her may not be considered as part of the *res gestae* because such was not spontaneously and voluntarily made. The CA, nonetheless, held that accused-appellant may be convicted of the crime of acts of lasciviousness as the said crime is included in the crime of rape, and the elements of which were sufficiently established during trial. Thus, the CA disposed as follows:

FOR THE STATED REASONS, the September 21, 2011 (sic) Decision of the Regional Trial Court is AFFIRMED with MODIFICATIONS that accused-appellant EDWIN DAGSA y BANTAS @ "WING WING" is sentenced to suffer an indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal* in its minimum period, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* in its medium period, as maximum, and further ORDERED to pay the victim, AAA, Php20,000.00 as civil indemnity, Php30,000.00 as moral damages, and Php10,000.00 as exemplary damages, all with interest at the rate of 6% per annum from the date of finality of this judgment until its satisfaction.

SO ORDERED.[11]

On September 17, 2014, accused-appellant, through counsel, filed a Notice of Appeal[12] manifesting his intention to appeal the CA Decision to this Court.

In its Resolution dated September 29, 2014, the CA gave due course to accused-appellant's Notice of Appeal and ordered the elevation of the records of the case to this Court.[13]

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[9] CA *rollo,* pp. 74-75

[10] *Id.* at 75.

[11] *Id.* at 80.

[12] *Id.* at 86-88.

[13] *Id.* at 91.

Hence, this appeal was instituted.

In a Resolution[14] dated October 12, 2015, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation (In Lieu of Supplemental Brief)[15] dated December 16, 2015, the Office of the Solicitor General *(OSG)*informed this Court that it will no longer file a supplemental brief "there being no significant transaction, occurrence or event that happened since the filing of its Appellee's Brief [with the CA] dated March 17, 2014."

Accused-appellant, likewise filed a Manifestation (In Lieu of a Supplemental Brief)[16] dated December 28, 2015, indicating that he will no longer file a Supplemental Brief since no new issues material to the case which were not elaborated upon in the Appellant's Brief were discovered and that he "had exhaustively argued all the relevant issues in his brief, hence, the filing of a Supplemental Brief would only be a repetition of the arguments raised therein."

The appeal lacks merit.

The CA did not commit error in finding accused-appellant not liable for rape. Pertinent portions of the CA Decision, which the Court quotes with approval, are as follows:

x x x x x x x x x

In the present case, the combination of all the circumstances presented by the prosecution does not produce a conviction beyond reasonable doubt against Edwin for the crime of rape.

x x x x x x x x x

Here, the evidence of the prosecution failed to establish that Edwin had carnal knowledge of AAA. Michael's testimony did not show

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[14] *Rollo,* p. 20.

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

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

that Edwin had carnal knowledge with AAA. He only testified that he saw Edwin holding AAA's vagina. x x x

Jomie corroborated Michael's testimony, x x x

Clearly, Michael and Jemie's testimonies failed to prove that Edwin inserted his penis [into] AAA's vagina. What they saw was only his act of fondling AAA's private part which is not rape.

BBB's testimony that AAA admitted to her that she was sexually molested by Edwin cannot be treated as part of the *res gestae.* To be admissible as part of the *res gestae,* a statement must be spontaneous, made during a startling occurrence or immediately prior or subsequent thereto, and must relate to the circumstance of such occurrence. Here, AAA did not immediately tell BBB of the alleged rape. It was only the next day that she told her mother of the incident after she was asked what was wrong. Verily, the declaration was not voluntarily and spontaneously made as to preclude the idea of deliberate design.

x x x x x x x x x[17]

Nonetheless, the Court agrees with the ruling of the CA that accused-appellant is guilty of the crime of acts of lasciviousness. Under the variance doctrine embodied in Section 4,[18] in relation to Section 5,[19] Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence,[20] even though the crime

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

[18] SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

[19] SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[20] *People v. Pareja,* 724 Phil. 759, 784 (2014); *People v. Rellota,* G.R. No. 168103, August 3, 2010, 626 SCRA 422, 448; *People v. Abulon,* 557 Phil. 428, 455 (2007).

charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.

The ruling of the CA finding accused-appellant guilty of the crime of acts of lasciviousness is based on the testimonies of the two classmates of the victim, AAA, who saw accused-appellant fondle the latter's vagina.

Witness, Michael, clearly narrated the details of the fondling incident and positively identified accused-appellant as the perpetrator. In a simple, spontaneous, and straightforward manner, Michael testified as follows:

PROS. PATARAS ON DIRECT EXAMINATION:

Q You are a Grade I pupil?
A Yes sir.

Q In what school?
A In Paykek.

Q And as a Grade I pupil, you know that telling a lie is not good?
A Yes sir.

Q What you tell is only the truth?
A Yes sir.

Q Do you [know] a person by the name of [AAA]?
A Yes sir.

Q Why do you know her?
A (No answer)

COURT:

Make the question simple.

Q [AAA] was your classmate?
A Yes sir.

Q [AAA] was your classmate while you were also in kindergarten?
A Yes sir.

Q She is also your neighbor?
A Yes sir.

Q And she is also your playmate?
A Yes sir.

Q You always go to school together?
A Yes sir.

Q And whenever you go home, you always go home with her?
A Yes sir.

Q You have the same pathway in going to school and in going home?
A Yes sir.

Q How about a person by the name of Wingwing, do you know a person by that name
A Yes sir

Q If this Wingwing is in the Courtroom, would you be able to identify him?
A Yes sir.

Q Will you point to us this Wingwing that you know?

INTERPRETER:

The person pointed to by the witness identified himself as Edwin Dagsa alias Wingwing

Q Did you see anything that Wingwing do to [AAA]?
A Yes sir.

Q What did this Wingwing do to [AAA] that you saw?
A "Kinawet na ti pipit ni [AAA]"

Q He used his hands in doing that?
A Yes sir.

Q Do you still recall where did this Wingwing do that to [AAA]?
A Yes sir.

Q Where?
A In x x x Paykek.

Q Were you going to school at that time or were you already dismissed from school when you saw Wingwing do that to [AAA]?

A Yes sir.

Q So you were already going home when Wingwing did that to [AAA]?
A Yes sir.

Q So you were just dismissed from school?
A Yes sir.

Q Before Wingwing put his hands in the vagina on this [AAA], did he talk to anyone of you?
A Yes sir.

Q What did Wingwing tell you?
A He said that we will go down so that he will give candy to [AAA].

Q Aside from [AAA], do you recall if you have other companions when Wingwing put his hands at the vagina of [AAA]?
A Yes sir.

Q Who?
A Arnold, Dave, Joemi and I.

Q When you said Joemi, you are referring to Joemi Oyani?
A Yes sir.

Q After you saw Wingwing put his hands on the vagina of [AAA], where did you go?
A I went down.

x x x x x x x x x

ATTY SAYOG ON CROSS EXAMINATION;

Q Michael, is [AAA] your neighbor too?
A Yes ma'am

Q Michael, you said that you saw Wingwing put his hands into the vagina of Jerrilyn, are you far when you saw Wingwing put his hands on the vagina of [AAA]?
A Yes ma'am.

Q From where you are sitting, can you point to how far was Wingwing when he put his hands into the vagina of [AAA]?
A Where the Fiscal is sitting down.

COURT:

That would be about two (2) meters.

Q When you allegedly saw Wingwing did that act to [AAA], did you tell it to anyone?
A Yes ma'am

Q And to whom did you tell it? Your mother, your uncle?
A My mother, ma'am.

x x x x x x x x x[21]

In the same manner, Jomie corroborated the testimony of Michael and narrated, thus:

PROS. PATARAS ON DIRECT EXAMINATION

Q You know that telling a lie is bad or not good?
A Yes sir.

Q And what you will tell is only the truth?
A Yes sir.

Q Do you know this [AAA]?
A Yes sir.

Q Why do you know [AAA]?
A Yes sir.

Q Is she your neighbor?
A No sir.

Q Will you tell us why you know [AAA]?
A She was my classmate in kinder.

Q How about a person by the name of Wingwing, do you know such a person named Wingwing?
A Yes sir.

JEFFRY TAYNAN:

The witness pointed to a person who identified himself as Edwin Dagsa.

Q While you were classmates with [AAA], did you see anything that Wingwing did to [AAA]?
A Yes sir.

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[21] TSN, March 21, 2006, records, pp. 70-74.

Q What did you see that Wingwing did to [AAA]?
A While [we] were walking, he blocked our way and he told us to go down so that he will give [AAA] candy and when we did not go, he let [AAA] sit down.

Q After he let [AAA] sit down, what did he do to [AAA]?
A He held her vagina.

Q After he held the vagina of [AAA], what did he do next, if you have seen any?
A We went home.

Q How many times did you see Wingwing hold the vagina of [AAA]?
A Once only.

Q Did you tell this to the police?
A No sir.

Q I'm showing you a document with a name Jomie Uyan and above it is a signature, will you see whose signature is this?
A Mine sir.

Q Is that your signature?
A Yes sir.

Q So you recall that a policeman went to talk to you about what Wingwing did to [AAA]?
A Yes sir.

Q Did you tell also the police that Wingwing removed the panty of [AAA]?
A Yes sir.

Q And it was after this Wingwing removed the panty that he played the vagina of [AAA]?
A Yes sir.[22]

The trial court found the testimonies of Michael and Jamie to be straightforward, categorical and convincing. It is settled that the assessment of the credibility of witnesses is within the province of the trial court.[23] All questions bearing on the

[22] TSN, April 2, 2007, records, pp. 89-91.

[23] *People v. Esugon,* 761 Phil. 300, 311 (2015).

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.[24] The trial judge has the unique advantage of actually examining the real and testimonial evidence, particularly the demeanor of the witnesses.[25] Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal.[26] 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.[27]

Moreover, it has been held that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.[28] Likewise, jurisprudence has consistently given full weight and credence to a child's testimonies as youth and immaturity are badges of truth and sincerity.[29]

What is important in the instant case is that Michael and Jomie witnessed the unfolding of the crime and was able to positively identify accused-appellant as the culprit. Also, the fact that Michael and Jomie were just a few meters away from the victim and the accused-appellant, and that the crime was committed in broad daylight, bolster their testimonies as to the particular acts committed by accused-appellant and their identification of the latter as the perpetrator of the lascivious acts committed against the victim.

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[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *People v. Aquino,* 724 Phil. 739, 749 (2014).

[29] *People v. Entrampas,* G.R. No. 212161, March 29, 2017.

On the other hand, accused-appellant failed to refute the testimonies of Michael and Jomie who categorically pointed to him as the person who fondled the victim's private organ. He also failed to attribute any improper motive to the child witnesses to falsely testify against him. There was no evidence to establish that Michael and Jomie harbored any ill-will against accused-appellant or that they had reasons to fabricate their testimony. In the absence of proof to the contrary, the presumption is that the witness was not moved by any ill-will and was untainted by bias, and thus, worthy of belief and credence.[30]

Under these circumstances, the rule that where the prosecution eyewitnesses were familiar with both the victim and the accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witnesses for testifying against the accused, then their version of the story deserves much weight, thus applies.[31] The Court is, therefore, convinced that accused-appellant's culpability for lascivious acts committed against the victim was duly established by the testimony of the child witnesses.

The CA found accused-appellant guilty of the crime of acts of lasciviousness, under Article 336 of the RPC, in relation to Section 5 (b), Article III of RA 7610, which defines and penalizes acts of lasciviousness committed against a child, as follows:

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 subject to other

[30] *People v. Jalbonian,* 713 Phil. 93, 104 (2013).

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

> sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x
>
> x x x x x x x x x

The essential elements of this provision are:

1. The accused commits the act of sexual intercourse or *lascivious conduct.*

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. The child, whether male or female, is below 18 years of age.[32]

As to the first element, paragraph (h), Section 2 of the Implementing Rules and Regulations of RA 7610 defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. Records show that the prosecution duly established this element when the witnesses positively testified that accused-appellant fondled AAA's vagina sometime in October 2004.

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse.[33] This second element requires evidence proving that: (a) AAA was either exploited in prostitution or subjected to sexual abuse; and (b) she is a child as defined under RA 7610.[34]

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[32] *People v. Garingarao,* 669 Phil. 512, 523 (2011).

[33] *People v. Abello,* 601 Phil. 373, 393 (2009).

[34] *Id.*

In the case of *Olivarez v. Court of Appeals,*[35] this Court explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.[36] Intimidation need not necessarily be irresistible.[37] As in the present case, it is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.[38] This is especially true in the case of young, innocent and immature girls, like AAA, who could not be expected to act with equanimity of disposition and with nerves of steel.[39] Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[40]

Anent the third element, there is no dispute that AAA was four years old at the time of the commission of the crime. Thus, on the basis of the foregoing, the Court finds that the CA correctly found accused-appellant guilty of the crime of acts of lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of RA 7610.

With respect to the proper penalty to be imposed, Section 5(b) of RA 7610 provides that the penalty for lascivious conduct, when the victim is under twelve (12) years of age, shall be *reclusion temporal* in its medium period, which ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Citing the cases of *People v.*

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[35] 503 Phil. 421 (2005).

[36] *Id.* at 432; *People v. Abello, supra* note 31.

[37] *People v. Rellota, supra* note 20, at 447.

[38] *Id.*

[39] *Id.*

[40] *Id.*

Simon[41] and *People v. Santos,*[42] this Court, in the case of *Quimvel v. People,*[43] deemed it proper to apply the provisions of the Indeterminate Sentence Law in imposing the penalty upon the accused who was similarly charged with the crime of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610.

Thus, in the present case, in the absence of any mitigating or aggravating circumstance, the maximum term of the sentence to be imposed shall be taken from the medium period of *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days. On the other hand, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

Hence, from the foregoing, the penalty imposed by the CA, which is thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal* in its minimum period, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* in its medium period, as maximum, should be modified to conform to prevailing jurisprudence. Accordingly, the minimum prison term is reduced to twelve (12) years and one (1) day, while the maximum term is likewise reduced to fifteen (15) years, six (6) months and twenty-one (21) days.

Finally, in light of this Court's recent ruling in *People v. Caoili,*[44] where the accused was found guilty of lascivious conduct under Section 5(b) of RA 7610, committed against a fourteen (14)- year-old minor, and was meted the maximum penalty of *reclusion perpetua,* as opposed to the present case

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[41] 304 Phil. 725 (1994).

[42] 753 Phil. 637 (2015).

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

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

where the victim is only four (4) years old and the imposable penalty under existing law is only *reclusion temporal* in its medium period, it bears to reiterate the present ponente's disquisition m his Separate Concurring Opinion in *Quimvel,*[45] to wit:

Having in mind the State policies and principles behind R.A. 7610 *(Special Protection of Children Against Abuse, Exploitation, and Discrimination Act)* and R.A. 8353 *(Anti-Rape Law of 1997),* as well as the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, I submit that the following are the applicable laws and imposable penalties for acts of lasciviousness committed against a child under Article 336 of the RPC, in relation to R.A. 7610:

1. Under 12 years old - Section 5(b), Article III of R.A. 7610, in relation to Article 336 of the RPC, as amended by R.A. 8353, applies and the imposable penalty is *reclusion temporal* in its medium period, instead of *prision correccional.* In *People v. Fragante, Imbo v. People of the Philippines,* and *People of the Philippines v. Santos,* the accused were convicted of acts of lasciviousness committed against victims under 12 years old, and were penalized under Section 5(b), Article III of R.A. 7 610, and not under Article 336 of the RPC, as amended.

2. **12 years old and below 18, or 18 or older under special circumstances under Section 3(a) of R.A. 7610 -** Section 5(b), Article III of R.A. 7610 in relation to Article 336 of the RPC, as amended, applies and the penalty is ***reclusion temporal* in its medium period to *reclusion perpetua.*** This is because the proviso under Section 5(b) appl[ies] only if the victim is under 12 years old, but silent as to those 12 years old and below 18; hence, the main clause thereof still applies in the absence of showing that the legislature intended a wider scope to include those belonging to the latter age bracket. The said penalty was applied in *People of the Philippines v. Bacus* had *People of the Philippines v. Baraga* where the accused were convicted of acts of lasciviousness committed against victims 12 years old

[45] *Supra* note 42.

and below 18, and were penalized under Section 5(b), Article III of R.A. 7610. But, if the acts of lasciviousness is not covered by lascivious conduct as defined in R.A. 7610, such as when the victim is 18 years old and above, acts of lasciviousness under Article 336 of the RPC applies and the penalty is *prision correccional.*

Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty *[reclusion temporal* medium] when the victim is under 12 years old is lower compared to the penalty *[reclusion temporal* medium to *reclusion perpetual]* when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31, Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua.* In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum, whereas as the minimum term in the case of the older victims shall be taken from *prision mayor medium* to *reclusion temporal minimum.* It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints, but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law. To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.

Too, it bears emphasis that R.A. 8353 did not expressly repeal Article 336 of the RPC, as amended. Section 4 of R.A. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. 8353, except in sexual assault as a form of rape. Hence, when the lascivious act is not covered by R.A. 8353, then

Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. 7610.

In fact, R.A. 8353 only modified Article. 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances applicable to rape, *viz.:* threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. In fine, Article 336 of the RPC, as amended, is still a good law despite the enactment of R.A. 8353 for there is no irreconcilable inconsistency between their provisions.

Meanwhile, **the Court is also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor.* In *People v. Chingh,* the Court noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. 8353 to have disallowed the applicability of R.A. 7610 to sexual abuses committed to children. The Court held that despite the passage of R.A. 8353, R.A. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."**

Finally, as the Court stressed in ***Dimakuta v. People,*** where the lascivious conduct is covered by the definition under R.A. 7610 where the penalty *is reclusion temporal* medium and the said act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor,* the offender should be liable for violation of Section 5(b), Article III of R.A. 7610, where

the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect from herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. 7 610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.[46]

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06087, finding accused-appellant Edwin Dagsa y Bantas @ "Wing Wing" guilty beyond reasonable doubt of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of RA 7610, is hereby **AFFIRMED** with **MODIFICATION** by sentencing accused-appellant to an indeterminate penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum.

As reference for possible corrective legislation on the basis of the above observations, let a Copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice, pursuant to Article 5[47] of the Revised

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[46] Citations omitted; emphases supplied.

[47] ARTICLE 5. *Duty of the Court in Connection with Acts Which Should Be Repressed but Which are Not Covered by the Law, and in Cases of Excessive Penalties.* — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without

Penal Code. Also, let a copy of this Decision be furnished the President of the Senate and the Speaker of the House of Representatives.

SO ORDERED.

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

Caguioa, J., subject to his dissent in *Quimvel* and separate opinion in *People vs. Caoili.*

SECOND DIVISION

[G.R. No. 229102. January 29, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PHILIP MAMANGON *y* ESPIRITU,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [A]n appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

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suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offfense.

2. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; IN BOTH CASES, THE IDENTITY OF THE PROHIBITED DRUG MUST BE PROVED WITH MORAL CERTAINTY.—** Mamangon was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11 (3), Article II of RA 9165. In every prosecution of unauthorized sale of dangerous drugs, it is essential that the following elements are proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Meanwhile, in order to convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. In both cases, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment that the drugs are seized up to their presentation in court as evidence of the crime.

3. **ID.; ID.; PROCEDURE WHICH THE POLICE OFFICERS MUST FOLLOW WHEN HANDLING THE SEIZED DRUGS IN ORDER TO PRESERVE THEIR INTEGRITY AND EVIDENTIARY VALUE.—** Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items <u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media</u>**

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, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

4. **ID.; ID.; ID.; NON-COMPLIANCE TOLERATED UNDER JUSTIFIABLE GROUNDS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** The Court clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA10640 – provide that **the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure,** and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** x x x In *People v. Almorfe,* **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**. Also, in *People v. De Guzman,* it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appelant.

DECISION

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Philip Mamangon *y* Espiritu (Mamangon) assailing the Decision[2] dated November 27, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06565, which affirmed the Decision[3] dated September 17, 2012 of the Regional Trial Court of Manila, Branch 53 (RTC) in Crim. Case Nos. 09-266829 and 09-266830 finding him guilty beyond reasonable doubt of violating Sections 5 and 11 (3), Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Mamangon of the crimes of illegal sale and illegal possession of dangerous drugs, the accusatory portions of which state:

Criminal Case No. 09-266829

That on or about February 20, 2009, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away any dangerous drug, did then and there [willfully], unlawfully and knowingly sell, trade, deliver or give away ZERO POINT ZERO ZERO NINE (0.009) gm. of white

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[1] See Notice of Appeal dated December 21, 2015; *rollo*, pp. 15-16.

[2] *Id*. at 2-14. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Magdangal M. De Leon and Victoria Isabel A. Paredes concurring.

[3] CA *rollo*, pp. 13-16. Penned by Judge Reynaldo A. Alhambra.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Both dated February 24, 2009; CA *rollo*, pp. 11-12.

crystalline substance containing methylamphetamine hydrochloride, known as "SHABU", a dangerous drug.

Contrary to law.[6]

Criminal Case No. 09-266830

That on or about February 20, 2009, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there [willfully], unlawfully and knowingly have in his possession and under his control and custody ZERO POINT ZERO ZERO SEVEN (0.007) gm. white crystalline substance containing methylamphetamine hydrochloride, known as "SHABU", a dangerous drug.

Contrary to law.[7]

The prosecution alleged that at around seven (7) o'clock in the evening of February 20, 2009, a tip was received from a confidential informant that a certain "Pepe," who was later on identified as Mamangon, was selling illegal drugs along the railroad track of Dagupan Extension and Antipolo Street in Tondo, Manila.[8] Acting on the said tip, a buy-bust operation was organized in coordination with the Philippine Drug Enforcement Agency (PDEA), and the buy-bust team went to the target area at around 8:40 in the evening.[9] Upon arriving thereat, the informant, together with Police Officer (PO) 3 Erick Guzman (PO3 Guzman), the designated poseur-buyer, approached Mamangon and ordered ₱300.00 worth of *shabu* from him. Subsequently, Mamangon handed over one (1) piece of plastic sachet containing *shabu* to PO3 Guzman, who simultaneously paid the former using the marked money. Shortly after, PO3 Guzman removed his cap, which was the pre-arranged signal for the police to come in, and consequently, Mamangon was apprehended. PO3 Guzman then recovered the marked money from Mamangon and ordered him to empty his pockets, which purportedly contained another plastic sachet of *shabu*.

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[6] *Id*. at 11.

[7] *Id*. at 12.

[8] *Rollo*, p. 3.

[9] *Id*. at 3-4. See also TSN, September 17, 2010, pp. 6-9.

After securing the additional plastic sachet, PO3 Guzman marked it alongside the other seized item in the presence of Mamangon. Thereafter, the team went to the barangay hall but immediately left since no one was around. The team then proceeded to Police Station 7, where PO3 Guzman turned over Mamangon, as well as the seized items, to PO2 Rolando Dela Cruz (PO2 Dela Cruz), the investigator on duty.[10] PO2 Dela Cruz then conducted the requisite inventory, while PO3 Guzman took photographs of the confiscated items in the presence of Mamangon and the other arresting officers. After conducting the inventory to which were attached the photographs, PO2 Dela Cruz prepared the request for laboratory examination, which was submitted together with the seized items to the Philippine National Police (PNP) Crime Laboratory for examination. Accordingly, they were received and examined by Forensic Chemist, Police Senior Inspector Elisa G. Reyes (FC Reyes), who confirmed that they contained *methylamphetamine hydrochloride*, a dangerous drug.[11]

In his defense, Mamangon denied the allegations against him. He maintained that at around four (4) o'clock in the afternoon of February 19, 2009, he was with his cousin, Moises Mamangon, in Dagupan Street, Tondo, Manila, when PO2 Jayson Magbitang (PO2 Magbitang) suddenly approached and asked them if they saw a person running towards their direction. When Mamangon answered in the negative, another police officer arrived, asked for his name, and frisked him. Mamangon claimed that PO2 Magbitang then invited him to the police station for "verification." However, upon their arrival, he was allegedly placed inside the detention cell and was brought out the following day, only to have his pictures taken with the seized items. Mamangon clarified that while he knew PO2 Magbitang to be a police officer, he did not know PO3 Guzman until the latter testified in court.[12]

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[10] See *id*. at 4-5.

[11] See *id*. at 5. See also Chemistry Report No. D-121-09 dated February 21, 2009 signed by FC Reyes; records, p. 18.

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

The RTC Ruling

In a Decision[13] dated September 17, 2012, the RTC found Mamangon guilty beyond reasonable doubt of violating Sections 5 and 11 (3), Article II of RA 9165 and respectively sentenced him as follows: (*a*) in Crim. Case No. 09-266829, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, with costs; and (*b*) in Crim. Case No. 09-266830, to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of ₱300,000.00, with costs.[14] It held that the prosecution proved with moral certainty all the necessary elements of the crimes of illegal sale and illegal possession of dangerous drugs. On the contrary, Mamangon's unsubstantiated defense of denial failed to overcome the positive testimonies of witnesses, who had no ill-motive to testify falsely against him.[15]

Furthermore, the RTC found that the identity of the *corpus delicti* was competently established by the prosecution, as the integrity and evidentiary value of the dangerous drugs were shown to have been preserved from the time they were seized from Mamangon until they were submitted to the forensic chemist for examination up to the time they were offered in evidence.[16]

Aggrieved, Mamangon appealed[17] to the CA.

The CA Ruling

In a Decision[18] dated November 27, 2015, the CA affirmed the ruling of the RTC,[19] holding that the prosecution adequately proved all the elements of the crimes charged.[20] Further, the

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[13] CA *rollo*, pp. 13-16.

[14] *Id*. at 16.

[15] See *id*. at 15-16.

[16] See *id*.

[17] See Notice of Appeal dated October 1, 2012; *id*. at 17.

[18] *Rollo*, pp. 2-14.

[19] *Id*. at 13.

[20] See *id*. at 12-13.

CA ruled that the chain of custody rule was complied with: *first*, PO3 Guzman immediately marked the confiscated illegal drugs at the place of arrest and delivered them to PO2 Dela Cruz for further investigation and documentation; *second*, PO2 Dela Cruz conducted an inventory of the seized drugs in the presence of Mamangon and the other police officers; *third*, after the inventory, PO2 Dela Cruz brought the seized items to the PNP Crime Laboratory, where they were examined by FC Reyes; and *fourth*, after examination, FC Reyes issued Chemistry Report No. D-121-09[21] dated February 21, 2009 finding the drugs positive for the presence of *methylamphetamine hydrochloride*.[22]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Mamangon's conviction for the crimes charged.

The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[23] "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."[24]

Mamangon was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11 (3), Article II of RA 9165. In every prosecution of unauthorized sale of dangerous drugs,

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[21] Records, p. 18. Signed by FC Reyes.

[22] *Rollo*, pp. 9-12.

[23] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

it is essential that the following elements are proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[25] Meanwhile, in order to convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[26]

In both cases, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment that the drugs are seized up to their presentation in court as evidence of the crime.[27]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[28] Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items <u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official</u>** who shall be required to sign the

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[25] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[26] *People v. Bio*, 753 Phil. 730, 736 (2015).

[27] See *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[28] See *People v. Sumili*, *supra* note 25, at 349-350.

copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[29] In the case of *People v. Mendoza*,[30] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence**that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[31]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[32] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[33] — provide that **the said inventory and photography**

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[29] See Section 21 (1) and (2), Article II of RA 9165.

[30] 736 Phil. 749 (2014).

[31] *Id*. at 764; emphases and underscoring supplied.

[32] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[33] 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,*

may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 — under justifiable grounds —will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[34] Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable

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> *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.

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[34] See Section 24 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[35] In *People v. Almorfe*,[36] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**.[37] Also, in *People v. De Guzman*,[38] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[39]

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Mamangon.

First, records reveal that while the requisite inventory and photography of the confiscated drugs were conducted in the presence of Mamangon and the other apprehending officers, the same were not done in the presence of an elected public official and any representative from the DOJ and the media, *viz.*:

[Atty. Winston Aris M. Mendoza (ATTY. MENDOZA)]:

That during the Inventory of the confiscated item there was no other witness present.

[Fiscal Juan Eugenio T. Banico (FISCAL BANICO)]:

The accused as well as the arresting police officers were present. Your Honor.

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[35] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[36] 631 Phil. 51 (2010).

[37] See *id*. at 60.

[38] 630 Phil. 637 (2010).

[39] *Id*. at 649.

ATTY. MENDOZA:

But there are no other witness present, Your honor, only the arresting police officers and when the evidence were photograph [sic] the evidence was not yet marked, Your Honor.

FISCAL BANICO:

It was already marked and the photograph is the best evidence, Your Honor.

x x x[40] (Underscoring supplied)

Additionally, it also appears that when the police officers subsequently arrived at the barangay hall, they had every opportunity to coordinate with the barangay officials and secure the presence of the other witnesses, yet they decided to leave and immediately proceed to the police station. During the Direct Examination of PO3 Guzman, he testified that:

FISCAL FRANCISCO L. SALOMON:

Q: <u>How about to the barangay officials, did you coordinate with the barangay officials after the arrest?</u>

[PO3 GUZMAN]:

A: <u>We went at the barangay but no one is around sir.</u>

Q: When you leave the place, where did you proceed Mr. Witness?

A: <u>We proceeded to our office, at Station 7 sir.</u>

x x x[41] (Underscoring supplied)

To make matters worse, the prosecution did not proffer a plausible explanation — apart from their unsubstantiated claim that "no one is around" the barangay hall when they arrived — in order for the saving clause to apply. Records fail to disclose that the police officers even attempted to contact and secure the presence of an elected public official, as well as a representative from the DOJ and the media, when they were already at the police station. To reiterate, the law requires the presence of these witnesses to ensure the establishment of the chain of custody

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[40] TSN, February 18, 2011, pp. 6-7.

[41] TSN, September 17, 2010, pp. 17-18.

and remove any suspicion of switching, planting, or contamination of evidence. Thus, considering the police officers' unjustified non-compliance with the prescribed procedure under Section 21 of RA 9165, the integrity and evidentiary value of the confiscated drugs are seriously put into question.

Verily, procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[42] It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[43] As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as well as its IRR, Mamangon's acquittal is perforce in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.[44]

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[42] See *People v. Sumili*, *supra* note 25, at 352.

[43] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[44] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the <u>initiative</u> to not only <u>acknowledge</u> but also <u>justify</u> any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 27, 2015 of the Court of Appeals in CA-G.R. CR HC No. 06565 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Philip Mamangon *y* Espiritu is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 231792. January 29, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALVIN JUGO *y* VILLANUEVA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [I]t must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** Here, Jugo was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. In such a crime, it is essential that the identity of the prohibited drug be established with moral certainty. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

3. **ID.; ID.; CHAIN OF CUSTODY; PROCEDURE THAT POLICE OFFICERS MUST FOLLOW IN HANDLING THE SEIZED DRUGS IN ORDER TO ENSURE THAT THEIR INTEGRITY AND EVIDENTIARY VALUE ARE PRESERVED.—** While not specifically defined in RA 9165, Section 1(b) of the Dangerous Drugs Board Regulation No. 1,

Series of 2002 defined the term "chain of custody" as the duly recorded authorized movements and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination, until it is presented in court. In this relation, Section 21, Article II of RA 9165 outlines the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved. Under the said section, the apprehending team shall, among others, immediately after seizure and confiscation, conduct a physical inventory and take photographs of the seized items **in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media or the Department of Justice, and any elected public official** who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes. x x x It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.

4. **ID.; ID.; ID.; ID.; NON-COMPLIANCE TOLERATED UNDER JUSTIFIABLE GROUNDS, SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** [U]nder varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the IRR of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provides that the said inventory and photograph may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. x x x However, prevailing jurisprudence instructs that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved.

Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated September 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06927, which affirmed the Decision[3] dated June 27, 2014 of the Regional Trial Court of Dagupan City, Branch 44 (RTC) in Criminal Case No. 2011-0398-D, finding accused Alvin Jugo *y* Villanueva (Jugo) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[4] filed before the RTC charging Jugo of violation of Section 5, Article II of RA 9165, the accusatory portion of which states:

That on or about August 5, 2011 in the afternoon, in Primicias St., corner 4th Block, Sagud Bahley, San Fabian, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused did, then and there willfully, unlawfully and feloniously

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[1] See Notice of Appeal dated October 19, 2016; *rollo,* pp. 17-18.

[2] *Id*. at 2-16. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Rodil V. Zalameda and Samuel H. Gaerlan concurring.

[3] CA *rollo*, pp. 48-53. Penned by Judge Genoveva Coching-Maramba.

[4] Records, p. 1.

SELL, TRADE, and DELIVERED (sic) one (1) transparent plastic sachet of methamphetamine hydrochloride, commonly known as shabu, weighing 0.101 gram to an undercover police officer of PNP San Fabian during a buy-bust operation, without any permit or license to do so.

CONTRARY TO Section 5, Art. II of RA 9165.[5]

The prosecution alleged that sometime in 2011, members of the San Fabian Police Station conducted surveillance for three (3) months to verify the reports that Jugo was engaged in illegal drug activities.[6] In the morning of August 5, 2011, a team composed of Police Officer 2 Fernando Romero, Jr. (PO2 Romero) as the poseur-buyer, Senior Police Officer 1 Ariel Villegas (SPO1 Villegas), Police Officer 3 Edmund Disu[7] (PO3 Disu), Police Officer 3 Cristobal Eslabra, and Police Officer 1 Fernando Berongoy, Jr., prepared for a buy-bust operation to be conducted at Primicias St., corner 4th Block, Barangay Sagud Bahley, San Fabian, Pangasinan.[8] At around 2:00 o'clock in the afternoon, PO2 Romero and the civilian informant met with Jugo and his two (2) companions, Amor Lomibao (Lomibao) and Marvin Zamudio (Zamudio), in front of a *carinderia*.[9] The civilian informant first approached Jugo, followed by PO2 Romero. Afterwards, Jugo, Lomibao, and Zamudio executed the transaction with PO2 Romero, who then gave the marked money to Jugo; in turn, Jugo handed to PO2 Romero one (1) heat-sealed plastic sachet containing white crystalline substance.[10] After the civilian asset left, PO2 Romero performed the pre-arranged signal, prompting the rest of the team to approach them and arrest Jugo and his two (2) companions. SPO1 Villegas conducted a body search on Jugo and recovered the marked

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[5] *Id*.

[6] CA *rollo*, p. 49.

[7] "Dizu" in some parts of the records.

[8] CA *rollo*, p. 49. See also Joint Affidavit of Arrest dated August 8, 2011; records, p. 5.

[9] See *id*.

[10] See *id*. See also records, p. 5.

money.[11] PO2 Romero retained possession of the subject plastic sachet containing white crystalline substance.[12]

After the buy-bust operation, the team returned to the police station with the confiscated sachet to avoid any untoward incident as people were approaching the team.[13] Thereat, PO2 Romero marked the subject plastic sachet with "FMR,"[14] took photographs of the drug and motorcycle, and prepared the request for laboratory examination, Joint Affidavit of Arrest, and Confiscation Receipt.[15] Together with Jugo, PO2 Romero and PO3 Disu went to the barangay hall and asked Barangay Captain Alvin Fajardo (Brgy. Capt. Fajardo) to sign the Confiscation Receipt.[16] Thereafter, PO2 Romero and PO3 Disu brought the suspected sachet of drug, with a request for laboratory examination from Police Chief Inspector (PCI) Domingo Soriano, to the PNP Crime Laboratory for examination by PCI Emelda Roderos.[17] The laboratory examination yielded positive results for the presence of *methamphetamine hydrochloride*, a dangerous drug.[18]

In his defense, Jugo testified that on August 5, 2011, he went with Lomibao and Zamudio to Barangay Cayanga to borrow money from his uncle for his wife's delivery.[19] While onboard the motorcycle going back to Barangay Sagud Bahley, they were flagged down by PO2 Romero and were subsequently

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[11] See *id*. at 49-50. See also records, p. 5.

[12] See *id*. at 50.

[13] See *rollo*, p. 9. See also CA *rollo*, p. 50.

[14] TSN, May 6, 2013, pp. 6 and 8.

[15] See CA *rollo*, p. 50.

[16] *Id*.

[17] *Id*. at 48.

[18] *Id*. at 48-49. See also Chemistry Report No. D-101-2011-U examined by Police Chief Inspector and Forensic Chemist Emelda Besarra Roderos; records p. 85.

[19] *Id*. at 50.

brought to the police station for interrogation. Later on, Lomibao and Zamudio were released, while Jugo remained in detention.[20]

The RTC Ruling

In a Decision[21] dated June 27, 2014, the RTC found Jugo liable for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165.[22] Accordingly, Jugo was sentenced to suffer the penalty of the life imprisonment and ordered to pay a fine of ₱500,000.00.[23]

The RTC found that the prosecution was able to establish all the elements of illegal sale of *shabu* during a valid buy-bust operation.[24] In this regard, the RTC ruled that PO2 Romero's testimony positively identified Jugo as the seller of the dangerous drug, which was presented and duly identified in court. Further, the RTC did not give weight to Jugo's bare denial that he was merely flagged down by PO2 Romero.[25]

Aggrieved by his conviction, Jugo appealed[26] to the CA, contending, among others, that there were various deviations from the chain of custody rule.[27] Particularly, he pointed out that: (*a*) the marking of the drug was not immediately conducted upon arrest and confiscation; (*b*) the marking, taking of photographs, and physical inventory were not done in the presence of a representative from the media, the Department of Justice, and an elected public official; and (*c*) there were discrepancies between the testimony of PO2 Romero and the Confiscation Receipt and Request for Laboratory Examination,

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[20] See *id*. at 50-51.

[21] *Id*. at 48-53.

[22] *Id*. at 53.

[23] *Id*.

[24] See *id*. at 51-52.

[25] *Id*. at 52.

[26] See Notice of Appeal dated July 3, 2014; records, pp. 157-158.

[27] See CA *rollo*, p. 38.

as the documents state that the one (1) plastic sachet of *shabu* was seized from all three, namely, Jugo, Lomibao, and Zamudio, while PO2 Romero testified that the same drug was only confiscated from Jugo.[28]

The CA Ruling

In a Decision[29] dated September 27, 2016, the CA affirmed Jugo's conviction.[30] It held that the testimonies of the police officers were sufficient to prove that Jugo committed the crime of illegal sale of *shabu* and that PO2 Romero's testimony satisfactorily established the elements of illegal sale of prohibited drugs, identifying PO2 Romero as the poseur-buyer and Jugo as the seller of one (1) plastic sachet of *shabu* for the price of ₱300.00.[31] Moreover, the CA remarked that the warrantless arrest of Jugo was legal; hence, the seized items are admissible in evidence.[32] Lastly, the CA observed that the chain of custody was sufficiently established as the handling of the seized items was substantially compliant with the legal requirements of Section 21, Article II of the Implementing Rules and Regulations (IRR) of RA 9165.[33]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Jugo's conviction for violation of Section 5, Article II of RA 9165 must be upheld.

The Court's Ruling

The appeal is meritorious.

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[28] *Id*. at 40-42.

[29] *Rollo*, pp. 2-16.

[30] *Id*. at 15.

[31] See *id*. at 6-10.

[32] See *id*. at 11-12.

[33] *Id*. 12-14.

Preliminarily, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[34]

Here, Jugo was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[35] In such a crime, it is essential that the identity of the prohibited drug be established with moral certainty. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[36]

While not specifically defined in RA 9165, Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002[37] defined the term "chain of custody" as the duly recorded authorized movements and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination, until it is presented in court.

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[34] See *People v. Ceralde*, G.R. No. 228894, August 7, 2017, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[35] See *id*., citing *People v. Sumili*, 753 Phil. 342, 348 (2015).

[36] See *id*., citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[37] Entitled "GUIDELINES ON THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS, CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS, AND LABORATORY EQUIPMENT," approved on October 18, 2002.

In this relation, Section 21, Article II of RA 9165 outlines the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved.[38] Under the said section, the apprehending team shall, among others, immediately after seizure and confiscation, conduct a physical inventory and take photographs of the seized items **in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media or the Department of Justice, and any elected public official** who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes.[39] Case law stresses that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, [and] any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of RA 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[40]

Nonetheless, it has been clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[41] In fact, the IRR of RA 9165 – which is now crystallized into

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[38] See *People v. Ceralde*, *supra* note 34, citing *People v. Sumili*, *supra* note 35 at 349-350.

[39] See Section 21 (1) and (2), Article II of RA 9165.

[40] See *People v. Ceralde*, *supra* note 34, citing *People v.* Mendoza, 736 Phil. 749, 764 (2014).

[41] See *id*., citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

statutory law with the passage of RA 10640[42] – provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[43]

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[42] 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"

[43] See Section 21 (a), Article II of the IRR of RA 9165.

In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[44] However, prevailing jurisprudence instructs that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, 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.[45]

After a judicious study of the case, the Court finds that there are substantial gaps in the chain of custody which were unjustified, thereby putting into question the identity, integrity, and evidentiary value of the seized items from Jugo.

At the outset, the Court notes SPO1 Villegas's testimony on re-direct examination where he essentially testified that while he was present at the police station when PO2 Romero prepared the Confiscation Receipt[46] – which the prosecution claims to be the physical inventory of the seized item – he nevertheless admitted that he never saw PO2 Romero make such preparation, and also claimed lack of knowledge as to the other details of the preparation of said receipt despite him and PO2 Romero being in the same office:

Pros. Lopez: By the way, where were you when PO2 Romero was already preparing this confiscation receipt?

SPO1 Villegas: I am in the office, ma'am.

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[44] See *People v. Ceralde*, *supra* note 34, citing *People v. Goco*, G.R. No. 219584, October 17, 2016.

[45] See *id*.; citations omitted.

[46] See Confiscation Receipt dated August 5, 2011; records, p. 11.

Q: What about PO2 Romero, do you know where did he prepare this confiscation receipt?

A: In the office also, ma'am.

Q: And did you see him prepared [sic] this confiscation receipt?

A: No, ma'am.

Q: So you did not know what point in time exactly PO2 Romero prepared this Confiscation Receipt?

A: Yes, ma'am.

Q: You also do not know who signed this Confiscation Receipt as you say you do not know when this Confiscation receipt was prepared and who signed the same, correct?

A: Yes, ma'am.[47]

Verily, the aforesaid testimony raises questions as to whether or not the Confiscation Receipt was prepared in an orderly manner. More importantly, a plain examination of the Confiscation Receipt shows that it was not prepared in the presence of any representative from either the media or the DOJ. Furthermore, the prosecution's claim that an elected public official attended the preparation of the Confiscation Receipt was belied by no less than PO2 Romero, who explicitly testified that they merely went to the office of Brgy. Capt. Fajardo to have the Confiscation Receipt signed ***after*** the same was already prepared and ***after*** the photographs were already taken:

Pros. Lopez: What about the signature on top of the name Alvin Fajardo, do you know whose signature is this?

PO2 Romero: That is the signature of Brgy. Captain Alvin Fajardo, ma'am.

Q: Can you tell us who asked Alvin Fajardo to sign this Confiscation Receipt?

A: It's me, ma'am.

Q: Where did you ask him to sign this Confiscation Receipt?

[47] TSN, August 23, 2012, pp. 15-16.

A: At the barangay hall, ma'am.[48]

Notably, such testimony was corroborated by that of SPO1 Villegas on cross-examination, to wit:

Q: Did you contact any barangay official when the confiscation receipt was prepared because you said you saw the preparation of the same?

A: That's the job of the MAIDSOTG, PNCO, ma'am.

Q: You said you saw the preparation of the confiscation receipt, was there any barangay official at your office who witnessed the preparation of the confiscation receipt and also the signing of the same?

A: None, ma'am.

Q: So Punong Barangay Alvin Fajardo was not there?

A. Yes, ma'am.

Q: Did he sign this confiscation receipt or not?

A: I don't know because it was the job of the MAIDSOTG to prepare that document.

Q: And there was no picture taken to show the signing of the confiscation receipt?

A: None, ma'am.[49] (Emphases and underscoring supplied)

As may be gleaned from the foregoing, the preparation of the inventory, *i.e.*, Confiscation Receipt, and taking of photographs were ***NOT*** done in the presence of: (*a*) the accused or his representative; (*b*) an elected public official; and (*c*) a representative from the DOJ or the media, contrary to the express provisions of Section 21, Article II of RA 9165, as amended by RA 10640. In such instances, the prosecution must provide a credible explanation justifying the non-compliance with the rule as the presence of these individuals is not just a matter of procedure. Rather, the rule exists to ensure that protection is

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[48] TSN, May 23, 2013, p. 7.

[49] TSN, August 23, 2012, p. 14.

given to the innocent whose life and liberty are put at risk. Unfortunately, no such explanation was proffered by the prosecution to justify the procedural lapse.

By and large, the breaches of procedure committed by the police officers militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[50] It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[51] Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR, Jugo's acquittal is in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.[52]

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set

[50] See *People v. Sumili*, *supra* note 35 at 352.

[51] See *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[52] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 27, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06927 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Alvin Jugo *y* Villanueva is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

EN BANC

[A.M. No. P-05-1938. January 30, 2018]

THE OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MR. CRISPIN C. EGIPTO, JR.,**

CLERK OF COURT IV, MUNICIPAL TRIAL COURT IN CITIES, PAGADIAN CITY, *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PENALTY OF DISMISSAL WITH FORFEITURE OF RETIREMENT BENEFITS REDUCED, CONSIDERING THE CIRCUMSTANCES THAT MERIT THE MITIGATION OF THE PENALTY.— On November 7, 2017, the Court found and declared the respondent guilty of gross neglect of duty, dishonesty and grave misconduct for failing to remit his collections on time, and dismissed him from the service, x x x The respondent now moves for the reconsideration of the decision particularly seeking the reduction of his penalty of dismissal with forfeiture of all his retirement benefits (excluding earned leave credits), to suspension of six months, or to a fine in an equitable amount considering his service in the Judiciary for more than 36 years; his unqualified and candid acknowledgement of his offense; his feeling of remorse; his full restitution of the shortages amounting to ₱98,652.81; his advancing age and medical condition; and his nearing the mandatory retirement by January 4, 2019. x x x [T]he Court finds that the circumstances listed by the respondent merit the mitigation of the ultimate penalty of dismissal from the service with forfeiture of all retirement benefits (excluding earned leave credits), with prejudice to his re-employment in the Government, including government-owned or government-controlled corporations imposed upon him. **WHEREFORE**, the Court **GRANTS** respondent Crispin C. Egipto, Jr.'s motion for reconsideration, and **MODIFIES** his penalty of dismissal from the service to **ONE (1) YEAR SUSPENSION WITHOUT PAY** commencing upon notice of this resolution with a stern warning that a repetition of the same or similar act will be dealt with more severely.

R E S O L U T I O N

***PER CURIAM*:**

On November 7, 2017, the Court found and declared the respondent guilty of gross neglect of duty, dishonesty and grave

misconduct for failing to remit his collections on time, and dismissed him from the service, disposing thusly:

> **WHEREFORE**, the Court **FINDS** and **DECLARES** respondent **CRISPIN C. EGIPTO, JR.,** Clerk of Court IV, Municipal Trial Court in Cities of Pagadian City, **GUILTY** of **DISHONESTY** and **GRAVE MISCONDUCT;** and, **ACCORDINGLY, DISMISSES** him from the service with forfeiture of all retirement benefits (excluding earned leave credits), with prejudice to his re-employment in the Government, including government-owned or government-controlled corporations.
>
> The Court **DIRECTS** the Employees Leave Division, Office of Administrative Services, Office of the Court Administrator, to determine the balance of his earned leave credits; and to report thereon to the Finance Division, Fiscal Management Office, Office of the Court Administrator for purposes of computing the monetary value of his earned leave credits for release to him.
>
> **SO ORDERED.**

The respondent now moves for the reconsideration of the decision particularly seeking the reduction of his penalty of dismissal with forfeiture of all his retirement benefits (excluding earned leave credits), to suspension of six months, or to a fine in an equitable amount considering his service in the Judiciary for more than 36 years; his unqualified and candid acknowledgement of his offense; his feeling of remorse; his full restitution of the shortages amounting to ₱98,652.81; his advancing age and medical condition; and his nearing the mandatory retirement by January 4, 2019.

We grant the motion for reconsideration.

In *Arganosa-Maniego v. Salinas*,[1] the Court explained:

> [I]n several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations,

[1] A.M. No. P-07-2400, June 23, 2009, 590 SCRA 531, 544-547.

respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.

The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

The court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the laws concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.

Conformably with the foregoing, the Court finds that the circumstances listed by the respondent merit the mitigation of the ultimate penalty of dismissal from the service with forfeiture of all retirement benefits (excluding earned leave credits), with prejudice to his re-employment in the Government, including government-owned or government-controlled corporations imposed upon him.

WHEREFORE, the Court **GRANTS** respondent Crispin C. Egipto, Jr.'s motion for reconsideration, and **MODIFIES** his penalty of dismissal from the service to **ONE (1) YEAR SUSPENSION WITHOUT PAY** commencing upon notice of this resolution with a stern warning that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

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

Perlas-Bernabe J., on leave.

Martires, J., on official leave.

EN BANC

[A.M. No. P-09-2633. January 30, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ROLANDO C. TOMAS and ANGELINA C. RILLORTA, former Officers-in-Charge, Regional Trial Court, Santiago City, Isabela,** *respondents.*

[A.M. No. RTJ-12-2338. January 30, 2018]

ANGELINA C. RILLORTA, *complainant, vs.* **JUDGE FE A. MADRID, Regional Trial Court, Branch 21, Santiago City, Isabela,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GRAVE MISCONDUCT AND SERIOUS DISHONESTY ON THE ACTS OF TAMPERING OF OFFICIAL RECEIPTS AND OVERWITHDRAWALS FROM COURT FUNDS; THE ADMINISTRATIVE CASE SHALL ALSO BE CONSIDERED AS A DISCIPLINARY PROCEEDING AGAINST THE JUDGE AS MEMBER OF THE BAR.—** In this case, the Court agrees with the findings of the OCA, which affirmed the evaluations of the Investigating Justice, "that official receipts were tampered and that there were overwithdrawals from the Fiduciary Fund account amounting to Nine Hundred Thirty Six [Thousand] (₱936,000.00) Pesos. The Audit Team's findings were not refuted by Judge Madrid and Mrs. Rillorta during the investigation." These acts of tampering of official receipts and overwithdrawals from court funds clearly constitute grave misconduct and serious dishonesty. x x x As recommended by the OCA, this administrative case against Judge Madrid for grave misconduct and serious dishonesty shall also be considered as a disciplinary proceeding against her as a member of the Bar, in accordance with A.M. No. 02-9-02-SC.
2. **ID.; ID.; GRAVE MISCONDUCT AND DISHONESTY; DISCUSSED.—** Misconduct is defined as a transgression of

some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest in a charge of grave misconduct. Dishonesty, on the other hand, is defined as a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

3. **ID.; ID.; COURT EMPLOYEES; GRAVE MISCONDUCT; PARTICIPATION IN THE TAMPERING OF RECEIPTS, NON-DEPOSIT TO AND OVERWITHDRAWALS FROM THE FIDUCIARY FUND.—** Rillorta is liable for grave misconduct for her participation in the tampering of receipts, non-deposit to and overwithdrawals from the Fiduciary Fund. Rillorta admitted having tampered some official receipts. However, she claims that the tamperings were upon the instructions of Judge Madrid. This does not excuse her from any liability because obviously tampering of such official documents is unlawful which should never be countenanced. The Court sustains the OCA's statement that "as a public officer, her duty was not only to perform her assigned tasks, but to prevent the commission of acts inimical to the judiciary and to the public, in general." It is grave misconduct when Rillorta participated or consented to the commission of the unlawful acts of tampering receipts and overwithdrawals from court funds simply because of following the orders or instructions of her superior, Judge Madrid.

4. **ID.; ID.; JUDGES; GRAVE MISCONDUCT AND SERIOUS DISHONESTY; PENALTY IN CASE AT BAR.—** Since Judge Madrid is found guilty of the grave offenses of grave misconduct and serious dishonesty, the penalty of dismissal from the service is proper even for the first offense in accordance with Section 46A(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. However, since Judge Madrid has already retired from the service, the penalty of dismissal can no longer be imposed. Instead, all of her retirement benefits, except accrued

leave benefits, are forfeited, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations.

5. **ID.; ID.; COURT EMPLOYEES; GRAVE MISCONDUCT; PENALTY IN CASE AT BAR.—** Since Rillorta's grave misconduct, aside from her previous infractions, undermined the people's faith in the courts and, ultimately, in the administration of justice, the OCA's recommended penalty of dismissal is proper. x x x However, since Rillorta has already retired from the service, the penalty of dismissal can no longer be imposed. Instead, all of her retirement benefits, except accrued leave benefits, are forfeited, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations.

D E C I S I O N

***PER CURIAM*:**

A.M. No. P-09-2633 stems from the result of the financial audit conducted in the Regional Trial Court, Santiago City, Isabela while A.M. No. RTJ-12-2338[1] is an offshoot of A.M. No. P-09-2633. The Financial Audit Team found, among others, shortages in the judiciary funds, tampering of official receipts, and overwithdrawal of cash bonds allegedly committed by Angelina C. Rillorta (Rillorta), Officer-in-Charge (OIC), Regional Trial Court, Santiago City, Isabela (now retired). The administrative complaint in A.M. No. RTJ-12-2338 was filed by Rillorta against Judge Fe Albano Madrid (Judge Madrid), formerly Presiding Judge, Regional Trial Court, Branch 21, Santiago City, Isabela (now retired), for dishonesty, involving the same audit findings in A.M. No. P-09-2633.

The facts, as narrated by the Office of the Court Administrator (OCA), are as follows:

A.M. No. P-09-2633

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[1] Formerly OCA IPI NO. 11-3614-RTJ.

In OCA Memorandum dated March 12, 2009, the Financial Audit Team reported shortages in the Judiciary Development Fund (JDF), General Fund (GF) and Sheriff's General Fund (SGF) of the former Officers in-Charge as follows:

a) Rolando C. Tomas – ₱18,639.50 (JDF) and ₱14,538.45 (GF)

b) Angelina Rillorta – ₱23,839.67 (JDF); ₱7,884.65 (GF) and ₱12.00 (SGF)

A review of the court orders and acknowledgment receipts of the withdrawn cashbonds to determine the Fiduciary Funds also revealed a shortage amounting to Six Million Five Hundred Fifty-Seven Thousand Nine Hundred Fifty-Nine Pesos and 70/100 (₱6,557,959.70).

Balance per LBP SA # 1361-0025-27 as of 4/30/04		₱5,969,511.40
Add: Deposit on 5/26/04 based on the initial findings of the Audit Team		936,000.00
Total		₱6,905,511.40
Less: Net Interest (withdrawn on 4/26/05	₱3,516.18	
Unwithdrawn interest	50.00	3,566.18
Adjusted Bank Balance as of 4/30/04		₱6,901,945.22
Beginning Balance		₱32,539.30
Collections for the period 10/18/91 to 4/30/04		16,419,498.96
Balance		₱16,452,038.26
Less: Valid Withdrawals (same period)		2,993,533.34
Unwithdrawn Fiduciary Fund as of 4/30/04		₱13,458,504.92
Unwithdrawn Fiduciary Fund as of 4/30/04		₱13,458,504.92
Less: Adjusted Bank Balance as of 4/30/04		6,901,945.22
Balance of Accountabilities/Shortage		₱6,556,559.70

The shortage referred to above represents the cash bonds which were withdrawn but with incomplete documents such as court orders and acknowledgment receipts. However, according to the Financial Audit Team, if the supporting documents of the withdrawn cash bonds would be submitted, the shortages would be reduced to One Hundred Thirty-Six Thousand Eight Hundred Eighty-Six Pesos and 16/100 (₱136,886.16).

On April 22, 2009, the Court, through the First Division, issued a Resolution, the decretal portion of which reads:

> x x x x x x x x x
>
> (2) to DIRECT Mr. Rolando C. Tomas, former Officer-in-Charge, Regional Trial Court, Santiago City, Isabela to RESTITUTE within fifteen (15) days from receipt of notice, the shortages incurred in the JDF and General Fund Amounting to Eighteen Thousand Six Hundred Thirty-Nine Pesos and 50/100 (₱18,639.50) and Fourteen Thousand Five Hundred Thirty-Eight Pesos and 45/100 (₱14,538.45) respectively, in order to finalize the audit on said accounts x x x
>
> x x x x
>
> (4) to DIRECT Mrs. Angelina C. Rillorta, Officer-in-Charge, Regional Trial Court, Santiago, Isabela to RESTITUTE within fifteen (15) days from receipt of notice, the shortages incurred in the JDF, General Fund and Sheriff's General Fund amounting to Twenty-Three Thousand Eight Hundred Thirty-Nine Pesos and 67/100 (₱23,839.67), Seven Thousand Eight Hundred Eighty-Four Pesos and 65/100 (₱7,884.65) and Twelve Pesos (₱12.00), respectively, in order to finalize the audit on the said accounts, x x x
>
> (5) to require Mrs. Rillorta to SUBMIT to the Fiscal Monitoring Division, CMO, OCA the machine-validated deposit slip(s) as proof of compliance;
>
> (6) to require Mrs. Rillorta to SUBMIT to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, the Court orders and acknowledgment receipts of the withdrawn cashbonds (Annexes A, B & C) to finalize the audit on the Fiduciary Fund account within thirty (30) days from receipt of notice with information that non-submission of the supporting documents will incur a shortage amounting to Six Million Five Hundred Fifty-Seven Thousand Nine Hundred Fifty-Nine Pesos and 70/100 (₱6,557,959.70) for the Fiduciary Fund, x x x
>
> However, in case the following supporting documents of the cash bonds will be submitted, the shortage shall be reduced to One Hundred Thirteen Thousand Two Hundred Eighty-Six Pesos and 16/100 (₱113,286.16) x x x

x x x x x x x x x

Complying with the above directives, Mrs. Angelina Rillorta, in her undated letter, informed the Court that she has already deposited the shortages incurred in the JDF, GF and the SGF. She argued that she did not misappropriate any money and explained that she committed a mistake in depositing her collections in the proper account for which the Commission o[n] Audit (COA) had called her attention. With regards to the submission of the orders and acknowledgment receipts in support of the withdrawn cash bonds, she claimed that she only secured copies of some orders and acknowledgment receipts because some case records were not made available to her. She also explained that she has submitted her monthly financial report from December 1994 to April 2005 together with copies of the orders and acknowledgment receipts to the Accounting Division, Financial Management Office (FMO), OCA and if there was anything wrong or irregular in her reports, the Accounting Division should have called her attention or asked her to explain. Further, she argued that if the amount of the cash bonds was not given to the persons who requested the withdrawal thereof, a lot of complaints could have been filed against her in Court. She added that in order to comply with the directive of the Court, the Accounting Division, FMO, OCA, be directed to produce the financial reports and that she be given time to follow-up the said records with the said office.

In her Supplemental Explanation dated September 3, 2009, Mrs. Rillorta narrated that when she assumed as Officer-In-Charge, OCC, on March 10, 1995, the court's financial records were not formally turned over to her. She had to figure out by herself what to do. She explained that the monthly financial reports were submitted to Executive Judge Fe Albano Madrid for approval and signature and every time the latter went over the reports, she would change or correct the entries to conform with the entries in the passbook for the fiduciary account. After the corrections were incorporated in the report, Judge Madrid would sign it.

Mrs. Rillorta further narrated that sometime in January 2003, she reviewed the financial records and discovered that the monthly report did not jibe with the bank book entries. Hence, she requested the COA, Tuguegarao City, to audit her books

of account and after a preliminary audit, she was instructed to inform Judge Madrid of the discrepancies. She immediately informed Judge Madrid and the latter made some adjustments to the report. She alleged that on May 24, 2004, a team from the OCA came to conduct a financial audit. When the audit was about to be completed, an exit conference was held. She was expecting to be called to attend the conference, hence, she asked the team leaders if her presence was needed and was told "*Di ka naman pinatawag ni Judge.*" She was never required to respond to any findings and was therefore under the impression that Judge Madrid had sufficiently explained the discrepancies. It was only when she was going over the records of the court that she discovered that an Observation Memorandum dated May 17, 2004 prepared by the audit team was given to Judge Madrid. Thus, she requested the Court for a reinvestigation and hearing on the complaint which was referred to the OCA on December 16, 2009.

Complying with the directive of the Court, the OCA, in its Memorandum dated May 20, 2010, recommended that the motion to conduct another investigation be denied because it was no longer necessary considering that Angelina Rillorta has already remitted her shortages and that she was directed to explain in writing why she should not be dismissed from the service for violation of OCA Circular No. 22-94 dated April 8, 1994 (*Re: Guidelines in the Proper Handling and Use of Official Receipts),* it appearing that official receipts were tampered:

x x x x x x x x x

The OCA added that only the supporting documents such as court orders and acknowledgment receipts of the withdrawn cash bonds with incomplete documents should be submitted in order to finalize the accountabilities of Mrs. Rillorta in the Fiduciary fund.

On June 1, 2011, the Court adopted the OCA's recommendation and noted the Ex Parte Manifestation dated February 22, 2010 of Executive Judge Anastacio D. Anghad and Clerk of Court, Norbert Bong S. Obedoza, both of the RTC Santiago City, praying that respondent Rolando C. Tomas' death on February 10, 2010 be considered with humanitarian consideration in the resolution of this case.

In another Memorandum dated June 13, 2011, the OCA requested that (a) the recommendation in its Memorandum of May 20, 2010 denying the motion of Mrs. Rillorta for the conduct of another investigation be set aside; (b) the Land Bank of the Philippines, Santiago City, Isabela Branch, be directed to submit a certification as to the authorized signatory from August 1991 to April 30, 2004, for Savings Account No. 1361-0025-27 of the Fiduciary Fund of the RTC, Santiago City; (c) Judge Madrid be required to submit her comments on the unsigned letter and additional Supplement to the Motion for the Conduct of Another and/or Additional Investigation both dated September 28, 2010 filed by Mrs. Rillorta; and (d) the motion to conduct another investigation as well as the manifestation of the heirs of respondent Rolando Tomas be held in abeyance pending the submission of Judge Madrid's comment. OCA's recommendations were adopted by the Court in its Resolution of August 03, 2011.

In compliance with the June 1, 2011 Resolution, Mrs. Rillorta filed her Explanation with Motion for Reconsideration dated July 24, 2011 alleging that she was denied her right to due process when she was not allowed to participate in the exit conference with the Financial Audit Team. She also informed the Court that she filed a Complaint-Affidavit against Judge Madrid before the OCA x x x.

For her part, Judge Madrid, in her undated Compliance which was received by the OCA on October 20, 2011, stated that she was not aware of the unsigned letter dated September 27, 2010 and additional supplement to the motion for the conduct of another and/or additional investigation filed by Mrs. Rillorta. She claimed that the latter executed an Affidavit dated March 3, 2011 and two Supplemental Affidavits which were the basis of OCA IPI No. 11-3614-RTJ pending in the OCA, and requested a copy thereof if the said letter referred to a different matter for her to comment thereon. On the other hand, the Land Bank of the Philippines, Santiago Branch, Isabela, issued a Certification dated October 24, 2011 stating that Account No. 1361-0025-27 RTC, Branch 21 (Fiduciary Fund) was opened on March 29, 1993 by Judge Madrid who was the authorized signatory.

On December 3, 2012, the Court granted the request of Mrs. Rillorta for the conduct of another and/or additional investigation and referred the matter to the Associate Justice of the Court of Appeals who was designated to investigate A.M. OCA IPI No. 11-3614-RT[J] (*Re: Angelina C. Rillorta vs. Honorable Fe A. Madrid, Presiding Judge,*

Branch 21, RTC, Santiago City) [now A.M. No. RTJ-12-2338] for a joint investigation. The Court also directed the Financial Management Office, OCA, to deduct the amount of ₱33,177.95 from the equivalent money value of the total earned leave credits of the late Rolando Tomas who was dismissed from the service pursuant to the Resolution of the Court in A.M. No. P-09-2660 *(Francisco C. Taguinod vs. Deputy Sheriff Rolando Tomas, Branch 21, RTC, Santiago City).*

OCA IPI No. 11-3614-RTJ

This is an offshoot of A.M. No. P-09-2633. On March 3, 2011, Mrs. Rillorta filed the instant administrative complaint against Judge Madrid praying that an investigation be conducted and that Judge Madrid be directed to answer or explain the charges against her. In her Affidavit-Complaint, Mrs. Rillorta reiterated the allegations in her Supplemental Explanation in A.M. No. P-09-2633. She averred that the monthly reports did not dovetail with the bank book entries, that is, the amount collected appearing in the monthly report was only ₱700,000.00 while the amount appearing in the bank account was more or less ₱6,000,000.00. This discrepancy alarmed her, so she voluntarily submitted herself to an audit by the COA in Tuguegarao City. She informed Judge Madrid about the COA findings and in order to balance the discrepancies found, Judge Madrid instructed her and Susan[a] Liggayu to make some adjustments in the official receipts issued by the court. For instance, in the bail bond posted by then retired Judge Alivia of the RTC, Cauayan City for his client, Judge Madrid asked for the General Fund receipts and instructed her to write in the original receipt the true amount of the bailbond but to reflect the amount of ₱20.00 or P30.00 (clearance fee) in the duplicate and triplicate copies. She then asked Judge Madrid "*Ma'am, why not issue na lang Court Order para minsanan na ma-withdraw yung bina-balance mo"* to which she replied "*No, this is better."* She claimed that every time Judge Madrid instructed her to do it, she asked Susan[a] Liggayu to make a list so that they would have a record of the amounts collected for the Fiduciary Fund. She also narrated that Judge Madrid instructed her to alter the amounts of the cash bond withdrawn. For instance, if the amount of the bail bond deposited was ₱10,000.00, the amount to be withdrawn would be ₱110,000.00. This happened on several occasions. Likewise, in Criminal Case Nos. 4161 and 4162 (*People vs. Pua)* and Criminal Case No. 21-4225 (*People vs. Alejandro Ramos*), the release orders did not indicate the Official Receipt (O.R.) number which is the usual practice of the court.

Again, in her Second Supplemental Affidavit dated April 6, 2011, Mrs. Rillorta described how Judge Madrid effected the adjustments in the official receipts issued by the court. In Criminal Case No. 3423, Judge Madrid added zero "0" in O.R. No. 10706949 in between the digits three "3" and zero to make it appear that the amount received was Thirty Thousand Pesos (₱30,000.00) and superimposed the letter "y" at the end of the word three (in the box amount in words to jibe with Thirty Thousand Pesos). She also alleged that every time there was an excess in the amount withdrawn, she or Susan[a] Liggayu delivered the same to Judge Madrid by leaving the money on her table. The amounts were always put inside an envelope which was labelled by Susan[a] Liggayu by writing the corresponding case number. There were times when the withdrawals were done in the afternoon and in those instances, the excess amounts were delivered to Judge Madrid's house. She further alleged that Judge Madrid drafted her answer in A.M. No. P-09-2633 but did not submit the same because said comment made her admit the charges. Judge Madrid even insisted that she submit the same to avoid dismissal from the service since the argument raised was that she acted in good faith. She thus suspected that she was made a sacrificial lamb. She admitted that she was not knowledgeable in accounting procedures which was why she never questioned the acts of Judge Madrid and followed her orders and instructions.

For her part, Judge Madrid, in her Comment dated April 6, 2011, alleged that Mrs. Rillorta is a stenographer but could not take stenographic notes in open court. Her work then was to assist Clerk of Court Teofilo Juguilon and to type decisions. After the retirement of Atty. Juguilon, she thought it wise to designate her as OIC-Clerk of Court because she was already familiar with the workings of the office. In the beginning, she strictly monitored the collections and disbursements until Mrs. Rillorta gained her complete trust and confidence. So she just let Mrs. Rillorta do her work with little supervision. At that time, the court was a single sala court and had many cases to attend to which left her little time for financial management. She added that she could not remember if there was a formal turnover of the court's financial reports to Mrs. Rillorta, but an inventory of the records was received by the latter. Mrs. Rillorta prepared the monthly reports which she would note and sign after a review of the attached official receipts, order and acknowledgment receipts, as well as deposit slips and withdrawal slips. Corrections were made to conform to the supporting documents

or to correct wrong computations. She does not have her own separate records as alleged by Mrs. Rillorta. A separate record would be an extra work which she would not like to do. She admitted that the monthly reports did not jibe with the bank book in that, the money in the bank is more than what is stated in the monthly reports. However, this did not alarm her because there was more money which meant there was no shortage.

Judge Madrid further claimed that she did not know that Mrs. Rillorta had voluntarily submitted herself for audit to the COA but knew that the COA has always been auditing the financial records of the court because Mrs. Rillorta has been regularly submitting the monthly reports to the COA Office in Ilagan, Isabela. She was then informed by Mrs. Rillorta about the discrepancy between the monthly reports and the money in the bank but denied instructing Mrs. Rillorta and Susan[a] Liggayu to make some adjustments on the official receipts. She could not remember asking Mrs. Rillorta to give her the GF receipts in connection with the bail bond posted by retired Judge Alivia. She could have asked for the GF receipts to check on something but not to show how to tamper the bail bond receipts. Also, after the financial audit, the audit team informed her of the ₱900,000.00 shortage in the court's collection. She told the audit team to call Mrs. Rillorta so that she could be given a chance to produce the money and conduct a cash count. However, the audit team said that no cash count could be done because some receipts were tampered. She immediately talked to Mrs. Rillorta about the audit team's observations and told her to deposit the shortage right away. In addition, she could not remember if she was given an Observation Memorandum by the audit team except for a piece of paper that was shown to her by the audit team. She also confirmed that she is the signatory of the LBP account and that the withdrawals she signed were supported by official receipts and court orders. She also confirmed that she helped Mrs. Rillorta prepare her answer to the administrative charge against her but did so only upon her request and that she only included those statements which Mrs. Rillorta told her and of her fear of dismissal because of the charge of dishonesty and told her that she could plead good faith because there was no intention on her part to be dishonest.

Judge Madrid also argued that all instructions given to Mrs. Rillorta and the other court employees were lawful and proper and expected that the instructions be carried out. The corrections she made in the monthly reports were all proper and did not make any alterations or

adjustments on any official receipts, deposit slips, withdrawal slips or acknowledgment receipts.

In her Comment on the Supplemental Complaint dated April 28, 2011, Judge Madrid maintained that the same is a repetition of her original affidavit to which a comment had already been made. She claimed that she only signs the orders of release and it was Mrs. Rillorta who processed the documents which presented to her for signature. The order of release is a standard form and it was the duty of the OIC to check that the documents are complete before they are brought to her for signature. With regards to the undertaking attached to the complaint, she claimed that she did not know who prepared it but the blanks were filled up with the use of Mrs. Rillorta's typewriter. She does not usually scrutinize the word and every document presented in connection with the bail bond and if she noticed the typewritten insertions, she could have asked what they meant considering that the typewritten insertions are alien to the documents.

Refuting the allegations in the Supplemental Affidavit-Complaint, Judge Madrid, in her Comment dated June 6, 2011, denied that she inserted the letter "O" and superimposed the letter "Y" in Official Receipt No. 10706946. She claimed that she had no access to the documents which were in the custody of the monitoring team as they did not show her any documents when they talked to her after the audit. She also vehemently denied that the alleged excess in the withdrawn amount was delivered to her by Mrs. Rillorta or Susan[a] Liggayu either in the office or in her house. The only money she received were those withdrawn from the bank when she requested Mrs. Rillorta to encash her salary checks. When she confronted Susan[a] Liggayu about the tampering and withdrawals, the latter denied any knowledge about them and even executed an affidavit to that effect. In addition, she admitted to be the lone signatory of withdrawals but this was not by any sinister design as alluded to by Mrs. Rillorta. When the Clerk of Court retired from the service, the money was transferred to the RTC which is represented by her being then the Executive Judge. However, she did not personally make withdrawals and has always authorized Mrs. Rillorta to do the withdrawals instead.

In her Reply Affidavit dated June 13, 2011, Mrs. Rillorta narrated that Judge Madrid called her in her chambers on May 26, 2004, at around 1:30 [p.m.] to 2:00 p.m. Judge Madrid told her to go to the bank and deposit the money wrapped in a newspaper and placed

inside a plastic bag. She also handed her a piece of paper indicating the amount of ₱947,000.00 – ₱11,200.00 = ₱936,000.00 in her own handwriting. When she went out of Judge Madrid's room, Susan[a] Liggayu was waiting and handed her the piece of paper which Judge Madrid gave and they both counted the money. Susan[a] Liggayu then prepared the deposit slip based on the amount they counted and what was written on the piece of paper, after which she gave the prepared deposit slip to Judge Madrid who affixed her signature. This incident proved that monies were delivered to Judge Madrid and when the amount was needed to be deposited, it was readily and immediately produced by Judge Madrid for deposit and return.[2]

In his Report, Investigating Justice Elihu Ybañez detailed how Judge Madrid manipulated the Fiduciary Fund, to wit:

First. In Criminal Case No. 21-4225, entitled People vs. Alejandro Ramos, for Violation of COMELEC Resolution No. 6076, the Undertaking executed by the accused and his Bondsman, appears that the cash bail posted is only ₱20,000.00 without the Official Receipt issued was stated in the Undertaking but a marginal note 'NO RECEIPT ISSUED' admitted by respondent Judge as her own handwriting. Despite the fact that the bailbond posted was only ₱20,000.00 and respondent Judge [wrote a] marginal note that no proper receipt was issued for the cash bond of ₱20,000.00, respondent Judge still authorized the withdrawal and release of ₱120,000.00 which is over and above the actual amount of the cash bail posted of ₱20,000.00. How could respondent Judge in good faith sign the withdrawal slip after checking on the Undertaking which stated that cash bail posted was only ₱20,000.00 and by her own handwriting even noted in the same Undertaking that there was no Official Receipt issued for the cash bond posted. Per admission of respondent-complainant, she tampered with Official Receipt No. 1721363 dated 2 June 2003 to make the ₱120,000.00 upon the instruction of respondent Judge. Repondent-complainant testified further that from the withdrawn amount of ₱120,000.00, ₱100,000.00 went to respondent Judge and ₱20,000.00 was released to the Bondsman.

Second. Respondent Judge signed the withdrawal slip despite the fact that the original Official Receipt which is being presented by the Bondsman/Party and attached to the documents for the release

[2] *Rollo*, (Folder No. 3), unpaged. OCA Memorandum, pp. 1-10.

of the cash bonds provides for a much smaller amount or different in amount than the amount for withdrawal for the refund/release of the cash bond posted.

Third. Respondent Judge transferred the RTC Santiago City Bank Accounts by her as the lone signatory. This, without following the guidelines set by the Supreme [C]ourt requiring a co-signatory to the account who are the Executive Judge and the Clerk of Court/ OIC. Being the lone signatory to the RTC Santiago City General Fund, Fiduciary Fund and JDF Bank Accounts, respondent Judge had full control of the amount[s] deposited to and withdrawn from the RTC Bank Accounts. It would be far[-]fetched that funds of the court would be dissipated without respondent Judge knowing what is happening because she is the sole signatory to the bank deposits of the Fiduciary Funds of the RTC, Santiago City. In fact, respondent Judge on cross examination acknowledged full responsibility of the deposits to and withdrawals from the accounts.

Fourth. Respondent Judge had the final say on what should be stated in the Monthly Report of Collections/Deposits/Withdrawals and Disbursements such that she had full knowledge early on if and when any amounts have been receipted, deposited, and/or withdrawn. Respondent-complainant Angelina Rillorta, witnesses Jaime Gumpal, Virginia Manuel and Susan[a] Liggayu all confirmed that respondent Judge would change the data contained in the Monthly Report before she signed it.

Fifth. The evidence points to the fact that after the OCA Audit Team completed the court financial audit, respondent Judge returned the amount of ₱936,000.00 which respondent-complainant Rillorta and witness Susan[a] Liggayu deposited to the Landbank. Respondent-complainant testified on cross-examination that respondent Judge called her in the Judge's Chamber and gave her the blue SM plastic bag containing the ₱900,000.00 plus money. Respondent Judge also wrote in a piece of paper ₱947,200.00 minus ₱11,200[.00] = ₱936,000.00, which is the amount to be deposited representing the missing funds. The testimony of respondent-complainant is corroborated by witness Susan[a] Liggayu who testified on cross examination that she saw Judge Albano Madrid hand to Angelina Rillorta a blue plastic bag containing money which she and Angelina Rillorta counted. She further testified that she prepared the corresponding deposit slip and handed it to Angelina Rillorta which the latter in turn gave to Judge Madrid for the Judge's signature.

Afterwards, she and Angelina Rillorta deposited the money to Landbank. While respondent Judge claims that it was respondent-complainant who returned the ₱936,000.00 money, however, respondent-complainant could not have returned the amount as she was not the one informed by the OCA Audit Team but respondent Judge who in return did not tell respondent-complainant of the amount. x x x.

Sixth. Respondent Judge took undue interest in preparing the pleadings for respondent-complainant or even went the extra mile to control what will be written in the pleadings. The first draft answer made by respondent Judge for respondent-complainant was that the latter kept the money which was not agreed to by respondent-complainant. Respondent Judge forced respondent-complainant to submit to the Supreme Court the answer (Exhibit 14) she made for her but respondent-complainant refused, and submitted a different answer without saying that she kept the money.

While respondent Judge claims that she only took pity on respondent-complainant, so she prepared the pleadings for her, the draft pleadings tell that respondent Judge wanted to make it appear that it was respondent-complainant who took the missing funds. She was also discouraged by [respondent Judge] in approaching DCA Villanueva when the latter was in Tuguegarao City; also prevented respondent-complainant from telling anyone about the shortages. Withal, respondent Judge also encouraged if not stopped respondent-complainant from consulting a lawyer after she received the notice from the OCA re the missing Judiciary Funds.

Seventh. The assurances of respondent Judge on respondent-complainant that the latter won't be accused of malversation because respondent Judge already returned the money, referring to the ₱936,000.00 deposited after the audit conducted by the SC, is also indicative of her hand in the loss and return/deposit of the fiduciary funds.

Eighth. The testimony of respondent Judge's witness Arcelio F. [De] Castillo, former Legal Researcher of RTC Branch 21, Santiago City, who testified on the strict and meticulous character of respondent Judge only bolstered the fact that the incidents of tampering, non-deposit and overwithdrawal could not have passed respondent Judge without her knowledge and understanding.

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

The same Report highlighted Judge Madrid's telling admissions:

x x x [R]espondent Judge admitted that: (1) General Fund, Fiduciary Fund and JDF Accounts are by the Judge only; (2) she was the lone signatory to the Fiduciary Funds and the General Fund Accounts explaining that the decision was made at the time when the Clerk of Court retired and the latter had to transfer to her the account; (3) she was also the lone signatory not only to the bank accounts and likewise to the reports; (4) she did not bother to change the signatory to the accounts after COC Atty. Suguilon retired because the RTC only had an OIC not a Clerk of Court; (5) respondent Judge knew and was aware of the SC Circular re the required signatories to the court funds; (6) notwithstanding the guidelines set by the Supreme Court requiring a co-signatory for the account saying that the said circular was only issued after [the] RTC Santiago City became a multiple sala court emphasizing that the OIC was not a Clerk of Court; (7) respondent Judge being the only signatory, acknowledged full responsibility of the deposits and withdrawals thereon[.][4]

The Investigating Justice recommended the following:

(1) Judge Fe Albano Madrid be held liable for SERIOUS DISHONESTY and GROSS MISCONDUCT. All her retirement benefits, except her accrued leave benefits be ordered forfeited in favor of the government, if any, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations. Any computed shortages of the Fiduciary Fund yet to be restituted be charged against said accrued leave benefits.

Judge Albano Madrid be likewise DISBARRED for violation of Canon[s] 1 and 7 and Rule 1.01 of the Code of Professional Responsibility and her name ORDERED STRICKEN from the Roll of Attorneys; and

(2) Angelina C. Rillorta be liable for SIMPLE NEGLECT OF DUTY and be meted a fine of Ten Thousand Pesos (₱10,000.00)

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[3] *Id.* (Folder No. 1), unpaged. Report, pp. 58-61.

[4] *Id.* Report, pp. 51-52.

with a stern warning that repetition of the same or similar acts shall be dealt with more severely.[5]

The OCA recommended the following:

> 1. Judge Fe Albano Madrid (formerly Presiding Judge, Branch 21, Regional Trial Court, Santiago City, Isabela, now retired) be found GUILTY of serious dishonesty and gross misconduct and that all her retirement benefits, except her accrued leave benefits, be ordered FORFEITED, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations;
>
> 2. Judge Fe Albano Madrid be DIRECTED to SHOW CAUSE why she should not be DISBARRED for violation of Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility;
>
> 3. Angelina C. Rillorta, Officer-in-Charge, Office of the Clerk of Court, Regional Trial Court, Santiago City, Isabela, now retired, be found GUILTY of gross misconduct and that all her retirement benefits and accrued leave benefits be FORFEITED, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations;
>
> 4. The Employees Leave Division, Office of Administrative Services, Office of the Court Administrator be DIRECTED to compute the balance of the earned leave credits of Angelina Rillorta and forward the same to the Finance Division, Financial Management Office, Office of the Court Administrator, for the computation of the monetary value of her earned leave credits. The amount as well as other benefits Angelina Rillorta may be entitled to shall be applied as partial restitution of the computed shortages in the amount of ₱6,555,559.70;
>
> 5. Angelina C. Rillorta be DIRECTED to RESTITUTE her shortages in the Fiduciary Fund after deducting the money value of her accrued leave credits and other benefits; and
>
> 6. [T]he Legal Office, Office of the Court Administrator be DIRECTED to initiate appropriate criminal proceedings against

[5] *Id.* Report. pp. 66-67.

Judge Fe Albano Madrid and Angelina C. Rillorta in light of the above findings.[6]

The issues in this case are whether Judge Madrid is guilty of grave misconduct and serious dishonesty and whether Rillorta is guilty of grave misconduct.

The Court adopts the findings of the OCA and agrees in its recommendations, except as to the computation of the amount to be restituted by Rillorta.

Judge Madrid is Guilty of Grave Misconduct and Serious Dishonesty

Public office is a public trust. This constitutional principle requires a judge, like any other public servant and more so because of his exalted position in the Judiciary, to exhibit at all times the highest degree of honesty and integrity. As the visible representation of the law tasked with dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people.[7]

Judge Madrid failed to live up to these exacting standards. In this case, the Court agrees with the findings of the OCA, which affirmed the evaluations of the Investigating Justice, "that official receipts were tampered and that there were overwithdrawals from the Fiduciary Fund account amounting to Nine Hundred Thirty Six [Thousand] (₱936,000.00) Pesos. The Audit Team's findings were not refuted by Judge Madrid and Mrs. Rillorta during the investigation."[8] These acts of tampering of official receipts and overwithdrawals from court funds clearly constitute grave misconduct and serious dishonesty.

Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior.[9] The misconduct is grave if it involves any of the

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[6] *Id*. (Folder No. 3), unpaged. OCA Memorandum, pp. 26-27.

[7] *Office of the Court Administrator v. Judge Indar,* 685 Phil. 272, 286 (2012).

[8] *Rollo* (Folder No. 3), unpaged. OCA Memorandum, pp. 10-11.

[9] *Re: Administrative Charge of Misconduct Relative to the Alleged Use*

additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest in a charge of grave misconduct.[10]

Dishonesty, on the other hand, is defined as a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[11]

The Court agrees with the OCA in rejecting Judge Madrid's contention that she did not include Rillorta as co-signatory because the latter is only an OIC. Being designated as acting Clerk of Court or OIC, Rillorta had the same duties and responsibilities of a regular clerk of court.[12] Indeed, if Judge Madrid were uncomfortable that only an OIC was assigned to the Office of the Clerk of Court, she, as then Executive Judge, should have declared the position open so that a regular clerk of court could be appointed. However, Judge Madrid did not do so.

The Court likewise sustains the OCA's finding that Judge Madrid's only witness, Arcelio F. De Castillo (De Castillo), then Court Legal Researcher, did not help her case as the latter had no knowledge of the tampering of official receipts. In his Judicial Affidavit,[13] De Castillo stated that payments of bailbonds

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of Prohibited Drug of Castor, 719 Phil. 96, 100 (2013), citing *Dalmacio-Joaquin v. Dela Cruz*, 604 Phil. 256, 261 (2009).

[10] *Id.* at 100-101, citing *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 608 (2011).

[11] *Office of the Court Administrator v. Viesca*, 758 Phil. 16, 27 (2015), citing *Rojas, Jr. v. Mina,* 688 Phil. 241, 249 (2012), citing further *Japson v. Civil Service Commission*, 663 Phil. 665 (2011).

[12] *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan,* 753 Phil. 31, 37 (2015).

[13] *Rollo* (Folder No. 4), pp. 409-411.

were made in the office of the OIC-Clerk of Court; that he had not seen payments of bailbonds made inside the office or chambers of Judge Madrid; that he had not participated in any transactions involving the payment of bailbond; and that it was the criminal docket clerk Jaime U. Gumpal (Gumpal) who attended to the posting of bonds and his only participation was the review of documents after the requirements were completed.

On the other hand, the Judicial Affidavits[14] of Gumpal, Court Interpreter, and Susana B. Liggayu (Liggayu), Clerk III, both of Branch 21, Regional Trial Court, Santiago City, bolstered the fact that Judge Madrid manipulated the Fiduciary Fund collections and reports submitted to the OCA. Liggayu testified, among others, that Judge Madrid ordered the tampering of official receipts; and that she and Rillorta made a list to monitor Judge Madrid's overwithdrawals and undeposited amounts because Rillorta was already worried how much Judge Madrid would still order withdrawn.

As recommended by the OCA, this administrative case against Judge Madrid for grave misconduct and serious dishonesty shall also be considered as a disciplinary proceeding against her as a member of the Bar,[15] in accordance with A.M. No. 02-9-02 SC, which provides:

> Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
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> In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent Justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint

[14] *Id*. at 228-231, 235-238.

[15] See *Office of the Court Administrator v. Judge Indar*, *supra* note 7.

and show cause why he should not also be suspended, disbarred orotherwise disciplinarily sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.

Accordingly, Judge Madrid is directed to show cause why she should not be disbarred for violation of the Code of Professional Responsibility, particularly Canons 1[16] and 7[17] and Rule 1.01[18] thereof.

Rillorta is Guilty of Grave Misconduct

Rillorta is liable for grave misconduct for her participation in the tampering of receipts, non-deposit to and overwithdrawals from the Fiduciary Fund.

Rillorta admitted having tampered some official receipts. However, she claims that the tamperings were upon the instructions of Judge Madrid. This does not excuse her from any liability because obviously tampering of such official documents is unlawful which should never be countenanced. The Court sustains the OCA's statement that "as a public officer, her duty was not only to perform her assigned tasks, but to prevent the commission of acts inimical to the judiciary and to the public, in general."[19] It is grave misconduct when Rillorta participated or consented to the commission of the unlawful acts of tampering receipts and overwithdrawals from court funds simply because of following the orders or instructions of her superior, Judge Madrid.

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[16] This Canon reads:

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

[17] This Canon reads:

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.

[18] This Rule provides:

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

[19] *Rollo* (Folder No. 3), unpaged. OCA Memorandum, p. 22.

As correctly found by the OCA, "[w]hen Judge Madrid ordered [Rillorta] to alter an official receipt at the first instance, Mrs. Rillorta should have reported the matter to the OCA who has supervision over all judges and court personnel of the lower court[s]. Rather, she kept silent and allowed herself to be used by Judge Madrid and even facilitated the tampering of official receipts and overwithdrawals on several occasions. She knew the repercussions of her acts because she kept a record of the transactions on the tampering of bail bond receipts which, according to her, was a precautionary move and to keep track of the balances in the Fiduciary Fund account. She also failed to prove during the investigation that she was threatened, coerced or terrorized by Judge Madrid into doing such unlawful acts."[20]

The Court likewise rejects Rillorta's claim that when she assumed the position of OIC, the court's financial records were not formally turned over to her and she was not knowledgeable in accounting procedures. Unfamiliarity with procedures will not exempt Rillorta from liability. As a Clerk of Court, she is expected to keep abreast of all applicable laws, jurisprudence and administrative circulars pertinent to her office.[21] Further, Rillorta had been the OIC for nine years when the financial audit was conducted, and therefore, she was presumed to know her functions and responsibilities.[22]

Penalties on Judge Madrid and Rillorta

As this Court has repeatedly stated, the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, should be circumscribed with the heavy burden of responsibility.[23] The Court has not hesitated to impose the ultimate penalty on those who have fallen short of their

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[20] *Id.* OCA Memorandum, p. 23.

[21] See *OCA v. Bernardino*, 490 Phil. 500, 526 (2005).

[22] *Rollo* (Folder No. 3), unpaged. OCA Memorandum, p. 23.

[23] *OCA v. Bernardino*, *supra* at 531.

accountabilities. Any conduct that violates the norms of public accountability and diminishes, or even tends to diminish, the faith of the people in the justice system has never been and will never be tolerated or condoned by this Court.[24]

Since Judge Madrid is found guilty of the grave offenses of grave misconduct and serious dishonesty, the penalty of dismissal from the service is proper even for the first offense in accordance with Section 46A(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. However, since Judge Madrid has already retired from the service, the penalty of dismissal can no longer be imposed. Instead, all of her retirement benefits, except accrued leave benefits, are forfeited, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations.

With regard to Rillorta's offense and penalty, the OCA'srecommendation differed from that of the Investigating Justice's.

The Investigating Justice found Rillorta guilty of simple neglect of duty[25] while the OCA found Rillorta guilty of gross misconduct. The Investigating Justice noted that there were mitigating circumstances favoring Rillorta. These were "(1) making a list noting the non-deposit of cash bonds, underdeposit to and overwithdrawals from the Fiduciary Fund made at the instance of Judge Albano Madrid, (2) in going regularly to the COA Regional Office for Audit, (3) immediate restitution of the missing funds as ordered by the Supreme Court, (4) her previous administrative sanctions notwithstanding because as admitted by Judge Albano Madrid, she actually directed [Rillorta] to continue to function as Officer-in-Charge x x x despite the resolution of the Supreme Court suspending [Rillorta] x x x, (5) the moral ascendancy and control exercised over her by

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[24] *Office of the Court Administrator v. Nacura*y, 521 Phil. 32, 39 (2006), citing *Re: Report of the Financial Audit Conducted on the Accounts of Clerk of Court Zenaida Garcia, MTC, Barotac Nuevo, Iloilo*, 362 Phil. 480 (1999).

[25] *Rollo* (Folder No. 1), unpaged. Report, p. 67.

Judge Albano Madrid x x x, and (6) her staunch and determined efforts in pursuing the administrative complaint against Judge Albano Madrid x x x."[26]

On the other hand, the OCA found that this is not the first time Rillorta has been administratively sanctioned by this Court. In *Antonio T. Quebral v. Angelina C. Rillorta, Officer-in-Charge/ Clerk of Court, and Minerva B. Alvarez, Clerk IV, both of RTC, Branch 21, Santiago City, Isabela,*[27] she was found guilty of neglect of duty for violation of Administrative Circular No. 3-2000 which requires fees to be duly collected and receipted in case clearances are issued by the trial court and was suspended for three months without pay, with a stern warning that a repetition of the same would warrant a more severe penalty. In that case, Rillorta issued court clearances free of charge to people who are "friends of court employees" which the Court found to be highly irregular as she had no power, authority, or discretion to dispense with the payment of the said fees. Also, in *Re: Anonymous Complaint against Angelina Casareno-Rillorta, Officer-in-Charge, Office of the Clerk of Court,*[28] Rillorta was found guilty of gross misconduct for performing her duties/ reporting for work while under preventive suspension by the Court.

Since Rillorta's grave misconduct, aside from her previous infractions, undermined the people's faith in the courts and, ultimately, in the administration of justice, the OCA's recommended penalty of dismissal is proper.

In *Office of the Court Administrator v. Pacheco*,[29] the Court found Pacheco guilty of dishonesty, grave misconduct, and gross neglect of duty and consequently dismissed her from the service when she tampered with receipts and incurred cash shortages.

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[26] *Id*. Report, p. 66.

[27] 459 Phil. 306 (2003). Reported as *Judge Madrid v. Quebral.*

[28] 536 Phil. 373 (2006).

[29] 641 Phil. 1, 9, 14 (2010), cited in *Office of the Court Administrator v. Baltazar*, 771 Phil. 516, 534 (2015).

Similarly, in *Office of the Court Administrator v. Recio*,[30] Recio was found guilty of gross misconduct, dishonesty, and gross neglect of duty for failing to remit cash collections and misappropriating the same. She was also found to have tampered with receipts and the cash book and failed to submit the required monthly reports which the Court considered as acts which "evince a malicious and immoral propensity."[31]

The circumstances which the Investigating Justice considered mitigating do not overcome the fact that Rillorta repeatedly committed offenses which aggravated the grave offense she committed in this case. However, since Rillorta has already retired from the service, the penalty of dismissal can no longer be imposed. Instead, all of her retirement benefits, except accrued leave benefits, are forfeited, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations.

The Court notes that there is a finding in the report of the Financial Audit Team that "in case the following supporting documents of the cashbonds will be submitted, the shortages would be reduced to One Hundred Thirteen Thousand Two Hundred Eighty-Six Pesos and 16/100 (₱113,286.16)."[32] Rillorta insists that with regard to the submission of the orders and acknowledgment receipts in support of the withdrawn cash bonds, she only secured copies of some orders and acknowledgment receipts because some case records were not made available to her. She also explained that she had submitted her monthly financial report from December 1994 to April 2005 together with copies of the orders and acknowledgment receipts to the Accounting Division, Financial Management Office, OCA.[33]

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[30] 665 Phil. 13, 33, 35 (2011), cited in *Office of the Court Administrator v. Baltazar*, 771 Phil. 516, 534 (2015).

[31] *Id.* at 34.

[32] *Rollo* (Folder No. 1), p. 3. In some parts of the records, this amount appears as ₱136,886.16.

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

If the copies of the orders and acknowledgment receipts are indeed in the custody of the Accounting Division, Financial Management Office of the OCA, then the amount of the shortages Rillorta incurred will certainly be reduced. There is no doubt that Rillorta has been remiss in her duty to retain copies of the supporting documents of the withdrawn cash bonds; however, this does not automatically carry with it the restitution of ₱6,557,959.70[34] if this is not the exact amount of the shortages. It appears that there are means to reconcile the records available to Rillorta with the records available to the Financial Audit Team and the Accounting Division, Financial Management Office of the OCA and to compute the exact amount of the shortages. The finding that the shortages would be reduced to ₱113,286.16 if the supporting documents of the withdrawn cash bonds would be submitted clearly means that the Financial Audit Team was able to compute a much reduced amount of shortages based on available records. To order Rillorta to restitute the amount of ₱6,557,959.70 as shortages when in fact this amount is incorrect is without basis. Therefore, in the interest of justice, Rillorta should be given the opportunity to reconcile the records available to her, including the supporting documents already submitted to this Court, and the monthly reports allegedly containing the orders and acknowledgment receipts supposedly in the custody of the Accounting Division, Financial Management Office of the OCA for the computation of the exact amount of the shortages that should be restituted.

WHEREFORE, the Court finds Judge Fe Albano Madrid, formerly Presiding Judge, Regional Trial Court, Branch 21, Santiago City, Isabela, now retired, GUILTY of grave misconduct and serious dishonesty and all her retirement benefits, except her accrued leave benefits, are FORFEITED, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations. Judge Fe Albano Madrid is further DIRECTED to SHOW CAUSE why she should

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[34] *Id*. at 3. In some parts of the records, this amount appears as ₱6,555,559.70 or ₱6,556,559.70.

not be DISBARRED for violation of Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility.

The Court finds Angelina C. Rillorta, Officer-in-Charge, Office of the Clerk of Court, Regional Trial Court, Santiago City, Isabela, now retired, GUILTY of grave misconduct and all her retirement benefits, except her accrued leave benefits, are FORFEITED, with prejudice to re-employment in any branch of the government, including government-owned or controlled corporations. Angelina C. Rillorta is DIRECTED to RESTITUTE her shortages in the Fiduciary Fund after the computation of the exact amount of the shortages.

The Accounting Division, Financial Management Office of the Office of the Court Administrator is DIRECTED to produce the orders and acknowledgment receipts in its custody, if there are any, related to these consolidated cases and forward the same to the Office of the Court Administrator for reconciliation and computation of the exact amount of the shortages within ten (10) days from receipt of this Decision.

The Office of the Court Administrator is DIRECTED to recompute the amount of the shortages incurred by Angelina C. Rillorta after the submission of the orders, acknowledgment receipts and other supporting documents for reconciliation and to submit its findings within ten (10) days from receipt of the documents, if any, from the Financial Management Office, Office of the Court Administrator.

The Legal Office, Office of the Court Administrator is DIRECTED to initiate the appropriate criminal proceedings against Judge Fe Albano Madrid and Angelina C. Rillorta in view of the foregoing findings.

SO ORDERED.

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

Perlas-Bernabe, J., on leave.

Martires, J., on official leave.

EN BANC

[A.M. No. P-17-3645. January 30, 2018]
(Formerly OCA IPI No. 15-4415-P)

MARITA B. BALLOGUING, Presiding Judge, Regional Trial Court, Branch 20, Vigan City, Ilocos Sur, *complainant, vs.* **CRESENTE B. DAGAN, Utility Worker I, Regional Trial Court, Branch 20, Vigan City, Ilocos Sur,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; HABITUAL ABSENTEEISM; CASE AT BAR.—** A civil servant is considered habitually absent when "he or she incurs 'unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year."' To stress, mere failure to file leave of absence does not by itself result in any administrative liability. However, unauthorized absence is punishable if the same becomes frequent or habitual. In turn, absences become habitual when an officer or employee in the civil service exceeds the allowable monthly leave credit (2.5 days) within the given time frame. In this case, Dagan duly filed official leave for his absences in September, October, and November 2014. Nonetheless, it cannot escape our attention that by December 2014, until the filing of this complaint and the period thereafter, he already went on AWOL. Thus, pursuant to the foregoing rules on absenteeism, Dagan was guilty of habitual absenteeism as he evidently exceeded the authorized number of days that he may absent himself. x x x Dagan is similarly guilty of x x x conduct prejudicial to the best interest of the service. x x x [He] deserves not just the dropping of his name from the rolls. His disservice to the Judiciary gives the Court sufficient reason to dismiss him and declare him ineligible for public service hereafter.

2. **ID.; ID.; ID.; INSUBORDINATION; FAILURE TO FILE HIS COMMENT (ON THE ALLEGATION THAT HE TOOK RECORDS AND EVIDENCE IN COURT) DESPITE NOTICE TO DO SO.—** Dagan was twice directed by the OCA

to comment on this charge [that he took records and evidence in court] against him. However, despite receipt of notice, he did not file any comment on the Complaint. By such inexcusable refusal to comment despite ample opportunity to do so, Dagan had waived his right to defend himself, and had shown appalling disrespect of the Court's authority as well as its rules and regulations. x x x Hence, for his failure to file his comment despite notice to do so, Dagan committed insubordination, which in turn is punishable by suspension for one (1) month and one (1) day to six (6) months for the first violation. However, considering the foregoing discussion, Dagan's suspension is rendered impractical. Thus, the Court deems it appropriate to instead order him to pay a fine equivalent to three months worth of his salary.

D E C I S I O N

PER CURIAM:

Habitual absenteeism makes a mockery of the Court's high standards requiring its employees to dedicate their full working time for public service. It is prejudicial to the best interest of public service, and thus, must be curtailed.[1]

This resolves the administrative complaint filed by Presiding Judge Marita B. Balloguing (Judge Balloguing) of the Regional Trial Court (RTC) of Vigan City, Ilocos Sur, Branch 20 against Cresente B. Dagan (Dagan), Utility Worker I of the same court 1) for habitual absenteeism and abandonment of work; and 2) for taking records and evidence in the RTC.

Factual Antecedents

In a Letter-Complaint[2] dated January 8, 2015, Judge Balloguing alleged that Dagan incurred absences at work, as shown by his daily time record[3] (DTR) for September,

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[1] *Leave Division-O.A.S., Office of the Court Administrator v. Sarceno*, 754 Phil. 1, 3 (2015).

[2] *Rollo*, pp. 2-3.

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

October, and November 2014. She also stated that in December 2014 up to the filing of the case, Dagan had completely abandoned his work. To confirm these allegations, the Office of the Court Administrator (OCA), Office of Administrative Services (OAS) – Employees' Leave Division of the Court issued a Certification,[4] the pertinent portions of which read:

> This is to certify that according to the records of this office, Mr. Cresente B. Dagan, Utility Worker 1, Branch 20, Regional Trial Court, Vigan City, Ilocos Sur, was on sick leave with pay for the period September 1, 23, November 3, 2014[;] on vacation leave with pay for the period September 8-12, 16, 24-26, 29-30, October 1-3, 7-10, 22-24, 27-31, 2014[;] on calamity leave with pay for the period October 13-17, 2014 and force[d] leave from October 20, 21, 2014.
>
> This is to certify further that Mr. Dagan is on absence without official leave (AWOL) effective December 1, 2014 and has been recommended to be dropped from the rolls.

In addition, Judge Balloguing claimed that the records in Civil Case No. 7355-V pending in the RTC, and the rifle submitted as evidence thereto went missing. She averred that while said records were already reconstituted, the rifle remained missing. She insisted that the only possible culprit for its loss was Dagan since he held keys to the stockroom where the rifle was kept; and, the stockroom used to be his sleeping quarter.

Judge Balloguing prayed that Dagan be dismissed from the service, and his position in the RTC be declared vacant.

In its 1st Indorsement[5] dated May 7, 2015, the OCA directed Dagan to submit his comment on this case.

Subsequently, Judge Balloguing declared that on June 2, 2015, she received the OCA's First Indorsement; and she personally sent Joel Paraan (Paraan), a staff member at the Justice Hall Maintenance Department, to deliver a copy of the First

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[4] *Id.* at 14; signed by Officer-in-Charge Ryan U. Lopez.

[5] *Id.* at 6.

Indorsement at Dagan's residence in Piddig, Ilocos Norte.[6] She asserted that Dagan received the same as shown by his signature on its receiving copy.[7]

In its 1st Tracer[8] dated October 19, 2015, the OCA reiterated the directive for Dagan to submit his comment on the Complaint. In a separate Letter[9] of even date, the OCA requested Judge Balloguing to cause the personal delivery of the 1st Tracer to Dagan to ensure proper service. Later, Judge Balloguing informed the OCA that she already caused the personal service of the OCA's 1st Tracer, and Dagan received it.[10]

Meanwhile, the Court, in its April 11, 2016 Resolution[11] in A.M. No. 15-11-350-RTC (*Re: Dropping from the Rolls of Mr. Cresente B. Dagan, Utility Worker I, Branch 20, Regional Trial Court, Vigan, Ilocos Sur*) resolved to drop Dagan from the rolls effective December 1, 2014, without prejudice to the outcome of this case, and did not disqualify Dagan from receiving benefits he might be entitled, as well as from being reemployed in the government. The Court also resolved to declare Dagan's position as Utility Worker I vacant, and to inform him of his separation from the service at his last known address appearing in his 201 file.

Report and Recommendation of the Office of the Court Administrator

In its January 4, 2017 Report,[12] the OCA opined that there was compelling reason to dismiss Dagan from the service

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[6] *Id*. at 7.

[7] *Id*. at 9.

[8] *Id*. at 10.

[9] *Id*. at 11.

[10] *Id*. at 12.

[11] *Id*. at 22-24.

[12] *Id*. at 18-21; signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Legal Office Wilhelmina D. Geronga.

considering that Dagan had not returned to work since December 2014; and, the absence of a court employee for a prolonged period constituted conduct prejudicial to the service, a ground for dismissal with forfeiture of benefits.

The OCA added that Dagan was twice directed to comment on the charge that he took court records and evidence (rifle) but despite notice, he did not heed the OCA's directive; as such, Dagan had waived his right to defend himself.

Lastly, the OCA stressed that Dagan had been dropped from the rolls because of his prolonged absence. However, such action was non-disciplinary in character, and did not prohibit Dagan from returning to work in the Judiciary. The OCA maintained that Dagan should not be allowed to escape administrative sanction by going on AWOL and at the same time still have the opportunity to return to the Judiciary. Thus, the OCA made these recommendations:

(1) the instant administrative complaint for habitual absenteeism, abandonment of work and neglect of duty be RE-DOCKETED as a regular administrative matter against respondent Cresente B. Dagan, Utility Worker I, Branch 20, Regional Trial Court, Vigan City, Ilocos Sur;

(2) the 11 April 2016 Resolution of the Court in A. M. No. 15-11-350-RTC dropping respondent Dagan from the rolls be SET ASIDE; and

(3) respondent Dagan be instead found GUILTY of grave misconduct and conduct prejudicial to the best interest of the public service for his prolonged unauthorized absences from work since 15 December 2014 and be ordered DISMISSED from the service, with FORFEITURE of all benefits, except accrued leave credits, if any, and PERPETUAL DISQUALIFICATION from re-employment in any government instrumentality, including government-owned and controlled corporations.[13]

On February 20, 2017, the Court re-docketed this case as a regular administrative matter.

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

In her Letter dated March 14, 2017, Judge Balloguing informed the OCA that upon investigation, she learned that on January 13, 2015, after office hours and after all employees left the courthouse, Dagan surreptitiously returned the subject rifle to the court. She stressed that such matter was recorded in the logbook of the court for January 13, 2015. She added that her court stenographer, Antonia P. Espejo, also chanced upon Dagan when he returned the rifle.

In addition, Judge Balloguing alleged that at the time of her Letter, Dagan was detained at the Ilocos Norte Provincial Jail as he was charged with violation of Comelec[14] Gun Ban which he purportedly committed in Sarrat, Ilocos Norte. Because of such circumstance, Judge Balloguing requested that she be authorized to fill up the position vacated by Dagan.

Acting on Judge Balloguing's March 14, 2017 Letter, the OCA made the following recommendations:

1. the request of Executive Judge Marita Hernales-Balloguing, Branch 20, RTC, Vigan City, Ilocos Sur, contained in her letter dated 14 March 2017, be GRANTED; and
2. Executive Judge Balloguing be AUTHORIZED to fill up the position of Utility Worker I in Branch 22,[15] RTC, Vigan City, Ilocos Sur, vacated by respondent Cresente B. Dagan who was dropped from the rolls pursuant to the Resolution dated 11 April 2016 x x x

Issue

Whether Dagan is guilty of habitual absenteeism, abandonment of work, and of taking court records and evidence such that he must be dismissed from the service.

Our Ruling

The Court hereby adopts the recommendations of the OCA.

A. Habitual absenteeism and abandonment of work

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[14] Commission on Elections.

[15] Should be Branch 20.

A civil servant is considered habitually absent when "he or she incurs 'unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year.'"[16] To stress, mere failure to file leave of absence does not by itself result in any administrative liability. However, unauthorized absence is punishable if the same becomes frequent or habitual. In turn, absences become habitual when an officer or employee in the civil service exceeds the allowable monthly leave credit (2.5 days) within the given time frame.[17]

In this case, Dagan duly filed official leave for his absences in September, October, and November 2014. Nonetheless, it cannot escape our attention that by December 2014, until the filing of this complaint and the period thereafter, he already went on AWOL. Thus, pursuant to the foregoing rules on absenteeism, Dagan was guilty of habitual absenteeism as he evidently exceeded the authorized number of days that he may absent himself.

In *Re: AWOL of Ms. Bantog*,[18] the Court imposed the penalty of dismissal against respondent Bantog, Court Stenographer III of the RTC of Pasig City, Branch 168, due to her having gone on AWOL. The Court ruled that Bantog's act was an utter disregard of her responsibilities as a public servant and as a court employee.

Similarly, in *Re: Habitual Absenteeism of Marcos*,[19] the Court dismissed from the service respondent Marcos, Sheriff III of the Metropolitan Trial Court, Office of the Clerk of Court of Caloocan for his frequent absences. It ratiocinated that habitual absenteeism constitutes gross misconduct and conduct prejudicial to the best interest of the service. It also emphasized the constitutional precept that public office is a public trust. Since

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[16] Citing Administrative Circular No. 14-2002, *Leave Division–O.A.S., Office of the Court Administrator v. Sarceno*, *supra* note 1 at 8.

[17] *Judge Arabani, Jr. v. Arabani*, A.M. Nos. SCC-10-14-P, SCC-10-15-P & SCC-11-17, February 21, 2017.

[18] 411 Phil. 523 (2001).

[19] 650 Phil. 251 (2010).

public officers are accountable to the people, they must perform their duties strictly. It further held that, it condemns such act or omission that would diminish the people's faith in the Judiciary; hence, all its officers and employees must conduct themselves in a manner that is beyond suspicion.

Moreover, in *Leave Division-O.A.S., Office of the Court Administrator v. Sarceno*,[20] the Court held that habitual absenteeism is prejudicial to the best interest of the service as it makes a mockery of public service. The Court decreed that by his habitual absenteeism, therein respondent Sarceno, Clerk III of the RTC of Manila, Branch 31, acted in a manner that resulted in inefficiency in the public service, which inefficiency must be curtailed. It further declared that Sarceno's habitual absenteeism had seriously compromised the integrity of the Judiciary, and for which reason, it dismissed Sarceno from the service.

Here, Dagan is similarly guilty of habitual absenteeism and conduct prejudicial to the best interest of the service. Like in *Re: AWOL of Ms. Bantog, Re: Habitual Absenteeism of Marcos*, and *Sarceno*, Dagan deserves not just the dropping of his name from the rolls. His disservice to the Judiciary gives the Court sufficient reason to dismiss him and declare him ineligible for public service hereafter.

B. Theft of court records and evidence

The Court also adopts in full the finding and recommendation of the OCA, which focused closely on Dagan's failure to obey the OCA's directive to comment on the allegation that he took records and evidence in court.

Dagan was twice directed by the OCA to comment on this charge against him. However, despite receipt of notice, he did not file any comment on the Complaint. By such inexcusable refusal to comment despite ample opportunity to do so, Dagan had waived his right to defend himself, and had shown appalling

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[20] *Supra* note 1.

disrespect of the Court's authority as well as its rules and regulations.[21]

In *Clemente v. Bautista,*[22] the Court ruled that the directive to comment on a case filed against a court employee is not an empty requirement. The OCA's directives, and those of its deputies are issued pursuant to the administrative supervision of the Court. They are not mere requests but are directives that must be timely and fully complied with. As such, the indifference to and disregard of such orders constitute insubordination. Hence, for his failure to file his comment despite notice to do so, Dagan committed insubordination, which in turn is punishable by suspension for one (1) month and one (1) day to six (6) months for the first violation. However, considering the foregoing discussion, Dagan's suspension is rendered impractical. Thus, the Court deems it appropriate to instead order him to pay a fine equivalent to three months worth of his salary.[23]

WHEREFORE, Cresente B. Dagan, Utility Worker I, Regional Trial Court, Vigan City, Ilocos Sur, Branch 20, is found **GUILTY** of habitual absenteeism, conduct prejudicial to the best interest of the service, and insubordination. He is hereby **DISMISSED FROM THE SERVICE** with prejudice to re-employment in any government agency, including government-owned or controlled corporations, and with forfeiture of retirement benefits, except accrued leave credits. He is also meted a penalty of **FINE** equivalent to his salary for three (3) months.

SO ORDERED.

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

Perlas-Bernabe, J., on leave.

Martires, J., on official leave.

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[21] *Lozada v. Zerrudo,* A.M. No. P-13-3108, 708 Phil. 353, 358 (2013).

[22] 710 Phil. 10, 15-16 (2013).

[23] *Id.* at 18.

EN BANC

[A.M. No. RTJ-18-2514. January 30, 2018]
(Formerly A.M. No. 16-10-387-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE HECTOR B. SALISE, PRESIDING JUDGE, BRANCH 7, REGIONAL TRIAL COURT, BAYUGAN CITY, AGUSAN DEL SUR,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; SERIOUS MISCONDUCT; FOR REPEATEDLY AND DELIBERATELY COMMITTING IRREGULARITIES IN THE DISPOSITION OF CASES, THEREBY MANIFESTING CORRUPT INCLINATIONS, A JUDGE CAN BE SAID TO HAVE MISUSED THE POWERS GRANTED BY LAW.—** [T]he Court finds Judge Salise guilty of serious misconduct. Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases. However, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority. Here, the attendant circumstances would reveal that Judge Salise's acts contradict any claim of good faith. Although a judge may not always be subjected to disciplinary actions for every erroneous order or decision he issues, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. If judges wantonly misuse the powers granted to them by the law, there will be, not only confusion in the administration of justice, but also oppressive disregard of the basic requirements under the law and established rules. For repeatedly and deliberately committing

irregularities in the disposition of his cases, thereby manifesting corrupt inclinations, Judge Salise can be said to have misused said powers.

2. **ID.; ID.; MISCONDUCT; TO WARRANT DISMISSAL FROM SERVICE, THE MISCONDUCT MUST BE GRAVE, SERIOUS, IMPORTANT, WEIGHTY, MOMENTOUS, AND NOT TRIFLING.—** Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.

D E C I S I O N

***PER CURIAM*:**

This case is pursuant to the judicial audit conducted in the Regional Trial Courts (*RTC*), Branch 6, Prosperidad and Branch 7, Bayugan City, both in the Province of Agusan del Sur. At that time, respondent Judge Hector B. Salise was the Acting Presiding Judge of Branch 6 and the Executive Judge of Branch 7.

The following are the factual and procedural antecedents of the instant case:

For Branch 6, RTC, Prosperidad, the judicial audit team found that the court allowed substituted service of summons when, under Section 6[1] of the Rule on Declaration of Nullity of Void

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[1] A.M. No. 02-11-10-SC, March 4, 2003.

Marriages and Annulment of Voidable Marriages, the modes of service of summons are only: a) personal service or service in person on defendant; and b) service by publication. In Criminal Case No. 8172, entitled *People v. Peter*, for Qualified Theft, in which no bail was recommended, the court granted the Urgent Petition for Bail without first conducting a hearing to prove that the evidence of guilt against the accused was strong despite the offense charged being a capital offense, in violation of Sections 7[2] and 8,[3] Rule 114 of the Rules of Criminal Procedure. In Criminal Case No. 8155, entitled *People v. Lopez, Jr.*, for Illegal Possession of an Explosive, in which no bail was again recommended as the offense charged is considered a capital offense under Presidential Decree (*P.D.*) 1866,[4] as amended

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Section 6. *Summons.* — The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:(1) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order. In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.

x x x x x x x x x

[2] **Section 7.** *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.* — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

[3] **Section 8.** *Burden of proof in bail application.* — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

[4] Entitled *Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations thereof and for Relevant Purposes.*

by Republic Act (*R.A.*) 9516,[5] the court once again granted the reduction of bail in the amount of ₱20,000,00 even if there was no showing that a bail hearing was conducted.

In Civil Case No. 1639, a case for Declaration of Nullity of Marriage, Judge Salise prematurely rendered a decision granting the petition, without ruling on the petitioner's motions to dispense with the presentation of her last witness and to admit her Formal Offer of Exhibits, and even though the case was still set for hearing in a month's time.

The manner by which Judge Salise dismissed several cases before this court would suggest impropriety, manifest bias and partiality, grave abuse of discretion, and gross ignorance of the law and procedure. Notably, Judge Salise ordered the dismissal of Criminal Case Nos. 7912, 7999, and 8000 before the scheduled day of arraignment, while Criminal Case No. 8028 was dismissed prior to the scheduled hearing on the Motion to Suppress Illegally Seized Evidence and without the accused filing a motion for said dismissal. The court personnel of Branch 6 likewise testified that Judge Salise would call cases, although they were not included in the calendar of cases for hearing, even to the point of dismissing these cases.

Judge Salise also issued a Resolution dated September 5, 2014 in a case which was never docketed in Branch 6 for failure to pay the required docket fee. The court staff only came to know about this when someone filed a Motion for Reconsideration of said Resolution sometime in September 2014.

For Branch 7, RTC, Bayugan City, Judge Salise may be considered to have railroaded the proceedings for a number of cases for declaration of nullity of marriage. In Civil Case No. 1887, Judge Salise rendered a decision granting the petition barely eight (8) months since the case was filed on July 14, 2014, without conducting the mandatory pre-trial, and worse, without petitioner presenting his evidence before the court. In

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[5] Entitled *An Act Further Amending the Provisions of Presidential Decree No. 1866 x x x.*

Civil Case No. 1770, he proceeded with the hearing of the case and later penned a decision granting the petition although the court did not acquire jurisdiction over the person of the respondent as the summons was returned to the court unserved. Similarly, in Civil Case No. 1888, he proceeded to hear the case until the same was submitted for decision even if there was a serious question on the court's jurisdiction over the case. In Civil Case No. 1806, he proceeded with and decided the case without complying with the mandatory requirements under the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages such as the investigation report of no collusion between the parties from the public prosecutor, the pre-trial, and the notice to the respondent. In other cases, he proceeded with and decided the case without due notice to the respondents. In Civil Case No. 1506, he again decided the case in favor of the petitioner without the mandatory investigation report of no collusion between the parties from the public prosecutor. And lastly, Judge Salise would allow substituted service of summons in most cases for declaration of nullity of marriage and annulment of voidable marriage before the court in violation of Section 6 of the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages.

In Special Proceeding No. 1741 for Cancellation of Affidavit of Legitimation, Judge Salise issued an Order directing the then OIC-Clerk of Court of Branch 7, a non-lawyer, to receive evidence *ex parte*, in violation of the rule[6] that the court may delegate the reception of evidence to its clerk of court, who is a member of the bar. Also, in several criminal cases, the issuance

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[6] Section 9, Rule 30 of the Rules of Court provides:

Section 9. *Judge to receive evidence*; *delegation to clerk of court*. — The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or *ex parte* hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and the transcripts within ten (10) days from termination of the hearing.

of warrants of arrest was extremely delayed, taking four (4) to eight (8) months from the time the case was filed.[7]

For his part, Judge Salise apologized for whatever procedural lapses he has committed. He explained that his actions were all done in good faith and judges would sometimes deviate from the rules on a case-to-case basis. He, likewise, claimed that the reported irregularities were mostly due to inadvertence, but he did them in good faith and without malice. He fervently asked for the kind indulgence and consideration of the Court for the lapses, delays, negligence, and inadvertence, and promised to be more circumspect in the future.

On October 21, 2016, after an extensive review and evaluation of the case, the Office of the Court Administrator (*OCA*) recommended the imposition of the extreme penalty of dismissal, thus:

PREMISES CONSIDERED, we respectfully recommend for the consideration of the Court that:

1. the Joint Judicial Audit Report by way of a Memorandum dated 10 September 2015 be **TREATED** as an administrative complaint against Judge Hector B. Salise, Executive Judge, Branch 7, Regional Trial Court, Bayugan City, and formerly Acting Presiding Judge, Branch 6, Regional Trial Court, Prosperidad, both in the Province of Agusan del Sur;

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[7] In violation of Section 6, Rule 112 which provides:

Section 6. *When warrant of arrest may issue*. — (a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

2. the letter dated 13 November 2015 and the twin compliance letters, both dated 16 November 2015, all of Judge Salise be **NOTED**; and

3. Judge Salise be **ADJUDGED GUILTY** of serious misconduct prejudicial to the integrity and dignity of the judiciary, and be **DISMISSED** from the service, with forfeiture of all or part of the benefits as the Court may determine, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations.

Respectfully submitted.[8]

The Court's Ruling

The Court finds no logical reason to depart from the findings and recommendations of the OCA.

At the outset, the Court stresses that Judge Salise never refuted, much less denied the aforementioned judicial audit findings and observations. In fact, he even admitted that:

a. he granted bail to some accused charged with capital offenses in criminal cases in which no bail was recommended, without conducting the mandatory bail hearing. He merely mentioned excuses such as "there is an ongoing settlement," "private complainant is open to settlement," the prosecution did not object to the motion for bail," "to decongest jail," "upon agreement of the parties," or "it was done without malice or bad faith";

b. with his permission, the court interpreter drafted the Decision in Civil Case No. 1887, granting the petition for declaration of nullity of marriage based solely on the petition and the psychological report, and there were no copies of the Pre-trial Order, the Order showing that petitioner had been presented, and the minutes. No

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[8] Evaluation and recommendation submitted by Officer-in-Charge Raul B. Villanueva and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino, dated October 21, 2016. *Rollo*, pp. 238-239.

transcript of stenographic notes could likewise be seen in the records at the time of the judicial audit;

c. he erred in proceeding to hear the case in Civil Case No. 1770 (for declaration of nullity of marriage) when the return of the summons states that it is unserved. He decided the case in favor of the petitioner despite the court's lack of jurisdiction over the defendant;

d. his act of proceeding to hear the case in Civil Case No. 1888 (for declaration of nullity of marriage) despite the question on the court's jurisdiction was due to the words of the petitioner's lawyer that his client was able to find a job in Bayugan and that he was renting a house in Purok II, Poblacion, Bayugan City;

e. he failed to issue an Order directing the public prosecutor to conduct a background check in Civil Case Nos. 1506 and 1806, both for declaration of nullity of marriage, due to a mere oversight and the same was without malice; and

f. he allowed plea-bargaining in cases for violation of R.A. 9165 or the Dangerous Drugs Act of 2002, with the consent of the prosecution in order to decongest the jails.

Furthermore, Judge Salise failed to refute several factual circumstances, showing an implied admission of their truthfulness and accuracy. It was established that he rendered a premature decision in Civil Case No. 1639 (for declaration of nullity of marriage) granting the petition without first ruling on the pending motions filed by the petitioner. He likewise dismissed criminal cases on his own initiative, supposedly "for paucity of proof and dearth of evidence," even after he had already determined, expressly or impliedly, that there was probable cause against the accused. He ordered the dismissal of these cases after either the accused had been arraigned or after the cases had been set for arraignment.

Judge Salise also dismissed cases based on fabricated grounds. For instance, he issued an Order in Criminal Case No. 7994,

for illegal possession of firearm and ammunition, dismissing the case on the ground that "this case has not been moving for almost three (3) years," when in reality, said case was dismissed on May 17, 2013 or less than two (2) months after the same had been filed on March 26, 2013. In Criminal Case No. 8011 for acts of lasciviousness, he dismissed the case *motu proprio* "considering that private complainant x x x has not been appearing in this court since the scheduled hearing of this case." However, an examination of the records of the case would reveal that following the filing of the Information on July 13, 2013, there had only been four (4) settings of the case before it was ordered dismissed on March 24, 2014. Out of those four (4) settings, three (3) were cancelled due to the absence of the defense counsel, ongoing plea-bargaining, and "as there was no showing that private complainant x x x has been notified of the day's setting." Verily, those cancellations could not reasonably be attributed to the private complainant.

Moreover, there were also irregularities in the manner by which Judge Salise disposed of or dismissed criminal cases for violation of R.A. 9165. Supposedly to "decongest the jail," he allowed plea-bargaining as early as 2012, which was still prohibited then under Section 23,[9] Article II of R.A. 9165. In Criminal Case No. 3441 for possession of dangerous drugs under Section 11, with an imposable penalty of twelve (12) years to life imprisonment and a fine of ₱300,000.00 to ₱500,000.00, he allowed the accused to plead guilty to possession of drug paraphernalia and sentenced him to suffer a straight penalty of one (1) year of imprisonment and to pay a fine of ₱10,000.00. In Criminal Case No. 3488 for violation of Section 5, he allowed the two (2) accused to plead guilty to the lesser offense of use of *shabu* and sentenced them to a straight penalty of six (6) months of imprisonment and to pay a fine of ₱10,000.00. In Criminal Case No. 4450 for possession of dangerous drugs under Section 11, he again allowed the accused to plead guilty to

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[9] Struck down as unconstitutional by the Court in *Estipona v. Judge Lobrigo*, G.R. No. 226679, August 15, 2017, thereby allowing plea-bargaining in violations of R.A. 9165.

possession of drug paraphernalia and sentenced him to suffer a straight penalty of one (1) year of imprisonment and to pay a fine of ₱5,000.00.

Judge Salise also dismissed similar cases under highly questionable circumstances and without due regard to the applicable procedural rules, to wit:

1. Criminal Case No. 3833 for violation of Section 5, Article II of R.A. 9165 was ordered dismissed "for paucity of proof" even after he had earlier issued an Order finding probable cause against the accused.

2. Criminal Case No. 3882 for violation of Section 11, Article II of R.A. 9165 was ordered dismissed "for lack of probable cause" even after he had earlier issued an Order finding probable cause against the accused.

3. He ordered *motu proprio* the dismissal of Criminal Case No. 4033 for violation of Section 11, Article II of R.A. 9165 against one of the accused "for insufficiency of evidence" even if said accused had already been arraigned and the case was awaiting pre-trial.

4. He ordered *motu proprio* the dismissal of Criminal Case No. 4098 for violation of Section 11, Article II of R.A. 9165 "in chambers" on the ground that the accused "were arrested without a search warrant or warrant of arrest," even if both of them had already been arraigned and the case had been set for pre-trial conference.

5. He ordered *motu proprio* the dismissal of Criminal Case No. 4123 for violation of Section 11, Article II of R.A. 9165 on the ground that "the arresting officer dipped into the left pocket of the accused and allegedly found *shabu* worth ₱1,000.00, which is illegal and inadmissible in evidence," even if the accused had already been arraigned and the pre-trial had been terminated.

6. He ordered *motu proprio* the dismissal of Criminal Case No. 4124 for violation of Section 11, Article II of R.A. 9165 on the ground that "a review of the records shows

that SPO1 Juliano M. Ano did not specify how the *shabu* was found at the right hand pocket of the accused and that the latter was not committing a crime in the presence of the police," even if the case was already at the trial stage.

7. He ordered *motu proprio* the dismissal of Criminal Case No. 4188 for violation of Section 11, Article II of R.A. 9165 after almost nine (9) months since the filing of the case, even if the case had already been set for arraignment. Interestingly, when the accused filed a motion for reduction of bail, Judge Salise dismissed the case *motu proprio* instead of acting on the motion.

8. He ordered *motu proprio* the dismissal of Criminal Case No. 4194 for violation of Section 11, Article II of R.A. 9165 "in chambers" citing the discrepancy between the residential addresses of the accused as appearing in the Information and in the search warrant, even if the accused had already been arraigned and the case had been set for pre-trial conference.

9. He ordered *motu proprio* the dismissal of Criminal Case No. 4247 for violation of Section 11, Article II of R.A. 9165 on the ground that there was a discrepancy between the time of apprehension of the accused as alleged in the Information (9:30 p.m. of June 18, 2014) and that stated in the affidavit of the arresting officer (10:30 p.m. of June 18, 2014). One of the accused had already been arraigned and the pre-trial conference had been scheduled. Upon motion of one of the accused, Judge Salise also ordered the prosecution to conduct a re-investigation and to submit a report on the same. Strangely, however, Judge Salise ordered the dismissal of the case *motu proprio* without waiting for the re-investigation report.

10. He ordered *motu proprio* the dismissal of Criminal Case No. 4317 for violation of Section 11, Article II of R.A. 9165 "for paucity of proof" even if the accused had

already been arraigned and the case had been set for pre-trial.

Judge Salise also never refuted or denied the testimonies of his court personnel affirming his breaches and even saying that litigants and lawyers would frequent his chamber to personally verify their cases. He would call cases, although not included in the court's calendar, "to the point of dismissing" the same. Worse, he was also reported to have issued and signed a Resolution in a case that was not in the court's docket.

The aforementioned circumstances surrounding the proceedings and disposition of cases are far too flagrant to simply be ignored and their totality strongly indicates Judge Salise's corrupt tendencies. His assertions that his procedural lapses were committed in good faith and without any monetary consideration simply do not hold water. The number of cases involved and the manner by which he disposed of said cases clearly show a pattern of misdeeds and a propensity to violate the law and established procedural rules, particularly the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, R.A. 9165, the Revised Rules of Criminal Procedure, and the Rules of Court.

Consequently, the Court finds Judge Salise guilty of serious misconduct.

Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases.[10] However, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave

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[10] *Andrada v. Judge Banzon*, 592 Phil. 229, 233-234 (2008).

abuse of authority.[11] Here, the attendant circumstances would reveal that Judge Salise's acts contradict any claim of good faith.

Although a judge may not always be subjected to disciplinary actions for every erroneous order or decision he issues, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. If judges wantonly misuse the powers granted to them by the law, there will be, not only confusion in the administration of justice, but also oppressive disregard of the basic requirements under the law and established rules. For repeatedly and deliberately committing irregularities in the disposition of his cases, thereby manifesting corrupt inclinations, Judge Salise can be said to have misused said powers.

Indubitably, Judge Salise violated the Code of Judicial Conduct ordering judges to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.[12] He simply used oversight, inadvertence, and honest mistake as convenient excuses. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to

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[11] *DOJ v. Judge Mislang*, A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372, July 26, 2016, 798 SCRA 225, 235.

[12] Section 2, Canon 3 of the New Code of Judicial Conduct for the Philippine Judiciary.

differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[13]

To hold a judge administratively liable for serious misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice.[14] The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them impartial justice. They must trust the judge; otherwise, they will not go to him at all. They must believe in his sense of fairness; otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.[15] Judge Salise's acts indubitably violated said trust and confidence, seriously impairing the image of the judiciary to which he owes the duty of loyalty and obligation to keep it at all times above reproach and worthy of the people's trust.[16]

WHEREFORE, the Court **FINDS** Judge Hector B. Salise, Acting Presiding Judge of Branch 6, Regional Trial Court, Prosperidad and Executive Judge of Branch 7, Regional Trial Court, Bayugan City, both in the Province of Agusan del Sur, **GUILTY** of serious misconduct and hereby **DISMISSES** him from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

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[13] *Office of the Ombudsman v. De Zosa*, 751 Phil. 293, 300 (2015).

[14] *Supra* note 10, at 233-234.

[15] *Lai v. People*, 762 Phil. 434, 443 (2015).

[16] *Re: Release by Judge Manuel T. Muro, RTC, Branch 54 Manila, of an Accused in a Non-Bailable Offense,* 419 Phil. 567, 592 (2001).

SO ORDERED.

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

Perlas-Bernabe, J., on leave.

Martires, J., on official leave.

THIRD DIVISION

[A.C. No. 9067. January 31, 2018]

MARJORIE A. APOLINAR-PETILO, *complainant, vs.* **ATTY. ARISTEDES A. MARAMOT,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION AGAINST ENGAGING IN DISHONEST CONDUCT; VIOLATED IN CASE AT BAR.—** Pertinent in this case are Rule 1.01 and Rule 1.02 of Canon 1; and Rule 10.1 of Canon 10, which provide: CANON 1 – x x x 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. CANON 10 – x x x 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. The respondent prepared the deed of donation. At the time of his preparation of the document, he actually knew that Princess Anne was a minor; hence, his claim of having then advised that her parents should represent her in the execution of the document. Mommayda was likewise a minor. His awareness of the latter's minority at the time was not disputed

because he was also representing Mommayda in the latter's adoption proceedings aside from being Mommayda's neighbor. Nonetheless, he still indicated in the deed of donation that the donees were of legal age. His doing so, being undeniably dishonest, was contrary to his oath as a lawyer not to utter a falsehood. He thereby consciously engaged in an unlawful and dishonest conduct, defying the law and contributing to the erosion of confidence in the Law Profession.

2. **ID.; ID.; ID.; ID.; CANNOT BE EXCUSED BY GOOD FAITH AND GOOD INTENTIONS.—** As a lawyer, [respondent] should not invoke good faith and good intentions as sufficient to excuse him from discharging his obligation to be truthful and honest in his professional actions. His duty and responsibility in that regard were clear and unambiguous. In *Young v. Batuegas*, this Court reminded that truthfulness and honesty had the highest value for attorneys.

3. **ID.; NOTARY PUBLIC; THE OMISSION MADE IN THE DEED OF DONATION RENDERS THE NOTARIAL ACKNOWLEDGMENT THEREOF IMPROPER.—** [T]he deed of donation in question was the same instrument that apparently contained the acceptance. The names of Princess Anne and Mommayda as the donees, even if still minors, should have been included in the notarial acknowledgment of the deed itself; and, in view of their minority, the names of their respective parents (or legal guardians) assisting them should have also been indicated thereon. This requirement was not complied with. Moreover, Princess Anne and Mommayda should have also signed the deed of donation themselves along with their assisting parents or legal guardians. The omission indicated that the deed of donation was *not complete*. Hence, the notarial acknowledgment of the deed of donation was improper. Rule II Section 1 of the *Rules on Notarial Practice* provides that: SECTION 1. Acknowledgment. – "Acknowledgment" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public <u>and presents an integrally complete instrument or document</u>; x x x.

D E C I S I O N

BERSAMIN, *J.*:

A lawyer is a disciple of truth because he swore upon his admission to the Bar that he would do no falsehood nor consent to the doing of any in court, and that he would conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients. His violation of the Lawyer's Oath through the commission of falsehood can be condignly sanctioned.

Antecedents

In her complaint-affidavit,[1] complainant Marjorie A. Apolinar-Petilo (Marjorie) alleges that the respondent consented to, abetted and participated in the illegal act of falsifying a public document in violation of Article 171(4) in relation to Article 172(2) of the *Revised Penal Code*; and that he thereby violated the Lawyer's Oath, Rules 1.01 and 1.02 of Canon 1 and Rule 10.01 of Canon 10 of the *Code of Professional Responsibility*.

The public document in question was the deed of donation[2] executed in favor of Princess Anne Apolinar-Petilo (Princess Anne) and Ma. Mommayda V. Apolinar (Mommayda) who were only 12 years old and 16½ years old, respectively, at the time of its execution.[3] Asserting that the respondent had known of the minority of the donees, Marjorie insists that he was thereby guilty of falsification first in his capacity as a lawyer by preparing the deed of donation and indicating therein that both donees were then "of legal age"; and as a notary public by notarizing the document. She claims that he, being Mommayda's counsel in the latter's adoption case, was aware of the untruthful statements he made in the deed of donation because he thereafter submitted the deed of donation as evidence therein.[4]

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

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

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

[4] *Id*. at 66-67.

In his answer, the respondent states that Margarita Apolinar (Margarita) and her sister-in-law Justina Villanueva-Apolinar (Justina) went to his law office sometime in 2000; that Margarita was a grandaunt who owned a parcel of land in Calapan, Oriental Mindoro that she wanted to donate to Princess Anne, Marjorie's own daughter, and Mommayda, the adopted daughter of Justina; that upon learning of Princess Anne's minority, he advised that she had to be represented by either parent;[5] that not one to be easily turned down, Margarita persisted, and prevailed over him; that he thereupon prepared the deed of donation but left the date, the document number and page number blank; that he reserved the notarization for later after the parties had signed the document; that he allowed Margarita to bring the deed of donation to Manila where she was supposedly proceeding in order to procure the signature of Princess Anne thereon and as a way of avoiding additional travel expenses; and that Justina had mentioned to him at the time that Margarita was then suffering from colon cancer and had only a little time to live.

The respondent recalled that a month afterwards Margarita and Justina returned to him with the signed deed of donation; that he then noticed that the document did not bear the signatures of Princess Anne's parents; that Margarita again offered to procure the signatures on the document; and that Margarita and Justina did not anymore return with the document until the time when he had to enter the instrument in his notarial book for his monthly report.

Margarita eventually died on April 13, 2003. Later on, with issues about her properties left unresolved, the relationship among her relatives quickly turned sour, and the deed of donation again came to the fore. In 2004, Justina and her husband Tomas went to see the respondent and confided to him that they were entangled in a court battle with Marjorie, their niece, over Margarita's properties, including the apartment in Manila where they had been occupying since 1980. They then learned from the respondent that because Mommayda's birth certificate had been

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[5] *Id*. at 23.

simulated, they needed to legally adopt her in order to enable her to inherit from them. Hence, they filed a petition for the adoption of Mommayda, which did not sit well with Marjorie.

Claiming that her successional rights as a niece or heir to Tomas vis-a-vis would be adversely affected by the adoption of Mommayda, Marjorie vigorously opposed the petition for adoption, and argued for its dismissal on the basis that Tomas and Justina were not morally capable of adoption as shown by their simulation of the birth of Mommayda. Marjorie also brought several criminal cases in the Office of the Provincial Prosecutor on the ground of the simulation of the birth and falsification of the birth certificate of Mommayda in violation of Articles 347, 359, 183 and 184 of the *Revised Penal Code*.

Marjorie's opposition to the petition for adoption and her criminal charges were dismissed. Also dismissed were her opposition to the petition of Tomas and Justina for the correction of entry in Mommayda's birth certificate, as well as Marjorie's motion to recall the social worker for cross examination in the adoption case. The respondent claims that Marjorie –exasperated and dissatisfied with the outcome – then turned against him and instituted the complaint for his disbarment or suspension from the practice of law.[6]

The respondent submits that there was nothing illegal in the deed of donation; that as the sole owner of the donated land, Margarita had an absolute right to dispose of her property by donation; that no law prohibited donations to minors; and that the filing of the petition for judicial partition was an express if not implied ratification of the defect in the donation; and that in regard to the submission of the simulated birth certificate in evidence, the purpose of filing the petition for adoption was to rectify the simulation and to convert the relationship between Mommayda and her adopting parents into a legal one.[7]

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[6] *Id*. at 24.

[7] *Id*. at 23-28.

During the mandatory conference set by the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline, Marjorie admitted that a petition for judicial partition involving the donated land was meanwhile filed; that a compromise agreement[8] was reached; and that Princess Anne sold her share to Mommayda.[9]

In his position paper,[10] the respondent asserts that the complaint was pure harassment calculated only to besmirch and malign his reputation; and that the complaint was also a premeditated tactic to prolong or pre-empt the adoption case considering that a favorable ruling thereat would adversely affect Marjorie's rights as an heir of Mommayda's parents.

In his resolution dated May 22, 2008,[11] the IBP Commissioner recommended that:

> WHEREFORE, in view of the foregoing considerations, the undersigned Commissioner finds respondent Atty. Aristedes A. Maramot to have violated the Notarial Law, his act having undermined the confidence of the public on notarial documents; and, respectfully recommends his suspension from notarial practice for a period of one (1) year while the other complaints against him are recommended dismissed for lack of merit.[12]

In his motion for reconsideration,[13] the respondent submitted that he did not employ any falsity because it was only Margarita – the donor – who had in fact attested to the execution of the deed of donation in the notarial acknowledgement of the deed of donation; that it was inconsequential even if Princess Anne had signed the deed of donation not in his presence; that in conveyances, only the person encumbering or conveying needed to personally appear, sign and acknowledge the deed before the notary public; and that Princess Anne and Mommayda's

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

[9] *Id*. at 101-102.

[10] *Id*. at 96-97.

[11] *Id*. at 107-110.

[12] *Id*. at 109-110.

[13] *Id*. at 111-113.

names were placed in the document merely for them to accept the donation.

The respondent pleads for the mitigation of his liability considering that he has exhibited candor in admitting his offense. He represents that his act was not gross enough as to justify suspension; that the complainant had thereby suffered no damage, but had actually benefitted from the act; that he had notarized in good faith; and that with this offense being his first in his 12 years as a law practitioner and as notary public, humanitarian considerations should be considered in his favor because he had children to support and had been his family's sole bread winner.

In her comment on the respondent's motion for reconsideration,[14] Majorie avers that Princess Anne could not have signed the instrument in Manila because her daughter was then studying in Victoria, Oriental Mindoro.

In Resolution No. XVII-2008-337 dated July 17, 2008, the IBP Board of Governors adopted and approved the report and recommendations of the Commission on Bar Discipline, but modified the penalty by recommending the immediate revocation of the respondent's notarial commission and his disqualification from reappointment as a notary for two years, thus:[15]

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for Respondent's violation of the Notarial Law, Atty. Aristedes Maramot is hereby **SUSPENDED** from the practice of law for one (1) year, <u>immediate Revocation of his Notarial Commission if presently Commissioned and Disqualified from reappointment as Notary Public for Two (2) years.</u>[16]

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[14] *Id*. at 116-117.

[15] *Id*. at 106.

[16] *Id.*

The IBP Board of Governors denied the respondent's motion for reconsideration through Resolution No. XIX-2011-424 dated June 26, 2011,[17] thus:

> RESOLVED to unanimously DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Board and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, for lack of substantial ground or reason to disturb it, the Board of Governors' Resolution No. XVIII-2008-337 dated July 17, 2008 is hereby **AFFIRMED**.[18]

On September 6, 2011, the respondent filed in this Court his *Comment on the IBP Board of Governor's Resolution No. XVII-2008-337 and No. XIX-2011-424* dated August 16, 2011.[19]

In its Report dated June 27, 2012,[20] the Office of the Bar Confidant recommended to treat the comment as a petition for review.

On February 15, 2012, the respondent filed an amended comment dated December 5, 2011.[21]

On July 23, 2012, the Court resolved: (1) to direct the respondent to furnish the IBP a copy of his amended comment and submit proof of its service within ten (10) days; and (2) to require the complainant to file her comment thereon within 15 days from receipt.[22]

Accordingly, the complaint submitted her comment on November 9, 2012, opposing the respondent's prayer for reconsideration and asking the Court to uphold the Resolutions of the IBP Board of Governors.

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[17] *Id*. at 136.

[18] *Id*.

[19] *Id*. at 144-148.

[20] *Id*. at 163.

[21] *Id*. at 153.

[22] *Id*. at 184.

Ruling of the Court

We affirm the Resolutions of the IBP Board of Governors.

A.
As a Lawyer

Every lawyer before entering his duties and responsibilities as a member of the Bar and an officer of the Court, professes as a natural course the promises contained in the Lawyer's Oath, to wit:

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

The letter and spirit of the Lawyer's Oath are oftentimes forgotten or taken for granted in the course of the lawyer's practice of law. To give teeth thereto, the Court has adopted and instituted the *Code of Professional Responsibility* to govern every lawyer's relationship with his profession, the courts, the society, and his clients.

Pertinent in this case are Rule 1.01 and Rule 1.02 of Canon 1; and Rule 10.1 of Canon 10, which provide:

> CANON 1 – x x x
>
> 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.
>
> CANON 10 – x x x

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.

The respondent prepared the deed of donation. At the time of his preparation of the document, he actually knew that Princess Anne was a minor; hence, his claim of having then advised that her parents should represent her in the execution of the document. Mommayda was likewise a minor. His awareness of the latter's minority at the time was not disputed because he was also representing Mommayda in the latter's adoption proceedings aside from being Mommayda's neighbor. Nonetheless, he still indicated in the deed of donation that the donees were of legal age. His doing so, being undeniably dishonest, was contrary to his oath as a lawyer not to utter a falsehood. He thereby consciously engaged in an unlawful and dishonest conduct, defying the law and contributing to the erosion of confidence in the Law Profession.

The respondent's explanation that it was only Margarita who actually acknowledged that the deed of donation was her own free act and deed does not extricate him from responsibility. The deed of donation, whether or not acknowledged by the donees, should not bear any false statement upon a material fact. The ages of the donees were material because they bore on their capacities to render the donation efficacious. That neither Princess Anne nor Mommayda acknowledged the deed of donation did not cure the defect.

The respondent justifies himself by stating that the persistence of the donor Margarita prevailed upon him to prepare the deed of donation as he had done; and adverts to the donor's assurance that she would herself procure the signatures of the parents of Princess Anne on the document. He also submits that the execution of the deed had redounded to the advantage of the minors; and that there was no law that prohibited the donation in favor of minors.

The respondent cannot be relieved by his justifications and submissions. As a lawyer, he should not invoke good faith and

good intentions as sufficient to excuse him from discharging his obligation to be truthful and honest in his professional actions. His duty and responsibility in that regard were clear and unambiguous. In *Young v. Batuegas*,[23] this Court reminded that truthfulness and honesty had the highest value for attorneys, thus:

> A lawyer must be a disciple of truth. He swore upon his admission to the Bar that he will do no falsehood nor consent to the doing of any in court and he shall conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients. He should bear in mind that as an officer of the court his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusion. The courts, on the other hand, are entitled to expect only complete honesty from lawyers appearing and pleading before them. While a lawyer has the solemn duty to defend his client's rights and is expected to display the utmost zeal in defense of his client's cause, his conduct must never be at the expense of truth.[24]

The respondent posits that a donation could be made in favor of a minor. Such position was not a factor, however, because whether or not a minor could benefit from the donation did not determine the merits of the complaint for his disbarment or suspension from the practice of law. Neither was his claim that the filing of the petition for judicial partition amounted to the ratification of the deed of donation a factor to be considered in his favor. The decisive consideration is whether or not he committed a falsehood in his preparation of the deed of donation. Sadly for him, the answer is in the affirmative.

Relative to the respondent's submission of the false birth certificate of Mommayda in the proceedings for her adoption, we adopt with approval the following findings and recommendation made by the IBP Commissioner absolving the respondent, *viz.*:

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[23] A.C. No. 5379, May 9, 2003, 403 SCRA 123.

[24] *Id*. at 126-127.

The Certificate of Live Birth of Ma. Mommayda Villanueva Apolinar is certainly a simulated one where it was made to appear that she was the biological child of Spouses Tomas V. Apolinar and Justina P. Villanueva when she was not. It was not shown, however, that respondent has a hand when its contents were given to the employee of the Local Civil Registrar of Victoria, Mindoro Oriental. From the face of the document, it appears that Tomas Apolinar himself gave the details and he signed the Certificate of Live concerned.

When the respondent used the document in the adoption case of Ma. Mommayda Villanueva Apolinar by the Spouses Tomas and Justina Apolinar (docketed as Spec. Proc. No. R-04-5396, RTC, Branch 40, Calapan City, Mindoro Oriental), the respondent did not misrepresent that Ma. Mommayda V. Apolinar is the biological daughter of the petitioners. In fact, there was nothing that was misrepresented in the allegations in the petition. This led to the filing of another case for the correction of entry in the birth certificate of the same Ma. Mommayda V. Apolinar docketed as Spec. proc. CV-05-5445. It was alleged therein that Leini Villanueva Guerrero and Johnny Ortega are the biological parents of Ma. Mommayda Apolinar.[25]

B.
As a Notary Public

The respondent is also being hereby charged with having executed the notarial acknowledgment for the deed of donation despite Princess Anne not having actually appeared before him.

The respondent explains that he did not employ any falsity or dishonesty, and that he did not make untruthful statements in executing the notarial acknowledgment.

In this respect, the IBP Commissioner observed that:

It cannot be denied that the respondent violated the Notarial Law when he, by his own admission, notarized the Deed of Donation which was signed by at least one of the parties, namely: the donee, Princess Anne Petilo, who signed not in the presence of the Notary Public but somewhere in Metro Manila. This fact the respondent has admitted in his Answer (records, P. 22 Statement of Facts, par. 3). For this reason, notaries public are once again reminded to observe with utmost care the basic requirements in the performance of their

[25] *Rollo*, p. 140.

duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence a notary public should not notarized a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein (Serzo vs. Flores, A.C. No. 6040 [formerly CBD 02-972, July 30, 2004] citing Fulgencio v. Martin, 403, 403 SCRA 216, 2200221).[26]

The IBP Commissioner obviously rendered his foregoing observations on the assumption that Princess Anne had herself acknowledged the instrument not in the presence of the respondent as the Notary Public. But, as borne out by the acknowledgment, only Margarita's name was indicated as the person appearing before the respondent during the notarization of the instrument, to wit:

BEFORE ME, on the date and at the place afore-cited personally appeared Margarita V. Apolinar with her CTC indicated below her name and signature, issued at Victoria, Oriental Mindoro, all known to me the same person who executed the foregoing instrument and she acknowledged to me that the same is her own free act and deed (Emphasis supplied)[27]

Nonetheless, the respondent's denial of having employed any falsity or dishonesty, or of making untruthful statements in executing the notarial acknowledgment does not necessarily save the day for him. There is no question that a donation can be accepted in a separate instrument. However, the deed of donation in question was also the same instrument that apparently contained the acceptance.[28] The names of Princess Anne and Mommayda as the donees, even if still minors, should have been included in the notarial acknowledgment of the deed itself; and, in view of their minority, the names of their respective parents (or legal guardians) assisting them should have also

[26] *Id*. at 108.

[27] *Id*. at 10.

[28] *Id*. at. 9, which contains the relevant portion of the deed of donation reading as follows:That the DONEES does hereby accept this donation of the above-described real property and does hereby express his gratitude for the liberality of the DONOR.

been indicated thereon. This requirement was not complied with. Moreover, Princess Anne and Mommayda should have also signed the deed of donation themselves along with their assisting parents or legal guardians.

The omission indicated that the deed of donation was *not complete*. Hence, the notarial acknowledgment of the deed of donation was improper. Rule II Section 1 of the *Rules on Notarial Practice* provides that:

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;

x x x x x x x x x

We cannot approve of the recommended penalty of suspension for one year. The circumstances peculiar to the complaint call for lenity in favor of the respondent, but who must nonetheless be sternly warned against a repetition of the offense at the risk of suffering a more stringent penalty. We hold that the penalties commensurate to the offense is suspension from the practice of law for six months.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent **ATTY. ARISTEDES MARAMOT** guilty of violating the Lawyer's Oath, Rules 1.01 and 1.02 of Canon 1 and Rule 10.01 of Canon 10 of the *Code of Professional Responsibility*, and the *Rules on Notarial Practice*; **SUSPENDS** him from the practice of law for six months effective from notice of this decision, with revocation of his notarial commission and disqualification from being re-appointed as Notary Public for two years effective upon receipt; and warns him of a more stringent penalty upon repetition of the offense.

SO ORDERED.

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

Martires, J., on official business.

THIRD DIVISION

[A.C. No. 9129. January 31, 2018]

MARIA EVA DE MESA, *complainant, vs.* **ATTY. OLIVER O. OLAYBAL,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF LAWYER TO HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME TO HIS POSSESSION; VIOLATED WHEN LAWYER DEPOSITED TO HIS PERSONAL ACCOUNT CASE SETTLEMENT AMOUNT RECEIVED FROM THE CLIENT.—** The records show that the respondent received from the complainant crossed manager's checks payable to Asialink worth ₱78,640.00 representing the settlement amount for her criminal cases; that instead of immediately transmitting the checks to Asialink, he managed to deposit the same to his personal account for collection. x x x The respondent's failure to deliver the checks to Asialink and instead depositing the checks in his account and thereafter misappropriating the funds thereof for his personal benefit constituted a serious breach by him of Canon 16, Rule 16.01 and Rule 16.02 of the *Code of Professional Responsibility*, which state as follows: Canon16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME TO HIS POSSESSION. Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client. Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him. The respondent flagrantly violated these canons of ethical conduct and professionalism, and should be held responsible. We can never understate that the relationship between a lawyer and his client is highly fiduciary, and imposes on the former a great degree of fidelity and good faith. Thus, any money or property received by him from his client for delivery to another in the context of the relationship is merely held by him in trust and should not be appropriated for his own benefit. For him to do otherwise is a violation of his oath as an attorney and officer of the Court.

2. ID.; ID.; LAWYER'S DUTY OF FIDELITY TO HIS CLIENT; VIOLATED WHEN LAWYER BOUND THE CLIENT TO THE TERMS OF COMPROMISE AGREEMENT EVEN IF NOT EXPRESSLY AND PROPERLY AUTHORIZED TO DO SO.— [T]he respondent's act of binding the complainant to the terms of the compromise agreement even if he had not been expressly and properly authorized to do so reflected his disregard of the duty of fidelity that he owed at all times towards her as the client. He thereby violated Canon 17 of the *Code of Professional Responsibility, viz:* CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM. The IBP Board of Governors recommended that the respondent be suspended from the practice of law for six months after taking due consideration of the various circumstances attendant to his case. The recommendation is well taken. Any breach of the fidelity towards the client that an attorney commits justifies the penalty of his suspension from the practice of law for a period of time.

D E C I S I O N

BERSAMIN, *J.*:

We stress, yet again, the fidelity that the attorney owes towards the client. A violation of such fidelity warrants the sanction of the attorney with suspension from the practice of law.

Antecedents

The complainant charges respondent Atty. Oliver O. Olaybal with betrayal of trust and confidence, malpractice and gross misconduct as a lawyer.

The complainant avers that the respondent was her counsel in her criminal cases for violation of Batas Pambansa Blg. 22, specifically: Criminal Case No. 88229, filed in the Metropolitan Trial Court in Pasig City (Pasig Case), Br. 72, and Criminal Case Nos. 26685 to 26688, filed in the Municipal Circuit Trial Court (MCTC), Branch 2, in Legaspi City (Legaspi Case); that as regards the Pasig Case, he advised her to settle amicably for

the amount of ₱78,640.00; that following his advice, she procured, through the help of Rowena Basco, her sister, Prudential Bank Manager's Checks No. 5574 and No. 5575 dated November 18, 2005 respectively for the amounts of ₱74,400.00 and ₱4,240.00; that both checks were crossed and payable to Asialink Finance Corporation (Asialink); that she handed the checks to the respondent for delivery to Asialink; that he did not deliver the checks to Asialink, but instead deposited them to his account through his son; that on February 28, 2006, he executed a compromise agreement with Asialink on her behalf as settlement of the Pasig Case; that under the compromise agreement, he undertook to pay Asialink the total sum of ₱83,328.00 through monthly installment payments of ₱6,110.75 from March 28, 2006 to February 28, 2007; that he also executed a deed of undertaking in Asialink's favor, whereby he guaranteed her monthly payment by issuing 12 post-dated checks in favor of Asialink; and that with respect to the Legaspi Cases, he failed to file her counter-affidavit on time, thereby jeopardizing her chances of testifying therein.[1]

In his answer and position paper, the respondent counters that the two manager's checks worth ₱78,640.00 were not in full settlement of the complainant's obligations because he still had to negotiate with Asialink on the final amount; that before he could negotiate with Asialink's representative, his son erroneously deposited the manager's checks to his account for safekeeping, without his knowledge and consent; that he nonetheless succeeded in settling her account with Asialink to her advantage by reducing her obligation from ₱115,770.00 to ₱83,328.00 through the elimination of surcharges and attorney's fees; that he was authorized to agree to the terms of the compromise agreement by her sister, Rowena Basco, and that she also agreed, through Atty. Romulo Ricafort, a friend of her mother-in-law, to implement the terms of the compromise agreement; that he prepared ahead of time the counter-affidavit to be submitted in the Legaspi Cases, but he was unable to file

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[1] *Rollo,* p. 116.

the same due to her fault and negligence and those of her witnesses; and that the matter already became moot and academic in any case inasmuch as the Legaspi Cases were dismissed on October 26, 2006.[2]

Findings and Recommendation of the Integrated Bar of the Philippines (IBP)

In his Report and Recommendation dated February 22, 2008,[3] IBP Investigating Commissioner Randall C. Tabayoyong declared that the respondent had misappropriated the amounts of the manager's checks for his personal gain and benefit in violation of Canon 16, Rule 16.01[4] of the *Code of Professional Responsibility*;[5] that his depositing the checks to his account and commingling the proceeds thereof with his personal funds violated Rule16.02[6] of the *Code of Professional Responsibility*;[7] and that his entering into the compromise settlement without authority placed the complainant at risk of undergoing criminal prosecution and conviction, thereby failing to safeguard her interest in violation of his ethical duty under Canon 18[8] of the *Code of Professional Responsibility*.

Anent the penalty to be imposed upon the respondent, IBP Investigating Commissioner Tabayoyong, taking into consideration the respondent's age and his efforts to rectify his wrongdoing, such as: (a) executing a deed of undertaking in favor of Asialink to guarantee the complainant's monthly installment payment under the compromise agreement; (b) issuing checks from his own checking account as the complainant's

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[2] *Id*. at 117.

[3] *Id*. at 114-127.

[4] Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

[5] *Rollo,* p. 121.

[6] Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

[7] *Rollo,* p. 119.

[8] Canon 18 – A lawyer shall serve his client with competence and diligence.

payment under the compromise agreement; and (c) bearing the ₱4,098.00 difference between the settlement amount and the amount given to him by the complainant,[9] recommended as follows:

> **WHEREFORE**, it is therefore respectfully recommended that respondent be suspended for six (6) months for having violated Canons 16 and 18 and Rules 16.01 and 16.02 of the Code of Professional Responsibility.[10]

In its Resolution No. XVIII-2008-159 dated April 15, 2008, the IBP Board of Governors adopted and approved the report of IBP Investigating Commissioner Tabayoyong, but modified the recommended penalty by also requiring the return of the amount of ₱78,640.00 to the complainant within 30 days from notice, *viz.:*

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violations of Canons 16 and 17 and Rule 16.01 and 16.02 of the Code of Professional Responsibility, Atty. Oliver O. Olaybal is hereby SUSPENDED from the practice of law for six (6) months and Ordered to Return the ₱78,640.00 to complainant within Thirty (30) days from receipt of notice.[11]

The respondent sought reconsideration,[12] but the IBP Board of Governors denied his motion *via* Resolution No. XIX-2011-390 dated June 26, 2011.[13]

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[9] *Rollo,* p. 126.

[10] *Id.* at 127.

[11] *Id*. at 113.

[12] *Id*. at 128-139.

[13] *Id*. at 149.

Issues

Were the findings and recommendations of the IBP Board of Governors proper?

Ruling of the Court

We sustain the findings and recommendation of the IBP Board of Governors.

The records show that the respondent received from the complainant crossed manager's checks payable to Asialink worth ₱78,640.00 representing the settlement amount for her criminal cases; that instead of immediately transmitting the checks to Asialink, he managed to deposit the same to his personal account for collection; and that he asserted as explanation for the deposit of the checks in his personal account that the deposit was due to the honest mistake of his son in order to prevent the checks from becoming stale.

We agree with the findings of the IBP Investigating Commissioner and IBP Board of Governors that the explanation of the respondent was improbable for being contrary to human experience. We reiterate the IBP Investigating Commissioner's observations on the matter:

> x x x It bears stressing that the subject checks were not only payable to Asialink, but were duly crossed. Hence, under existing banking rules and regulations and common commercial practice, these checks can only be deposited to the account of Asialink and to no other. It is quite perplexing to believe that respondent's son would even think that these checks belonged to his father and would, without even asking him, "mistakenly" deposit these checks to his account, for the faces of both checks unmistakably show that these should be given to Asialink. This Office is similarly unconvinced of the claim that the checks were deposited so that these would not become stale. As shown by the faces of these checks, these were issued in November 18, 2005 and would become stale, six (6) months thereafter. Yet, after the lapse of about two (2) weeks, or on December 1, 2005, the said checks were already deposited to respondent's account. Thus, at the time of their deposit, the subject checks were clearly far from being stale. Accordingly, respondent's explanation is devoid of any

probative value not only because it is uncorroborated, but also because it is contrary to human experience.[14]

The respondent's failure to deliver the checks to Asialink and instead depositing the checks in his account and thereafter misappropriating the funds thereof for his personal benefit constituted a serious breach by him of Canon 16, Rule 16.01 and Rule 16.02 of the *Code of Professional Responsibility*, which state as follows:

Canon 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME TO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

The respondent flagrantly violated these canons of ethical conduct and professionalism, and should be held responsible. We can never understate that the relationship between a lawyer and his client is highly fiduciary, and imposes on the former a great degree of fidelity and good faith.[15] Thus, any money or property received by him from his client for delivery to another in the context of the relationship is merely held by him in trust and should not be appropriated for his own benefit. For him to do otherwise is a violation of his oath as an attorney and officer of the Court.

Also, the respondent's act of binding the complainant to the terms of the compromise agreement even if he had not been expressly and properly authorized to do so reflected his disregard of the duty of fidelity that he owed at all times towards her as the client. He thereby violated Canon 17 of the *Code of Professional Responsibility*, *viz.*:

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[14] *Id.* at 120-121.

[15] *Bayonla v. Reyes,* A.C. No. 4808, November 22, 2011, 660 SCRA 490, 499.

CANON 17 — A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

The IBP Board of Governors recommended that the respondent be suspended from the practice of law for six months after taking due consideration of the various circumstances attendant to his case. The recommendation is well taken. Any breach of the fidelity towards the client that an attorney commits justifies the penalty of his suspension from the practice of law for a period of time.

WHEREFORE, the Court **SUSPENDS** respondent **ATTY. OLIVER O. OLAYBAL** from the practice of law for a period of six months effective upon receipt hereof; **ORDERS** him to return to the complainant the amount of ₱78,640.00 within 30 days from receipt hereof; and **WARNS** him that a stiffer penalty will be imposed on him should he commit a similar offense hereafter.

Let copies of this decision be attached to the personal records of **ATTY. OLIVER O. OLAYBAL** as a member of the Philippine Bar, and be furnished to the Office of the Court Administrator for proper dissemination to all courts throughout the country. Copies shall further be furnished to the Office of the Bar Confidant and the Integrated Bar of the Philippines.

SO ORDERED.

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

Martires, J., on official business.

SPECIAL FIRST DIVISION

[A.C. No. 10783. January 31, 2018]

ATTY. BENIGNO BARTOLOME, *complainant, vs.* **ATTY. CHRISTOPHER A. BASILIO,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; FAILURE TO IMMEDIATELY SERVE THE PENALTIES OF SUSPENSION FROM THE PRACTICE OF LAW, REVOCATION AND PROHIBITION AGAINST NOTARIAL PRACTICE, UPON RECEIPT OF THE DECISION IS A CONTUMACIOUS ACT; PENALTY IN CASE AT BAR.— The dispositive portion of the Decision explicitly states that the penalties imposed on Basilio for violation of the 2004 Rules of Notarial Practice and Rule 1.01, Canon 1 of the Code of Professional Responsibility — namely: (*a*) suspension from the practice of law for a period of one (1) year; (*b*) revocation of his incumbent commission as a notary public; and (*c*) prohibition from being commissioned as a notary public for two (2) years, were all "**effective immediately**" x x x. Accordingly, Basilio's compliance with the order of suspension, as well as all the other penalties, should have commenced on the day he received the Decision. x x x [T]he clause "effective immediately" was placed at the end of the enumerated series of penalties to indicate that the same pertained to and therefore, qualified all three (3) penalties, which clearly include his suspension from the practice of law. The immediate effectivity of the order of suspension — not just of the revocation and prohibition against his notarial practice — logically proceeds from the fact that all three (3) penalties were imposed on Basilio as a result of the Court's finding that he failed to comply with his duties as a notary public, in violation of the provisions of the 2004 Rules of Notarial Practice, and his sworn duties as a lawyer, in violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility. Thus, with the Decision's explicit wording that the same was "effective immediately", there is no gainsaying that Basilio's compliance therewith should have commenced immediately from his receipt of the Decision on December 2, 2015. x x x, [F]or his failure to immediately serve

the penalties in the Decision against him upon receipt, Basilio acted contumaciously, and thus should be meted with a fine in the amount of ₱10,000.00, as recommended by the OBC. Pending his payment of the fine and presentation of proof thereof, the lifting of the order of suspension from the practice of law is perforce held in abeyance.

APPEARANCES OF COUNSEL

Edward L. Robea for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For resolution are the Motion to Lift Suspension[1] dated July 19, 2017 filed by respondent Atty. Christopher A. Basilio (Basilio), as well as the Report and Recommendation[2] dated September 13, 2017 of the Office of the Bar Confidant (OBC), recommending that: (*a*) Basilio be meted with an additional penalty of fine in the amount of ₱10,000.00 for his failure to immediately comply with the Court's order of suspension from the practice of law, as mandated in the Decision[3]dated October 14, 2015 of the Court; and (*b*) the lifting of the order of suspension be held in abeyance pending the payment of the fine.

The Facts

In the October I4, 2015 Decision[4] (the Decision), the Court suspended Basilio from the practice of law for one (1) year, revoked his incumbent commission as a notary public, and prohibited him from being commissioned as a notary public for two (2) years, ***effective immediately***, after finding him guilty of violating the 2004 Rules of Notarial Practice and Rule 1.01,

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[1] *Rollo*, pp. 201-202.

[2] *Id*. at 210.

[3] *Id*. at 129-136. See also *Bartolome v. Basilio*, 771 Phil. 1 (2015).

[4] See *Bartolome v. Basilio*, *id*.

Canon 1 of the Code of Professional Responsibility. He is further warned that a repetition of the same offense or similar acts in the future shall be dealt with more severely.[5]

The Decision was circulated to all courts for the information and implementation of the order of suspension.[6] Basilio, thru his counsel, Atty. Edward L. Robea (Robea), claimed to have received a copy of the Decision on December 2, 20I5,[7] hence, his suspension from the practice of law, as well as the revocation of his notarial commission and prohibition from being commissioned as a notary public should have all effectively commenced on the same date. In a Resolution[8] dated April 20, 2016, the Court denied with finality Basilio's motion for reconsideration[9] of the Decision.

However, in a letter[10] dated June 9, 2016, Atty. Sotero T. Rambayon (Rambayon) inquired from the Court about the status of Basilio's suspension, alleging that the latter still appeared before Judge Venancio M. Ovejera of the Municipal Trial Court of Paniqui, Tarlac on April 26, 20I6. The letter was subsequently referred to the OBC for appropriate action.[11] In a letter-reply[12] dated July 25, 2016, the OBC informed Rambayon that the Decision had already been circulated to all courts for implementation, and that Basilio's motion for reconsideration had been denied with finality by the Court.

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[5] *Id*. at 11.

[6] *Rollo*, p. 158.

[7] As shown on the registry return receipt signed by Robea; *id*. at 128 (see dorsal portion). See also *id.* at 139 and 181. The OBC, however, indicated in its reports that Basilio, through his counsel, received the Decision on November 3, 2015 (see *id*. at 137, 158, and 210).

[8] *Id*. at 152.

[9] Basilio filed his motion for reconsideration before the OBC on January 22, 2016. *Id*. at 139-143.

[10] The letter was addressed to the Office of the Chief Justice (OCJ). *Id*. at 161.

[11] See letter of the OCJ dated June 29, 2016; *id*. at 160.

[12] *Id*. at 169.

Consequently, in a Report and Recommendation[13] dated July 27, 2016, the OBC recommended that Basilio be required to show cause why he should not be held in contempt of court for not immediately complying with the Court's order of suspension upon receipt of the Decision. He was further required to file a sworn statement, with certifications from the Office of the Executive Judge of the court where he practices his legal profession and from the Integrated Bar of the Philippines' (IBP) Local Chapter where he is affiliated with, affirming that he has ceased and desisted from the practice of law, has not appeared in court as counsel, and has not practiced his notarial commission during the mandated period.

In another letter[14] dated August 22, 2016, Rambayon informed the Court that in the schedule of cases before Judge Bernar D. Fajardo of the Regional Trial Court (RTC) of Paniqui, Tarlac, Branch 67, there were five (5) cases[15] where the litigants were supposedly represented by Basilio.

In a Resolution[16] dated October 5, 2016, the Court, among others, noted Rambayon's letter dated August 22, 2016 and further required Basilio to: (*a*) show cause within ten (10) days from notice why he should not be held in contempt of court for not immediately complying with the order of suspension upon receipt of the Decision; and (*b*) file a sworn statement with certifications affirming that he has fully served his penalty of suspension.

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[13] *Id*. at 158-159.

[14] The letter was addressed to the OCJ. See *id*. at 170-171.

[15] These cases are: (1) Criminal Case No. 2024, *People v. Arnold Obcena*, Frustrated Murder, as Private Prosecutor; (2) Civil Case No. 022-15, *Adona Gregorio v. Rogelio Gozum*, For Declaration of Nullity of Marriage, as lawyer for petitioner; (3) Special Proceedings No. 045-15, Petition for Judicial Declaration of Abandonment and Adoption, as counsel for petitioners; (4) Land Case No. 002-15-B, Petition for Cancellation of Second Owner's Duplicate Copy of OCT No. 22030, as lawyer for petitioner; and (5) Land Case No. 052-15, Petition for Cancellation of Encumbrance Entry No. 14-13265 in TCT No. 63931, as counsel for petitioner. See *id*. at 170.

[16] *Id.* at 176-177.

Complying[17] with the show cause order, Basilio explained that he did not immediately comply with the suspension order because he believed that his suspension was held in abeyance pending resolution of his motion for reconsideration of the Decision, following the guidelines in *Maniago v. De Dios*[18] (*Maniago*), wherein it was stated that "[u]nless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has [fifteen (15)] days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory."[19] On this score, he maintained that what was immediately executory was only the revocation of his notarial commission and the two (2)-year prohibition of being commissioned as a notary public.[20]

In a Resolution[21] dated March 15, 2017, the Court noted Basilio's compliance, and referred the case to the OBC for evaluation, report, and recommendation. In a Report and Recommendation[22] dated June 22, 2017, the OBC recommended that the directives in the Court's October 5, 2016 Resolution be reiterated, *i.e.*, the filing of a sworn statement with certifications attesting to his compliance with the full service of suspension, and require Basilio to comply with the same within ten (10) days from notice.

Before the Court could act on the OBC's June 22, 2017 Report and Recommendation, Basilio filed a Motion to Lift Suspension (Motion)[23] on July 25, 2017, attaching an Affidavit of Cessation/ Desistance from Practice of Law or Appearance in Court.[24] In

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[17] See Compliance to the Show Cause Order Dated October 5, 2016 filed before the OBC on January 26, 2017; *id*. at 180-184.

[18] 631 Phil. 139 (2010).

[19] *Id*. at 146.

[20] See *rollo*, pp. 182-183.

[21] *Id*. at 198-199.

[22] *Id*. at 200.

[23] Dated July 19, 2017. *Id*. at 201-202.

[24] Dated July 24, 2017. *Id*. at 203.

his motion, Basilio stated that he "has commenced to serve his penalty on July 9, 2016 and continue to serve his penalty until the present upon his receipt of the Order of the [Court] denying his Motion for Reconsideration."[25] He further mentioned that he "immediately ceased and desisted from the practice of his notarial commission on December 2, 2015 until the present."[26] Basilio likewise attached to his Motion the following: (*a*) Certification[27] dated July 12, 2017 from the IBP-Tarlac Chapter, affirming that Basilio "has not appeared in court beginning July 9, 2016 to July 9, 2017" and "has not practiced his notarial commission as notary public from December 2, 2016 [up to] the present"; (*b*) Certification[28] dated July 14, 2017 from the RTC of Paniqui, Tarlac, Branch 67, attesting that Basilio has ceased and desisted from the practice of law and has not practiced his notarial commission from December 2, 2016 up to the present; and (*c*) Certifications[29] dated July 17, 2017, from the RTC of Camiling, Tarlac, Branch 68 and July 20, 2017, from the RTC of Tarlac City, Branch 64, both affirming that Basilio did not appear as counsel in said courts from July 9, 2016 up to the present.

The Action and Recommendation of the OBC

In a Report and Recommendation[30] dated September 13, 2017, the OBC recommended that Basilio be meted with an additional penalty of a fine in the amount of ₱10,000.00 for his failure to immediately comply with the Court's order of suspension from the practice of law, as mandated in the Decision. Likewise, it recommended that the lifting of the order of suspension from the practice of law be held in abeyance pending his payment of the fine.

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[25] *Id*. at 201.

[26] *Id*. at 203.

[27] *Id*. at 205.

[28] *Id*. at 207.

[29] See *id*. at 208 and 206, respectively.

[30] *Id*. at 210.

The OBC maintained that Basilio, through his counsel, Robea, received the Decision on November 3, 2015. Hence, the one (1)-year suspension order from the practice of law imposed upon him commenced from the said date should end on November 3, 2016. On the other hand, the two (2)-year order of revocation of notarial commission and prohibition from being commissioned as a notary public should end on November 3, 2017. However, the OBC observed that Basilio served his suspension order from the practice of law beginning only on July 9, 2016 and desisted from his notarial practice on December 2, 2015, as shown by the attached Certifications; hence, the recommended fine.

The Issue Before the Court

The essential issues for the Court's resolution are: (*a*) whether or not Basilio's suspension should now be lifted, and (*b*) whether or not he should be fined for his failure to immediately comply with the order of the Court.

The Court's Ruling

The dispositive portion of the Decision explicitly states that the penalties imposed on Basilio for violation of the 2004 Rules of Notarial Practice and Rule 1.01, Canon 1 of the Code of Professional Responsibility — namely: (*a*) suspension from the practice of law for a period of one (1) year; (*b*) revocation of his incumbent commission as a notary public; and (*c*) prohibition from being commissioned as a notary public for two (2) years, were all "**effective immediately**", *viz.*:

> **WHEREFORE**, the Court finds Atty. Christopher A. Basilio **GUILTY** of violating the 2004 Rules of Notarial Practice and Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for one (1) year; **REVOKES** his incumbent commission as a notary public, if any; and **PROHIBITS** him from being commissioned as a notary public for two (2) years, ***effective immediately***. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.[31] [Emphasis, italics, and underscoring supplied]

[31] *Bartolome v. Basilio*, *supra* note 3, at 11.

Accordingly, Basilio's compliance with the order of suspension, as well as all the other penalties, should have commenced on the day he received the Decision.

According to the OBC, Basilio received the Decision on November 3, 2015. However, records show that Basilio, through Robea, actually received the Decision on December 2, 2015, as per the Registry Return Receipt, and that the same was merely mailed on November 13 (not 3), 2015.[32] The OBC — albeit still inaccurately - must have thought that this latter date was to be considered as the date of receipt. In fact, Basilio, in his motion for reconsideration and compliance to the Court's October 5, 2016 Resolution,[33] has repeatedly maintained that he received the Decision on December 2, 2015. This averment appears to be consistent with the documents on record and hence, ought to prevail.

This notwithstanding, Basilio himself admitted that he served his suspension only on July 9, 2016, proffering that he believed that what was immediately executory was only the revocation of his notarial commission and the two (2)-year prohibition against being commissioned as a notary public. Unfortunately, the Court cannot accept such flimsy excuse in light of the Decision's unequivocal wording.

Irrefragably, the clause "effective immediately" was placed at the end of the enumerated series of penalties to indicate that the same pertained to and therefore, qualified all three (3) penalties, which clearly include his suspension from the practice of law. The immediate effectivity of the order of suspension — not just of the revocation and prohibition against his notarial practice — logically proceeds from the fact that all three (3) penalties were imposed on Basilio as a result of the Court's finding that he failed to comply with his duties as a notary public, in violation of the provisions of the 2004 Rules of Notarial Practice, and his sworn duties as a lawyer, in violation of Rule

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[32] *Rollo*, p. 128 (see dorsal portion).

[33] *Id*. at 139 and 181.

1.01, Canon 1 of the Code of Professional Responsibility. Thus, with the Decision's explicit wording that the same was "effective immediately", there is no gainsaying that Basilio's compliance therewith should have commenced immediately from his receipt of the Decision on December 2, 2015. On this score, Basilio cannot rely on the *Maniago* ruling as above-claimed since it was, in fact, held therein that a decision is immediately executory upon receipt thereof if the decision so indicates, as in this case.

All told, for his failure to immediately serve the penalties in the Decision against him upon receipt, Basilio acted contumaciously,[34] and thus should be meted with a fine in the amount of ₱10,000.00,[35] as recommended by the OBC. Pending his payment of the fine and presentation of proof thereof, the lifting of the order of suspension from the practice of law is perforce held in abeyance.

WHEREFORE, the Court hereby **FINDS** respondent Atty. Christopher A. Basilio **GUILTY** of indirect contempt. He is hereby **FINED** in the amount of Ten Thousand Pesos (₱10,000.00) and **STERNLY WARNED** that a repetition of the same or similar infractions will be dealt with more severely. The lifting of the order of suspension from the practice of law is **HELD IN ABEYANCE** pending his payment of the fine and presentation of proof thereof.

SO ORDERED.

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

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[34] "A person guilty of disobedience of or resistance to a lawful order of a court or commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice may be punished for indirect contempt." (*Capitol Hills Golf and Country Club v. Sanchez*, 728 Phil. 58, 69 [2014].)

[35] See Notice of Resolution in *Santos Ventura Hocorma Foundation, Inc. v. Funk*, A.C. No. 9094, January 13, 2014.

[*] Designated member per A.M. No. 17-03-03-SC dated March 14, 2017.

SECOND DIVISION

[A.M. No. 17-11-272-RTC. January 31, 2018]

RE: DROPPING FROM THE ROLLS OF LEMUEL H. VENDIOLA, Sheriff IV, Office of the Clerk of Court (OCC), Regional Trial Court of Biñan City, Laguna (RTC).

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; OMNIBUS RULES ON LEAVE; CONTINUOUS ABSENCE WITHOUT APPROVED LEAVE FOR AT LEAST THIRTY (30) WORKING DAYS SHALL BE CONSIDERED ON ABSENCE WITHOUT OFFICIAL LEAVE (AWOL) AND SHALL BE SEPARATED FROM SERVICE .— Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, Series of 2007, states: Section 63. *Effect of absences without approved leave.* — An official or employee who is **continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL)** and shall be separated from the service or dropped from the rolls without prior notice. x x x Based on this provision, Vendiola should be separated from service or dropped from the rolls in view of his continued absence since April 2012. Vendiola's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court. x x x By failing to report for work since April 2012 up to the present, Vendiola grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stems from a request[1] to drop Mr. Lemuel H. Vendiola (Vendiola), Sheriff IV in the Office of

[1] See Letter dated February 21, 2013; *rollo*, p. 3.

the Clerk of Court (OCC), Regional Trial Court of Biñan City, Laguna (RTC), from the rolls due to his absences without official leave.

The Facts

The records of the Employees's Leave Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA), show that Vendiola has not submitted his Daily Time Record (DTR) since May 2012 up to the present.[2] He neither submitted any application for leave.[3] His service record[4] shows that he was appointed Utility Worker I in the RTC, Branch 24 on November 10, 2004. On April 27, 2009, he was appointed temporarily as Sheriff IV in the OCC, RTC. He was reappointed to the same position on a permanent capacity on June 3, 2010.[5] Vendiola did not submit the requirements for initial salary; he did, however, submit his DTR until April 2012.

In a Letter[6] dated February 21, 2013, Executive Judge Teodoro N. Solis of the RTC, Branch 25, requested the OCA to drop Vendiola from the rolls and declare his position vacant considering his absences without official leave since April 2012.[7]

Moreover, Vendiola's salaries and benefits have been withheld since December 2010 due to his non-submission of requirements for his initial salary in connection with his reappointment on a permanent capacity as Sheriff IV.[8]

The OCA informed the Court of its findings based on the records of its different offices, namely: (*a*) Vendiola is still in

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[2] *Id.* at 1. See also OAS Employees' Leave Division Certification dated September 29, 2015, signed by Officer-in-Charge Ryan U. Lopez, *id*. at 6.

[3] *Id*. at 1.

[4] See Service Record in the Judiciary; *id*. at 5.

[5] *Id*.

[6] *Id.* at 3.

[7] *Id*.

[8] *Id*. at 1.

the *plantilla* of court personnel, and thus, considered to be in active service; (*b*) he has no application for retirement; and (*c*) no administrative case is pending against him; but (*d*) he is, however, accountable for STF[9] (Sheriff Trust Fund) and has yet to be audited.[10]

In its report and recommendation[11] dated November 2, 2017, the OCA recommended that: (*a*) Vendiola's name be dropped from the rolls effective May 2, 2012 for having been absent without official leave; (*b*) his position be declared vacant; and (*c*) he be informed about his separation from the service at his last known address on record at Kasilaga Compound Silangan St., San Francisco, Biñan, Laguna. The OCA added, however, that Vendiola is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.[12]

The Court's Ruling

The Court agrees with the OCA's recommendation.

Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, Series of 2007,[13] states:

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[9] The records do not show what the letters "STF" stand for, as stated in "For Dropping From the Rolls" signed by Processor-in-Charge, Employee's Leave Division, OCA Zharina Marie I. Cantada (*id.* at 4). See, however, minute resolution of *OCA v. Judge Orallo, et al.*, AM No. MTJ-17-1890, August 2, 2017.

[10] *Id*. at 1.

[11] See Administrative Matter for Agenda signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Assistant Chief of Office, OAS Maria Teresa O. Demesa-Razal; *id*. at 1-2.

[12] Pursuant to Section 2 (2.6), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions; *id*. at 2.

[13] Entitled "AMENDMENT TO SECTION 63, RULE XVI OF THE OMNIBUS RULES ON LEAVE, CIVIL SERVICE COMMISSION MEMORANDUM CIRCULAR NOS. 41 AND 14, SERIES OF 1998 AND 1999, RESPECTIVELY," dated July 25, 2007.

Section 63. *Effect of absences without approved leave*. — An official or employee who is **continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL)** and shall be separated from the service or dropped from the rolls without prior notice. x x x

x x x x x x x x x (Emphasis supplied)

Based on this provision, Vendiola should be separated from service or dropped from the rolls in view of his continued absence since April 2012.

Vendiola's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court.[14] It contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency.[15] It should be reiterated and stressed that a court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary.[16] By failing to report for work since April 2012 up to the present, Vendiola grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.[17]

The dropping from the rolls, however, shall be without prejudice to his liability, if any, upon completion of the audit.

WHEREFORE, Mr. Lemuel H. Vendiola, Sheriff IV, Office of the Clerk of Court, Regional Trial Court of Biñan City, Laguna, is hereby **DROPPED** from the rolls effective May 2, 2012 and

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[14] See *Re: Dropping from the Rolls of Rowie A. Quimno*, A.M. No. 17-03-33-MCTC, April 17, 2017.

[15] See *id*., citing *Re: AWOL of Ms. Fernandita B. Borja*, 549 Phil. 533, 536 (2007).

[16] See minute resolution of *Re: Absence without official leave (AWOL) of Michael P. Fajardo*, A.M. No. 2016-15(A)-SC, August 1, 2016. See also minute resolution of *Dropping from the Rolls of Mary Grace Cadano Bouchard*, A.M. No. 15-11-349-RTC, January 11, 2016.

[17] See *id*.

his position is declared **VACANT**. He is, however, still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.

Let a copy of this Resolution be served upon him at his address appearing in his 201 file pursuant to Rule XVI, Section 63 of the Omnibus Civil Service Rules and Regulations, as amended.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191460. January 31, 2018]

PERFECTO M. PASCUA, *petitioner, vs.* **BANKWISE, INC. and PHILIPPINE VETERANS BANK,** *respondents.*

[G.R. No. 191464. January 31, 2018]

BANKWISE, INC., *petitioner, vs.* **PERFECTO M. PASCUA and PHILIPPINE VETERANS BANK,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; EVEN IF THE EMPLOYEE RESIGNED, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE RESIGNATION WAS VOLUNTARY.—** The employer has the burden of proving, in illegal dismissal cases, that the employee was dismissed for a just or authorized cause. Even if the employer claims that the employee resigned, the employer still has the burden of proving

that the resignation was voluntary. It is constructive dismissal when resignation "was made under compulsion or under circumstances approximating compulsion, such as when an employee's act of handing in his [or her] resignation was a reaction to circumstances leaving him [or her] no alternative but to resign." "Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment." In order to prove that resignation is voluntary, "the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."

2. **ID.; ID.; ID.; EMPLOYEE WITH SPECIAL QUALIFICATIONS WOULD NEED LESSER DEGREE OF PROTECTION FROM THE STATE THAN AN ORDINARY RANK AND FILE EMPLOYEE.—** Labor is a Constitutionally protected social class due to the perceived inequality between capital and labor. x x x The presumption is that the employer and the employee are on unequal footing so the State has the responsibility to protect the employee. This presumption, however, must be taken on a case-to-case basis. In situations where special qualifications are required for employment, such as a Master's degree or experience as a corporate executive, prospective employees are at a better position to bargain or make demands from the employer. Employees with special qualifications would be on *equal* footing with their employers, and thus, would need a lesser degree of protection from the State than an ordinary rank-and-file worker.

APPEARANCES OF COUNSEL

Alexius P. Tang for Perfecto M. Pascua.
PDIC Office of the General Counsel for Bankwise, Inc.
Philippine Veterans Bank Legal Division for Philippine Veterans Bank.

D E C I S I O N

LEONEN, *J.*:

There is constructive dismissal when an employee is compelled by the employer to resign or is placed in a situation where there would be no other choice but to resign. An unconditional and categorical letter of resignation cannot be considered indicative of constructive dismissal if it is submitted by an employee fully aware of its effects and implications.

For resolution are two (2) separate Petitions for Review on Certiorari[1] assailing the July 13, 2009 Decision[2] and February 22, 2010 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 103453. The Court of Appeals affirmed the Labor Arbiter and National Labor Relations Commission's finding that Perfecto M. Pascua (Pascua) was constructively dismissed. The Court of Appeals, however, absolved Philippine Veterans Bank from liability and held only Bankwise, Inc. (Bankwise) liable for Pascua's money claims.

Pascua was employed by Bankwise as its Executive Vice President for Marketing on July 1, 2002.[4]

On September 29, 2004, Philippine Veterans Bank and Bankwise entered into a Memorandum of Agreement for the purchase of Bankwise's entire outstanding capital stock.[5] On

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[1] *Rollo* (G.R. No. 191460), pp. 8-33 and *Rollo* (G.R. No. 191464), pp. 10-41.

[2] *Rollo* (G.R. No. 191460), pp. 57-70 and *Rollo* (G.R. No. 191464), pp. 43-56. The Decision was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison of the Seventh Division, Court of Appeals, Manila.

[3] *Rollo* (G.R. No. 191460), pp. 82-84. The Resolution was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison of the Former Seventh Division, Court of Appeals, Manila.

[4] *Id.* at 47, NLRC Decision.

[5] *Id*. at 85-95, Memorandum of Agreement.

January 12, 2005, Philippine Veterans Bank allegedly assumed full control and management of Bankwise.[6] Philippine Veterans Bank allegedly elected new members of the Board of Directors and appointed a new set of officers, including the President and Chief Operating Officer.[7]

Pascua was reassigned to a Special Accounts Unit but his duties, functions, and responsibilities were not clearly delineated or defined.[8]

On February 3, 2005, Pascua was informed by Roberto A. Buhain (Buhain), President of Bankwise, that as part of the merger or trade-off agreement with Philippine Veterans Bank, he should tender his resignation.[9] Buhain assured Pascua that he would be paid all his money claims during this transition.[10] Instead of tendering his resignation, Pascua wrote a letter dated February 7, 2005, wherein he pleaded, among others, that he stay in office until the end of the year.[11]

Seeing as Pascua had yet to submit his resignation, Vicente Campa (Campa), a director of Bankwise, told him that it was imperative that he submit his resignation and assured his continued service with Philippine Veterans Bank.[12] Based on Campa's assurance, Pascua tendered his resignation on February 22, 2005. His letter of resignation read:

SIR:

IN ACCORDANCE WITH THE INSTRUCTIONS OF THE PREVIOUS OWNERS OF THE BANK, I HEREBY TENDER MY RESIGNATION FROM THE BANK.[13]

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[6] *Id*. at 47, NLRC Decision.

[7] *Id*. at 49.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 49-50.

[11] *Id*.

[12] *Id*. at 51.

[13] *Id.*

On March 6, 2005, Pascua wrote a letter to Campa reminding him of his money claims due to his resignation.[14] Because of "the urgency of [his] financial needs,"[15] he proposed the initial payment of his midyear bonus of ₱150,000.00 or the transfer of his Bankwise loan amounting to ₱1,000,000.00 to offset his claim.[16] Pascua alleged that he was summoned by Buhain to his office on March 8, 2005 and handed a letter of acceptance of his resignation effective March 31, 2005.[17]

In a letter dated March 12, 2005, Pascua informed Buhain that per Buhain's suggestion, he asked Campa to request Bankwise's Board of Directors for the extension of his service until August 30, 2005. Both Philippine Veterans Bank and Bankwise, however, denied the request. Pascua allegedly inquired from Buhain how his money claims would be paid in view of "the passive attitude" of the banks. Buhain allegedly assured him that he already sought a meeting with Campa on the matter. During the meeting Campa also assured him that all his money claims would be paid by the previous owners of Bankwise.[18]

Due to the inaction of Philippine Veterans Bank and Bankwise, Pascua sent Buhain a letter dated April 13, 2005, demanding the early settlement of his money claims.[19] The demand was not heeded. Thus, Pascua filed a Complaint for illegal dismissal, non-payment of salary, overtime pay, holiday pay, premium pay for holiday, service incentive leave, 13th month pay, separation pay, retirement benefits, actual damages, moral damages, exemplary damages, and attorney's fees against Bankwise and Philippine Veterans Bank.[20]

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[14] *Id*. at 52.

[15] *Id.*

[16] *Id*.

[17] *Id*. at 37, Labor Arbiter's Decision.

[18] *Id*.

[19] *Id*. at 38.

[20] *Id*. at 102-103.

In his November 25, 2005 Decision,[21] the Labor Arbiter dismissed the Complaint on the ground that Pascua had voluntarily resigned. The Labor Arbiter relied on Pascua's resignation letter dated February 22, 2005 and paragraph 8 of his Contract of Employment[22] stating that no verbal agreement between the employee and Bankwise may alter the terms of employment. The Labor Arbiter found that there was no evidence in writing to prove the alleged private agreement among Pascua, Buhain, and Campa.[23]

Pascua appealed to the National Labor Relations Commission. In its October 31, 2007 Decision,[24] the National Labor Relations Commission reversed the Labor Arbiter's findings and held that Pascua was constructively dismissed.[25] It found that Pascua was separated from service as part of the merger or trade-off deal between Bankwise and Philippine Veterans Bank and was forced to accept his separation from service on the promise that he would be paid severance pay and his other benefits.[26] The dispositive portion of this Decision read:

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[21] *Id*. at 35-45. The Decision, docketed as NLRC-NCR-00-05-04129-05, was penned by Labor Arbiter Edgardo M. Madriaga of the National Labor Relations Commission, Quezon City.

[22] *Rollo* (G.R. No. 191464), pp. 67-68, Contract of Employment.

8. VERBAL AGREEMENT

It is understood that there are no verbal agreement or understanding between you and the Bank or any of its agents and representatives affecting this Agreement. And that no alterations or variations of its terms shall be binding upon either party unless the same are reduced in writing and signed by the parties herein.

[23] *Rollo* (G.R. No. 191460), p. 44.

[24] *Id*. at 46-55. The Decision, docketed as NLRC CA No. 047154-06, was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

[25] *Id.* at 53.

[26] *Id*. at 51.

WHEREFORE, premises considered, the assailed Decision is hereby REVERSED and SET ASIDE and a NEW one rendered whereby, the respondents Bank Wise, Inc. and Philippine Veterans Bank are hereby ordered to pay complainant Perfecto M. Pascua the amount of Php7,608,543.54 representing his backwages, separation pay and attorney's fees as above computed.

SO ORDERED.[27]

Philippine Veterans Bank and Bankwise filed separate Motions for Reconsideration dated December 14, 2007[28] and December 17, 2007,[29] respectively, before the National Labor Relations Commission. In its March 14, 2008 Resolution, the National Labor Relations Commission resolved to deny the Motions for Reconsideration filed "by the respondents" even though it only mentioned the December 14, 2007 Motion for Reconsideration.[30]

Philippine Veterans Bank filed a Petition for Certiorari before the Court of Appeals, arguing that Pascua's resignation was voluntary. It also argued that even assuming Pascua was constructively dismissed, it should not be made liable with Bankwise since it was separate and distinct from it.[31]

On February 7, 2008, during the pendency of the Petition for Certiorari with the Court of Appeals, the Monetary Board of the Bangko Sentral ng Pilipinas determined that Bankwise was insolvent and adopted Resolution No. 157 forbidding Bankwise from further doing business in the Philippines.[32] In the same Resolution, the Monetary Board placed Bankwise under

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[27] *Id.* at 54.

[28] *Rollo* (G.R. No. 191464), pp. 92-101, Philippine Veterans Bank's Motion for Reconsideration.

[29] *Id.* at 102-107, Bankwise, Inc.'s Motion for Reconsideration.

[30] *Id.* at 108-109. The Resolution was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

[31] *Rollo* (G.R. No. 191460), pp. 179-200.

[32] *Rollo* (G.R. No. 191464), p. 110, Monetary Board Resolution No. 157.

receivership and designated Philippine Deposit Insurance Corporation as its receiver.[33] On October 30, 2008, the Monetary Board issued Resolution No. 1386 directing the Philippine Deposit Insurance Corporation to proceed with the liquidation of Bankwise.[34]

On July 13, 2009, the Court of Appeals rendered its assailed Decision,[35] finding that Pascua was constructively dismissed but held that only Bankwise should be made liable to Pascua for his money claims.[36] The dispositive portion of this Decision read:

WHERFORE, the petition is DISMISSED while the assailed decision of the NLRC is PARTLY AFFIRMED with the modification that only respondent Bank Wise is ordered to pay Perfecto M. Pascua backwages, separation pay and attorney's fees.

SO ORDERED.[37]

The Court of Appeals found that there was no certificate of merger between Bankwise and Philippine Veterans Bank; hence, Bankwise retained its separate corporate identity.[38] The Court of Appeals also pointed out that the National Labor Relations Commission's finding of Philippine Veterans Bank's liability was an error of judgment, and not of jurisdiction; hence, it did not commit grave abuse of discretion.[39]

Pascua and Bankwise separately filed Motions for Reconsideration of this Decision. Both Motions, however, were denied by the Court of Appeals in its February 22, 2010 Resolution.[40]

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[33] *Id.*

[34] *Rollo* (G.R. No. 191460), p. 131, Monetary Board Resolution No. 1386.

[35] *Id.* at 57-70, Court of Appeals Decision.

[36] *Id.* at 70.

[37] *Id.*

[38] *Id.* at 69.

[39] *Id.*

[40] *Id.* at 82-84. The Resolution, docketed as CA-G.R. SP No. 103453,

Pascua filed a Petition for Review on Certiorari[41] with this Court docketed as G.R. No. 191460. Bankwise also filed a Petition for Review on Certiorari[42] with this Court, docketed as G.R. No. 191464. This Court consolidated both Petitions on April 26, 2010.[43]

Pascua argues that the Court of Appeals erroneously absolved Philippine Veterans Bank of its liability since it had already taken over the management and business operations of Bankwise by the time he was constructively dismissed.[44] He insists that since Bankwise was already declared insolvent, Philippine Veterans Bank should be held solidarily liable as Bankwise's assets are already exempt from execution.[45]

Bankwise, on the other hand, claims that the Court of Appeals erred in finding it liable since the National Labor Relations Commission never resolved its Motion for Reconsideration.[46] Considering that its Motion for Reconsideration was still pending, the decision of the National Labor Relations Commission against it has not yet become final.[47]

Bankwise also contends that assuming Pascua was enticed to resign in exchange for severance pay, it should not be held liable for the actions of Buhain and Campa, who acted beyond their authority.[48] It insists that paragraph 8 of Pascua's Contract of Employment states that no verbal agreement can alter or

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was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison of the Former Seventh Division, Court of Appeals, Manila.

[41] *Id.* at 8-33, Pascua's Petition for Review

[42] *Rollo* (G.R. No. 191464), pp. 10-41, Bank Wise's Petition for Review.

[43] *Id.* at 169.

[44] *Rollo* (G.R. No. 191460), p. 23.

[45] *Id.* at 27.

[46] *Rollo* (G.R. No. 191464), p. 24.

[47] *Id.* at 25.

[48] *Id.* at 29.

vary the terms of the contract unless it is reduced in writing.[49] It alleged that even assuming it was liable to Pascua, the liability could not be enforced since it was undergoing liquidation by the Philippine Deposit Insurance Corporation.[50] It also points out that legal compensation should be an applicable defense since Pascua had three (3) outstanding loan obligations to it in the amount of ₱4,902,364.88.[51]

For its part, Philippine Veterans Bank asserts that it is a distinct and separate entity from Bankwise since the Memorandum of Agreement between them was not consummated.[52] Even assuming that their Memorandum of Agreement was consummated, Bankwise expressly freed Philippine Veterans Bank from liability arising from money claims of its employees.[53] It also points out that even if Pascua was found to have been constructively dismissed, only Bankwise's corporate officers should be held liable for their unauthorized acts.[54]

Philippine Veterans Bank likewise posits that Pascua was not constructively dismissed since he had voluntarily resigned. It points out three (3) letters of resignation that Pascua drafted demanding payment of his severance pay according to the terms he had specified. It argues that Pascua voluntarily resigned knowing that it was acquiring Bankwise and it is not obliged to absorb Bankwise's employees.[55]

This Court is asked to resolve the sole issue of whether or not Pascua was constructively dismissed. Assuming that Pascua is found to have been constructively dismissed, this Court must

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[49] *Id*. at 32.

[50] *Id*. at 33.

[51] *Id*. at 34.

[52] *Rollo* (G.R. No. 191460), p. 169, Philippine Veterans Bank's Consolidated Comment.

[53] *Id*. at 171.

[54] *Id*. at 172.

[55] *Id*. at 174-176.

also resolve the issue of whether or not Philippine Veterans Bank should be solidarily liable with Bankwise, Inc. for his money claims.

At the outset, however, this Court must first address the issue of whether or not the National Labor Relations Commission March 14, 2008 Resolution also resolved Bankwise, Inc.'s Motion for Reconsideration dated December 17, 2007.

I

The National Labor Relations Commission October 31, 2007 Decision[56] already attained finality when the records of the case were remanded to the Labor Arbiter and a writ of execution was issued in Pascua's favor.

Philippine Veterans Bank filed a Motion for Reconsideration[57] dated December 14, 2007 while Bankwise filed a Motion for Reconsideration[58] dated December 17, 2007. On March 14, 2008, the National Labor Relations Commission resolved both motions in a Resolution[59] which read:

> Acting on the Motion for Reconsideration dated December 14, 2007 filed by *the respondents* relative to the Decision promulgated by this Commission on October 31, 2007, We resolve to DENY the same as the motion raised no new matters of substance which would warrant reconsideration of the Decision of this Commission.[60] (Emphasis supplied)

The Philippine Deposit Insurance Corporation, on behalf of Bankwise, entered its appearance before the National Labor Relations Commission during the pendency of the Motions for Reconsideration.[61] In a Comment dated August 27, 2008, it

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[56] *Rollo* (G.R. No. 191464), pp. 82–91.

[57] *Id.* at 92-101.

[58] *Id.* at 102-107.

[59] *Id.* at 108-109.

[60] *Id.* at 108.

[61] *Id.* at 111-114.

argued that the National Labor Relations Commission October 31, 2008 Decision could not have attained finality as to Bankwise since its Motion for Reconsideration was still pending.[62] What may have been an unfortunate typographical error in the March 14, 2008 Resolution gave the impression that Bankwise's Motion for Reconsideration remained unacted upon.

Under the 2005 NLRC Revised Rules of Procedure,[63] execution proceedings only commence upon the finality of the National Labor Relations Commission's judgment. Rule XI, Section 1 states:

RULE XI

EXECUTION PROCEEDINGS

Section 1. *Execution Upon Finality of Decision or Order*. — a) A writ of execution may be issued *motu proprio* or on motion, upon a decision or order that finally disposes of the action or proceedings after the parties and their counsels or authorized representatives are furnished with copies of the decision or order in accordance with these Rules, but only after the expiration of the period to appeal if no appeal has been filed, as shown by the certificate of finality. If an appeal has been filed, a writ of execution may be issued when there is an entry of judgment as provided for in Section 14 of Rule VII.

b) No motion for execution shall be entertained nor a writ of execution be issued unless the Labor Arbiter or the Commission is in possession of the records of the case which shall include an entry of judgment if the case was appealed; except that, as provided for in Section 14 of Rule V and Section 6 of this Rule, and in those cases where partial execution is allowed by law, the Labor Arbiter shall retain duplicate original copies of the decision to be implemented and proof of service thereof for the purpose of immediate enforcement.

By August 7, 2008, the records of the case were remanded to the Labor Arbiter for execution.[64] Thus, the National Labor

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[62] *Id*. at 116.

[63] NLRC REV. RULES OF PROC. (2005), Rule 11, Sec. 1. This has been superseded by the 2011 NLRC Rules of Procedure.

[64] *Rollo* (G.R. No. 191460), p. 114.

Relations Commission already considered its March 14, 2008 Resolution as final and executory to all parties, including Bankwise. Bankwise was also given notice of the March 14, 2008 Resolution,[65] so it cannot claim that the Resolution only resolved Philippine Veterans Bank's Motion for Reconsideration.

In his October 13, 2008 Order,[66] the Labor Arbiter held that although Bankwise was liable, he could not issue a writ of execution against it since its assets were under receivership.[67] The Labor Arbiter, however, stated that Pascua was not precluded from filing his money claim before the Statutory Receiver.[68] Among the issues considered by the Labor Arbiter was the Philippine Deposit Insurance Corporation's argument that the March 14, 2008 Resolution did not resolve Bankwise's Motion for Reconsideration.[69]

However, the Order was a definitive notice to Bankwise that the National Labor Relations Commission considered its judgment final and executory against Bankwise. Thus, Bankwise is bound by the finality of the National Labor Relations Commission October 31, 2007 Decision.

II

The employer has the burden of proving, in illegal dismissal cases, that the employee was dismissed for a just or authorized cause. Even if the employer claims that the employee resigned, the employer still has the burden of proving that the resignation was voluntary.[70] It is constructive dismissal when resignation "was made under compulsion or under circumstances approximating compulsion, such as when an employee's act of

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[65] *Id.* at 212.

[66] *Id.* at 114-130.

[67] *Id.* at 126.

[68] *Id.* at 127.

[69] *Id.* at 117.

[70] See *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, 624 Phil. 490 (2010) [Per *J.* Brion, Second Division].

handing in his [or her] resignation was a reaction to circumstances leaving him [or her] no alternative but to resign."[71]

"Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment."[72] In order to prove that resignation is voluntary, "the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."[73]

Pascua wrote three (3) letters addressed to Bankwise's officers. The first letter dated February 7, 2005, was not a letter of resignation, but a plea from Pascua to remain in service until the end of the year:

> . . . I beg to request that I be allowed to stay up to the end of the year and wind up my banking career with the institution that has given me the most daunting challenge ever. Given the opportunity[,] I would have preferred to be with the Marketing Group. Alternatively, I could supervise a Management Services Group (HRD, GSD, Asset Mgt and the like) a position previously held in another institution or any assignment which you feel I could do best as well under a new financial package under your best judgment. In any position, I commit to generate as much business as I can to the bank, both in terms of deposits and earning portfolios.
>
> With all humility, I must admit that I am not prepared to lose my job for reasons already stated in our meeting. Being the sole breadwinner and having a graduating student denied by CAP support, and some financial obligations, losing my job will really spell some disaster in my life.[74]

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[71] *Id.* at 505 citing *Metro Transit Organization, Inc. v. NLRC,* 348 Phil. 334 (1998) [Per *J.* Bellosillo, First Division].

[72] *Nationwide Security and Allied Services, Inc. v. Valderama*, 659 Phil. 362, 371 (2011) [Per *J*. Nachura, Second Division] citing *BMG Records (Phils.), Inc. v. Aparecio,* 559 Phil. 80-97 (2007) [Per *J.* Azcuna, First Division].

[73] *Id.*

[74] *Rollo* (G.R. No. 191460), p. 96.

However, this is the only evidence that shows Pascua was unwilling to resign. Pascua admitted that he voluntarily sent a resignation letter on the condition that his money claims would be made.[75] Thus, his second letter was a reluctant acceptance of his fate containing only one (1) line:

IN ACCORDANCE WITH THE INSTRUCTIONS OF THE PREVIOUS OWNERS OF THE BANK, I HEREBY TENDER MY RESIGNATION FROM THE BANK.[76]

Consistent with his intention to tender his resignation upon the payment of his money claims, his third letter was a proposal for a payment plan to cover his severance pay:

You will recall from our meeting with Mr. Buhain on March 31, 2005 that I presented an estimate of severance and other claims due to my attrition from a trade off agreement you have purportedly agreed with the new bank owners, represented by Philippine Veterans Bank, as part of the overall deal. The total amount of my claim approximates one million pesos. While you readily admitted and agreed in that meeting that my claim will be shouldered by the old owners, which you represent, you requested that we wait for Atty. Madara for his return by the end of the month.

Considering the urgency of my financial needs which I have confided to you on many occasion[s], may I respectfully propose the following:

1. Initial payment of my midyear bonus amounting to ₱150,000, immediately, or
2. Transfer of my bank loan with Bankwise for your account or assumption with a balance amounting to one million pesos as an offset to my claim[.]

For the record, and following my lawyer's advice[,] may I respectfully request for a copy of any document embodying the terms and conditions where old owners are liable to assume my severance and other benefits due to the trade off agreement.[77]

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[75] *Rollo* (G.R. No. 191464), p. 87.

[76] *Rollo* (G.R. No. 191460), p. 252.

[77] *Id.* at 253.

Labor is a Constitutionally protected social class due to the perceived inequality between capital and labor.[78] Article 1700 of the Civil Code states:

> Article 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.[79]

The presumption is that the employer and the employee are on unequal footing so the State has the responsibility to protect the employee. This presumption, however, must be taken on a case-to-case basis.[80]

In situations where special qualifications are required for employment, such as a Master's degree or experience as a corporate executive, prospective employees are at a better position to bargain or make demands from the employer.[81] Employees with special qualifications would be on *equal* footing with their employers, and thus, would need a lesser degree of protection from the State than an ordinary rank-and-file worker.

Pascua, as the Head of Marketing with annual salary of ₱2,250,000.00,[82] would have been in possession of the special qualifications needed for his post. He would have supervised several employees in his long years in service and might have

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[78] See *Fuji Television Network v. Espiritu*, 749 Phil. 388 (2014) [Per *J*. Leonen, Second Division] citing *Jaculbe v. Silliman University*, 547 Phil. 352, 359 (2007) [Per *J*. Corona, First Division]; *Mercury Drug Co., Inc. v. CIR*, 155 Phil. 636 (1974), [Per *J*. Makasiar, *En Banc*]; and *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 405 (1988) [Per *J*. Sarmiento, *En Banc*].

[79] CIVIL CODE, Art. 1700.

[80] *Fuji Television Network v. Espiritu*, 749 Phil. 388, 428-429 (2014) [Per *J*. Leonen, Second Division].

[81] *Id*. at 429.

[82] *Rollo* (G.R. No. 191460), p. 66.

even processed their resignation letters. He would have been completely aware of the implications of signing a categorically worded resignation letter. If he did not intend to resign, he would not have submitted a resignation letter. He would have continued writing letters to Bankwise signifying his continued refusal to resign.

Pascua's resignation letter, however, was unconditional. It contained no reservations that it was premised on his subsequent claim for severance pay and other benefits. His resignation was also accepted by his employers. In this instance, Pascua is not considered to have been constructively dismissed.

Pascua's third letter likewise indicates that he has already accepted the consequences of his voluntary resignation but that it would be subject to the payment of severance pay. However, his claim for severance pay cannot be granted. An employee who voluntarily resigns is not entitled to separation pay unless it was previously stipulated in the employment contract or has become established company policy or practice.[83] There is nothing in Pascua's Contract of Employment[84] that states that he would be receiving any monetary compensation if he resigns. He has also not shown that the payment of separation pay upon resignation is an established policy or practice of Bankwise since his third letter indicated that he was unaware of any such policy:

> For the record, and following my lawyer's advice[,] *may I respectfully request for a copy of any document embodying the terms and conditions where old owners are liable to assume my severance and other benefits due to the trade off agreement*.[85] (Emphasis supplied)

Pascua cannot also rely on the verbal assurances of Buhain and Campa that he would be paid his severance pay if he resigns. Number 8 of his Contract of Employment states that verbal

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[83] See *CJC Trading v. National Labor Relations Commission*, 316 Phil. 887 (1995) [Per *J.* Feliciano, Third Division].

[84] *Rollo* (G.R. No. 191464), pp. 67-68.

[85] *Rollo* (G.R. No. 191460), p. 253.

agreements between him and the Bankwise's officers on the terms of his employment are not binding on either party:

8. VERBAL AGREEMENT

It is understood that there are no verbal agreement or understanding between you and the Bank or any of its agents and representatives affecting this Agreement. And that no alterations or variations of its terms shall be binding upon either party unless the same are reduced in writing and signed by the parties herein.[86]

It was incumbent on Pascua to ensure that his severance pay in the event of his resignation be embodied on a written agreement *before* submitting his resignation letter. He should have, at the very least, indicated his conditions in his resignation letter. His third letter cannot be considered the written statement of his money claims contemplated in his Contract of Employment since it was unilateral and was not signed by Bankwise's officers.

Considering that Pascua was not considered to have been constructively dismissed, there is no need to discuss the issue of Philippine Veterans Bank and Bankwise's solidary liability for money claims.

WHEREFORE, the Petition in G.R. No. 191460 is **DENIED.** The Petition in G.R. No. 191464 is **GRANTED.**

The July 13, 2009 Decision and February 22, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 103453 are **REVERSED** and **SET ASIDE**. The Decision dated November 25, 2005 of the Labor Arbiter is **REINSTATED**. Bankwise, Inc. and Philippine Veterans Bank are absolved from the payment of Perfecto M. Pascua's money claims.

SO ORDERED.

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

Martires,[*] *J.,* on official business.

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[86] *Rollo* (G.R. No. 191464), p. 68.

[*] On official business as oer letter dated January 18, 2018.

SECOND DIVISION

[G.R. No. 207613. January 31, 2018]

REYMAN G. MINSOLA, *petitioner, vs.* **NEW CITY BUILDERS, INC. and ENGR. ERNEL FAJARDO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER; ONE EXCEPTION IS WHEN THE FINDINGS OF FACT OF THE QUASI-JUDICIAL AGENCIES ARE CONFLICTING WITH THOSE OF THE CA.—** As a general rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced before the lower tribunals. However, this rule allows for exceptions. One of these is when the findings of fact of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again.
2. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; FOUR KINDS OF EMPLOYEES.—** Essentially, the Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (c) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (d) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind — fixed-term employees or those hired only for a definite period of time.
3. **ID.; ID.; ID.; REGULAR EMPLOYMENT DISTINGUISHED FROM PROJECT-BASED EMPLOYMENT.—** Article 294 of the Labor Code, as amended, distinguishes regular from

project-based employment x x x Parenthetically, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase. For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking, and (ii) the employee was notified of the duration and scope of the project. In order to safeguard the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project.

4. **ID.; ID.; ID.; EMPLOYEES IN CONSTRUCTION BUSINESS ARE PROJECT EMPLOYEES, REGARDLESS OF EMPLOYEES' LENGTH OF SERVICE AND REPEATED RE-HIRING.—** In *Gadia v. Sykes Asia, Inc*., the Court explained that the "projects" wherein the project employee is hired may consist of "(i) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (ii) a particular job or undertaking that is not within the regular business of the corporation."Accordingly, it is not uncommon for a construction firm to hire project employees to perform work necessary and vital for its business. Suffice it to say, in *William Uy Construction Corp. and/or Uy, et al. v. Trinidad*, the Court acknowledged the unique characteristic of the construction industry and emphasized that the laborer's performance of work that is necessary and vital to the employer's construction business, and the former's repeated rehiring, do not automatically lead to regularization, x x x Additionally, in *Malicdem, et al. v. Marulas Industrial Corporation, et al*., the Court took judicial notice of the fact that in the construction industry, an employee's work depends on the availability of projects. The employee's tenure "is not permanent but coterminous with the work to which he is assigned." Consequently, it would be extremely burdensome for the employer, who depends on the availability of projects, to carry the employee on a permanent status and pay him wages

even if there are no projects for him to work on. An employer cannot be forced to maintain the employees in the payroll, even after the completion of the project. "To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management."Accordingly, it is all too apparent that the employee's length of service and repeated re-hiring constitute an unfair yardstick for determining regular employment in the construction industry. Thus, Minsola's rendition of more than one year of service and his repeated re-hiring are not badges of regularization.

5. **ID.; ID.; CONSTRUCTIVE DISMISSAL**.— In labor law, constructive dismissal, also known as a dismissal in disguise, exists "where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. There must be an act amounting to dismissal but made to appear as if it were not. It may likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."

6. **ID.; ID.; ENTITLEMENT TO MONETARY CLAIMS; CLAIMS FOR PAYMENT OF SALARY DIFFERENTIAL, SERVICE INCENTIVE LEAVE, HOLIDAY PAY AND 13TH MONTH PAY, THE BURDEN RESTS ON THE EMPLOYER TO PROVE PAYMENT; FOR OVERTIME PAY, PREMIUM PAYS FOR HOLIDAYS AND REST DAYS, THE BURDEN IS SHIFTED ON THE EMPLOYEE.—** In claims for payment of salary differential, service incentive leave, holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that the differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but are in the custody and control of the employer. On

the other hand, for overtime pay, premium pays for holidays and rest days, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business. It is thus incumbent upon the employee to first prove that he actually rendered service in excess of the regular eight working hours a day, and that he in fact worked on holidays and rest days. x x x [In case at bar,] Minsola should be awarded attorney's fees, as the instant case includes a claim for unlawfully withheld wages.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Anthony R. Inventado for respondents.

D E C I S I O N

REYES, JR., *J.*:

In labor cases, the courts are tasked with the delicate act of balancing the employee's right to security of tenure vis-á-vis the employer's right to freely exercise its management prerogatives. To preserve this harmony, the court recognizes the right of an employer to hire project employees, subject to the correlative obligation of sufficiently apprising the latter of the nature and terms of their employment, and paying them the wages and monetary benefits that they are lawfully entitled to.

This treats of the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision[2] dated December 21, 2012, and Resolution[3] dated June 11, 2013, issued by the Court of Appeals

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[1] *Rollo*, pp. 10-35.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Normandie B. Pizarro and Ramon A. Cruz, concurring; *id*. at 52-62.

[3] *Id*. at 37-38.

(CA) in CA-G.R. SP No. 121129, which dismissed petitioner Reyman G. Minsola's (Minsola) complaint for illegal dismissal.

The Antecedents

New City Builders, Inc. (New City) is a corporation duly organized under the laws of the Philippines engaged in the construction business, specializing in structural and design works.[4]

On December 16, 2008, New City hired Minsola as a laborer for the structural phase of its Avida Tower 3 Project (Avida 3).[5] Minsola was given a salary of Two Hundred Sixty Pesos (Php 260.00) per day.[6] The employment contract stated that the duration of Minsola's employment will last until the completion of the structural phase.[7]

Subsequently, on August 24, 2009, the structural phase of the Avida 3 was completed.[8] Thus, Minsola received a notice of termination, which stated that his employment shall be effectively terminated at the end of working hours at 5:00 p.m. on even date.

On August 25, 2009, New City re-hired Minsola as a mason for the architectural phase of the Avida 3.[9]

Meanwhile, sometime in December 2009, upon reviewing Minsola's employment record, New City noticed that Minsola had no appointment paper as a mason for the architectural phase. Consequently, New City instructed Minsola to update his employment record. However, the latter ignored New City's instructions, and continued to work without an appointment paper.

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[4] *Id*. at 53.

[5] *Id*.

[6] *Id*. at 150.

[7] *Id*.

[8] *Id*. at 151.

[9] *Id*. at 53.

On January 20, 2010, Minsola was again summoned to the office of New City to sign his appointment paper. Minsola adamantly refused to comply with the directive. He stormed out of the office, and never reported back for work.[10]

On January 26, 2010, Minsola filed a Complaint for Illegal Dismissal, Underpayment of Salary, Non-Payment of 13th Month Pay, Separation Pay and Refund of Cash Bond.[11] In his position paper,[12] Minsola claimed that he was a regular employee of New City as he rendered work for more than one year and that his work as a laborer/mason is necessary and desirable to the former's business. He claimed that he was constructively dismissed by New City.

Ruling of the Labor Arbiter

On October 8, 2010, the Labor Arbiter (LA) rendered a Decision[13] dismissing the complaint for illegal dismissal. The LA found that Minsola was a project employee who was hired for specific projects by New City. The fact that Minsola worked for more than one year did not convert his employment status to regular. The LA stressed that the second paragraph of Article 280, which refers to the regularization of an employee who renders service for more than one year, pertains to casual employees.[14] Likewise, the LA opined that Minsola was not terminated from work. The LA noted that the records are bereft of any proof or evidence showing that Minsola was actually terminated from work. Rather, it was actually Minsola who suddenly stopped reporting after he was instructed to sign and update his employment record.[15] Thus, the LA ordered Minsola's reinstatement until the completion of the project.[16]

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[10] *Id*. at 54.

[11] *Id*. at 53.

[12] *Id*. at 110-121.

[13] *Id.* at 169-183.

[14] *Id.* at 176.

[15] *Id*. at 178.

[16] *Id*. at 181.

Anent Minsola's monetary claims, the LA awarded Two Thousand Six Hundred Fifty-Two Pesos (Php 2,652.00), as 13th month pay differential. The dispositive portion of the LA decision reads:

> WHEREFORE, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit. However, respondent NEW CITY BUILDERS, INC. is ordered to pay complainant his 13th month pay differentials in the amount of Php 2,652.00.
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> All other claims are dismissed for want of merit.
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> SO ORDERED.[17]

Aggrieved, Minsola filed an appeal[18] before the National Labor Relations Commission (NLRC).

Ruling of the NLRC

On April 29, 2011, the NLRC rendered a Decision[19] reversing the LA's ruling. The NLRC found that Minsola was a regular employee and was constructively dismissed when he was made to sign a project employment contract.[20] Citing the case of *Viernes v. NLRC,*[21] the NLRC concluded that Minsola became a regular employee when his services were continued beyond the original term of his project employment, without the benefit of a new contract fixing the duration of his employment. Likewise, the NLRC noted that Minsola's job as a laborer/mason was necessary and desirable to the usual business of New City.[22] Consequently, the NLRC ordered New City to reinstate Minsola and pay him full backwages from January 20, 2010, until his actual reinstatement.[23]

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[17] *Id*. at 183.

[18] *Id*. at 193-200.

[19] *Id*. at 147-157.

[20] *Id*. at 153.

[21] 448 Phil. 690, 702-703 (2003).

[22] *Rollo*, p. 154.

[23] *Id*.

As for Minsola's monetary claims, the NLRC awarded the former his salary differentials, service incentive leave pay differentials and holiday pay.[24] The NLRC observed that the prevailing minimum wage rate at the time of Minsola's employment was Three Hundred Eighty-Two Pesos (Php 382.00) per day. This notwithstanding, Minsola merely received a wage of Php 260.00 per day. Hence, the NLRC awarded a salary differential of Forty-One Thousand Six Hundred Sixteen Pesos and Sixty-Four Centavos (Php 41,616.64), and a Service Incentive Leave Pay differential of Three Hundred Ten Pesos (Php 310.00).[25] In addition, the NLRC ordered the imposition of ten percent (10%) attorney's fees to the total monetary award.[26] The dispositive portion of the NLRC decision reads:

> WHEREFORE, the [LA's] Decision dated October 8, 2010 is hereby MODIFIED. In addition to the award of 13th month pay differential, [New City] is ordered to reinstate [Minsola] without loss of seniority rights and to pay him backwages (computed from January 20, 2010 up to the date of this decision), and Salary Differential (from December 16, 2008 up to January 19, 2010), Salary Incentive Leave Pay Differential, and 10% attorney's fee, to be computed by the Computation Unit (Commission), which computation shall be attached to and become part of this decision.
>
> SO ORDERED.[27]

Dissatisfied with the ruling, New City field a Motion for Reconsideration, which was denied by the NLRC in its Resolution[28] dated June 24, 2011.

Accordingly, New City filed a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court with the CA.

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[24] *Id*. at 155.

[25] *Id.*

[26] *Id*. at 156.

[27] *Id*.

[28] *Id*. at 162-164.

Ruling of the CA

On December 21, 2012, the CA reversed[29] the NLRC's decision. The CA ruled that Minsola was a project employee. The CA reasoned that Minsola was hired for specific phases in the Avida 3. He was originally hired as a laborer for the structural phase of the Avida 3. Upon the completion of the structural phase, he was re-hired in a different capacity, as a mason for the architectural phase of the Avida 3 construction. The CA observed that Minsola's tenure as a laborer was covered by an employment contract, which clearly provided that he was hired to work for a certain phase in the construction of the Avida 3, and that his term of employment will not extend beyond the completion of the same project. Likewise, the CA observed that the records are bereft of any proof showing that Minsola was constructively dismissed by New City.

Regarding the monetary awards, the CA reinstated the LA's ruling, thereby ordering the payment of Php 2,652.00, as 13th month pay differential. The dispositive portion of the assailed CA decision reads:

> WHEREFORE, the petition is GRANTED. The decision of the [NLRC] dated April 29, 2011 and its subsequent resolution dated June 24, 2011 are hereby ANNULLED and SET ASIDE. The decision of the [LA] is REINSTATED.
>
> SO ORDERED.[30]

Aggrieved, Minsola filed a Motion for Reconsideration, which was denied by the CA in its Resolution[31] dated June 11, 2013.

Undeterred, Minsola filed the instant Petition for Review on *Certiorari*[32] under Rule 45 of the Revised Rules of Court, seeking the reversal of the assailed CA decision and resolution.

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[29] *Id*. at 52-62.

[30] *Id*. at 61.

[31] *Id*. at 37-38.

[32] *Id*. at 10-35.

The Issues

The instant legal conundrum rests on the following issues, to wit: (i) whether or not Minsola was a project employee; (ii) whether or not Minsola was constructively dismissed by New City; and (iii) whether or not Minsola is entitled to his monetary claims consisting of his salary differential, service incentive leave pay differential, holiday pay and 10% attorney's fees.[33]

Minsola claims that he is a regular employee as his work as a laborer/mason was necessary and desirable to New City's construction business. Added to this, Minsola points out that he worked for New City for more than one year, more particularly, for 13 months, thereby automatically bestowing upon him regular employment status. Although he was initially hired as a laborer, his employment in Avida 3 continued when he was re-hired as a mason, without the execution of another contract fixing the term of his employment. Minsola further asserts that New City's act of forcing him to sign an employment contract is a scheme to preclude him from acquiring permanent employment status.

In addition, Minsola prays for the payment of his salary differentials, 13th month pay differential, service incentive leave pay differential, holiday pay and attorney's fees. He asserts that he received a meager daily wage of Php 260.00, which was far below the prevailing minimum wage rate of Php 382.00 per day. As such, he is entitled to receive differentials for his salary, 13th month pay and service incentive leave pay. Moreover, Minsola claims that New City failed to present proof showing that he was given his holiday pay. Lastly, Minsola asserts that he is entitled to an award of attorney's fees, as he was forced to litigate and defend his rights against his illegal dismissal and the unlawful withholding of his wages.

On the other hand, New City counters that Minsola was hired as a project employee to work for the structural phase, and thereafter, the architectural phase of the Avida 3. His work as

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

a laborer was completely different from his tasks as a mason.[34] In this regard, his subsequent re-hiring cannot be construed as a continuation of his former employment. Furthermore, the simple fact that his employment has gone beyond one year does not automatically convert his employment status. Finally, New City maintains that Minsola failed to present any proof to substantiate his claim of illegal dismissal. It did not dismiss Minsola, nor did it prevent the latter from reporting for work.[35]

Ruling of the Court

The petition is partly impressed with merit.

As a general rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced before the lower tribunals. However, this rule allows for exceptions. One of these is when the findings of fact of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again.[36]

Minsola is a Project Employee of New City

Essentially, the Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (c) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (d) casual employees or those who are not regular, project, or

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[34] *Id.* at 220.

[35] *Id.* at 225.

[36] *General Milling Corp. v. Viajar*, 702 Phil. 532, 540 (2013).

seasonal employees. Jurisprudence has added a fifth kind — fixed-term employees or those hired only for a definite period of time.[37]

Focusing on the first two kinds of employment, Article 294 of the Labor Code, as amended, distinguishes regular from project-based employment as follows:

> **Article 294**. *Regular and casual employment*.—The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

Parenthetically, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase.[38] For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking, and (ii) the employee was notified of the duration and scope of the project.[39] In order to safeguard the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project.[40]

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[37] *GMA Network, Inc. v. Pabriga, et al.*, 722 Phil. 161, 169 (2013), citing *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990).

[38] *Dacles v. Millenium Erectors Corp., et al.*, 763 Phil. 550, 558-559 (2015), citing *Omni Hauling Services, Inc., et al. v. Bon, et al.*, 742 Phil. 335, 343-344 (2014).

[39] *Dacles v. Millenium Erectors Corp., et al.*, *id.*

[40] *Id.*

In the case at bar, Minsola was hired by New City Builders to perform work for two different phases in the construction of the Avida 3. The records show that he was hired as a laborer for the structural phase of the Avida 3 from December 16, 2008 until August 24, 2009. Upon the completion of the structural phase, he was again employed on August 25, 2009, by New City, this time for the architectural phase of the same project. There is no quibbling that Minsola was adequately informed of his employment status (as a project employee) at the time of his engagement. This is clearly substantiated by the latter's employment contracts, stating that: (i) he was hired as a project employee; and (ii) his employment was for the indicated starting dates therein, and will end on the completion of the project.[41] The said contract sufficiently apprised Minsola that his security of tenure with New City would only last as long as the specific phase for which he was assigned.

Notwithstanding the notice regarding the term of his employment, Minsola avers that his continuous work as a laborer and mason, coupled with the fact that he performed tasks that are necessary and vital to New City's business, made him a regular employee of the latter.

The Court is not persuaded.

In *Gadia v. Sykes Asia, Inc.,*[42] the Court explained that the "projects" wherein the project employee is hired may consist of "(i) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (ii) a particular job or undertaking that is not within the regular business of the corporation."[43]

Accordingly, it is not uncommon for a construction firm to hire project employees to perform work necessary and

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[41] *Rollo*, p. 58.

[42] 752 Phil. 413, 421-422 (2015).

[43] *Id.* at 421, citing *Omni Hauling Services, Inc., et al. v. Bon, et al.*, *supra* note 38, at 344.

vital for its business. Suffice it to say, in *William Uy Construction Corp. and/or Uy, et al. v. Trinidad,*[44] the Court acknowledged the unique characteristic of the construction industry and emphasized that the laborer's performance of work that is necessary and vital to the employer's construction business, and the former's repeated rehiring, do not automatically lead to regularization, *viz.*:

> **Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard <u>will not be fair,</u> if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project.** And getting projects is not a matter of course. Construction companies have no control over the decisions and resources of project proponents or owners. There is no construction company that does not wish it has such control but the reality, understood by construction workers, is that work depended on decisions and developments over which construction companies have no say.
>
> For this reason, the Court held in *Caseres v. Universal Robina Sugar Milling Corporation* that **the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee.**[45] (Citations omitted and emphasis and underscoring Ours)

Additionally, in *Malicdem, et al. v. Marulas Industrial Corporation, et al.,*[46] the Court took judicial notice of the fact that in the construction industry, an employee's work depends on the availability of projects. The employee's tenure "is not permanent but coterminous with the work to which he is

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[44] 629 Phil. 185, 189 (2010).

[45] *Id.* at 190.

[46] 728 Phil. 264 (2014).

assigned."[47] Consequently, it would be extremely burdensome for the employer, who depends on the availability of projects, to carry the employee on a permanent status and pay him wages even if there are no projects for him to work on. An employer cannot be forced to maintain the employees in the payroll, even after the completion of the project.[48] "To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management."[49]

Accordingly, it is all too apparent that the employee's length of service and repeated re-hiring constitute an unfair yardstick for determining regular employment in the construction industry. Thus, Minsola's rendition of more than one year of service and his repeated re-hiring are not badges of regularization.

Minsola was not constructively dismissed by New City

Minsola contends that New City constructively dismissed him, when he was allegedly forced to sign an employment contract, termination report and other documents.

The Court is not persuaded.

In labor law, constructive dismissal, also known as a dismissal in disguise, exists "where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. There must be an act amounting to dismissal but made to appear as if it were not. It may likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[50]

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[47] *Id.* at 275.

[48] *Id.*

[49] *Id.*

[50] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.,*

In the case at bar, Minsola failed to advert to any particular act showing that he was actually dismissed or terminated from his employment. Neither did he allege that his continued employment with New City was rendered impossible, unreasonable or unlikely; nor was he demoted, nor made to suffer from any act of discrimination or disdain.[51] Neither was there any single allegation that he was prevented or barred from returning to work. On the contrary, it was actually Minsola who stormed out of New City's office and refused to report for work. It cannot be gainsaid that there is no illegal dismissal to speak of where the employee was not notified that he had been dismissed from employment nor was he prevented from returning to his work.

Minsola is entitled to Salary Differentials, 13th Month Pay Differentials, Service Incentive Leave Pay Differentials, Holiday Pay and Attorney's Fees

Notably, in determining the employee's entitlement to monetary claims, the burden of proof is shifted from the employer or the employee, depending on the monetary claim sought.

In claims for payment of salary differential, service incentive leave, holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that the differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but are in the custody and control of the employer.[52]

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et al., 693 Phil. 646, 656 (2012), citing *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 120-121 (2012).

[51] *Rollo*, p. 102.

[52] *Loon, et al. v. Power Master, Inc., et al.*, 723 Phil. 515, 531-532 (2013).

On the other hand, for overtime pay, premium pays for holidays and rest days, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business.[53] It is thus incumbent upon the employee to first prove that he actually rendered service in excess of the regular eight working hours a day, and that he in fact worked on holidays and rest days.[54]

In the instant case, the records show that Minsola was given a daily wage of Php 260.00, as shown by his employment contract dated December 16, 2008. It must be noted that this amount falls below the prevailing minimum wage of Php 382.00, mandated by Wage Order No. NCR-15, effective August 28, 2008 to June 30, 2010. Clearly, Minsola is entitled to salary differentials from December 16, 2008 until January 19, 2010, in the amount of Php 41,616.64.[55] Likewise, Minsola is entitled to service incentive leave pay differentials in the amount of Php 310.00, as the amount of service incentive leave pay he received on December 19, 2009 was only Php 1,600.00, instead of Php 1,900.[56] He is also entitled to a 13th month pay differential of Php 2,652.00.[57]

Moreover, Minsola is entitled to a holiday pay of Php 5,340.00 for two unworked legal holidays in December 2008, 11 unworked legal holidays in 2009 and one legal holiday in January 2010, as New City failed to present the payrolls that would show that Minsola's salary was inclusive of holiday pay.[58]

On the other hand, Minsola's claims for premium pay for holiday and rest day, as well as night shift differential pay are

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[53] *Id.* at 532, citing *Lagatic v. NLRC*, 349 Phil. 172, 185-186 (1998).

[54] *Id.*

[55] He is therefore entitled to salary differentials from December 16, 2008 until January 19, 2010 in the amount of Php 41,616.64 (Php 382.00 = Php 122.00 x 26 days x 13.12 months).

[56] *Rollo*, p. 155.

[57] *Id.*

[58] *Id.*

denied for lack of factual basis, as Minsola failed to specify the dates when he worked during special days, or rest days, or between 10:00 p.m. and 6:00 a.m.[59]

Finally, Minsola should likewise be awarded attorney's fees, as the instant case includes a claim for unlawfully withheld wages.[60]

All told, the *Court affirms the right of an employer to hire project employees for as long as the latter are sufficiently apprised of the nature and term of their employment.* New City was not remiss in informing Minsola of his limited tenure as a project employee. However, New City failed to pay Minsola the proper amount of wages due him. Thus, a modification of the CA decision as to the monetary awards is in order.

WHEREFORE, premises considered, the petition is partly granted. The Decision dated December 21, 2012 of the Court of Appeals in CA-G.R. SP No. 121129, is **modified** by awarding petitioner Reyman G. Minsola his salary differentials, service incentive leave pay differentials, holiday pay, and ten percent attorney's fees, in addition to his 13th month pay differential awarded by the appellate court. The Labor Arbiter is ordered to prepare a comprehensive accounting of all monetary claims pursuant to this Court's ruling. The total amount shall earn legal interest of six percent (6%) *per annum* from the finality of this Decision until full satisfaction of the obligation.

SO ORDERED.

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

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[59] *Id.*

[60] LABOR CODE OF THE PHILIPPINES, Article 111.

THIRD DIVISION

[G.R. No. 212994. January 31, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSHUA QUE *y* UTUANIS,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CONVICTION IN CRIMINAL ACTIONS REQUIRES PROOF BEYOND REASONABLE DOUBT; MORAL CERTAINTY MUST BE ESTABLISHED.—** Conviction in criminal actions requires proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence spells out this requisite quantum of proof: Section 2. *Proof beyond reasonable doubt*. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Proof beyond reasonable doubt is ultimately a matter of conscience. Though it does not demand absolutely impervious certainty, it still charges the prosecution with the immense responsibility of establishing moral certainty.
2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** The requisites that must be satisfied to sustain convictions for illegal sale of dangerous drugs under Section 5, and illegal possession of dangerous drugs under Section 11 of the Comprehensive Dangerous Drugs Act are settled. In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an 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. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.

3. **ID.; ID.; CHAIN OF CUSTODY RULE; FOUR LINKS.—** On the element of *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, spells out the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21(1) to (3) stipulate the requirements concerning custody prior to the filing of a criminal case: x x x In *People v. Nandi*, the four (4) links in the chain of custody are established: Thus, the following links 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. *People v. Morales* explained that "failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*." It "produce[s] doubts as to the origins of the [seized paraphernalia]."

4. **ID.; ID.; ID.; STRICT COMPLIANCE IS REQUIRED.—** [J]urisprudence has been definite on the consequence of non-compliance. This Court has categorically stated that whatever presumption there is concerning the regularity of the manner by which officers gained and maintained, custody of the seized items is "negate[d]": x x x The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance. Otherwise, the *raison d' etre* of the chain of custody requirement is compromised. Precisely, deviations from it leave the door open for tampering, substitution, and planting of evidence.

5. **ID.; ID.; ID.; SECTION 21(1) ON THE PRECISION REQUIRED IN THE CUSTODY OF SEIZED DRUGS AND DRUG PARAPHERNALIA.—** The precision required in the custody of seized drugs and drug paraphernalia is affirmed by

the amendments made to Section 21 by Republic Act No. 10640. x x x *Lescano v. People* summarized Section 2l(1)'s requirements: As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable." Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.

6. **ID.; ID.; ID.; PRESENCE OF THIRD PARTY WITNESSES IS IMPERATIVE NOT ONLY DURING THE PHYSICAL INVENTORY AND TAKING OF PICTURES BUT ALSO DURING THE ACTUAL SEIZURE OF ITEMS.—** *People v. Garcia* emphasized that the mere marking of seized items, unsupported by a proper physical inventory and taking of photographs, and in the absence of the persons whose presence is required by Section 21 will not justify a conviction: x x x The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*, where the presence of these witnesses was characterized as an "insulating presence [against] the evils of switching, 'planting' or contamination."

7. **ID.; ID.; ID.; NON-COMPLIANCE UNDER "JUSTIFIABLE GROUNDS"; REQUISITES.—** Section 21(1), as amended by Republic Act No. 10640, now includes a proviso that sanctions noncompliance under "justifiable grounds": x x x In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove "justifiable grounds"; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.

APPEARANCES OF COUNSEL

Benjamin A. Moraleda, Jr. for accused-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

LEONEN, *J.*:

The chain of custody requirements in the Comprehensive Dangerous Drugs Act are cast in precise, mandatory language. They are not stringent for stringency's own sake. Rather, they are calibrated to preserve the even greater interest of due process and the constitutional rights of those who stand to suffer from the State's legitimate use of force, and therefore, stand to be deprived of liberty, property, and, should capital punishment be imposed, life. This calibration balances the need for effective prosecution of those involved in illegal drugs and the preservation of the most basic liberties that typify our democratic order.

This resolves an appeal from the August 12, 2013 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00681-MIN,

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[1] *Rollo,* pp. 3-20. The Decision was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

convicting Joshua Que y Utuanis (Que) for violation of Sections 5[2] and 11[3] of Republic Act No. 9165, otherwise known as the

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[2] Rep. Act No. 9165 (2002), Sec. 5 provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.
For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[3] Rep. Act No. 9165 (2002), Sec. 11 provides:

Comprehensive Dangerous Drugs Act of 2002, for illegal sale and possession of dangerous drugs.

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 hydroxybutyrate (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 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

In two (2) separate Informations, both dated July 27, 2003, accused-appellant Que was charged with violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act, as follows:

Criminal Case No. 4943 (19810)

That on or about July 26, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law to sell, deliver, give away to another, transport or distribute any dangerous drug, did then and there, willfully, unlawfully and feloniously SELL and DELIVER to PO3 SAMMY ROMINA LIM, a member of the PNP, who acted . . . as poseur-buyer, one (1) small size heat-sealed transparent plastic pack containing 0.0157 gram of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.

CONTRARY TO LAW.[4]

Criminal Case No. 4944 (19811)

That on or about July 26, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control, one (1) small size heat-sealed transparent plastic pack containing 0.0783 gram of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.

CONTRARY TO LAW.[5]

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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*.

[4] CA *rollo*, p. 26.

[5] *Id*.

On July 30, 2003, Que filed a Motion to Quash Information and Warrant of Arrest and Admission to Bail. He pleaded not guilty to both charges when he was arraigned on June 7, 2004.[6]

During the hearings for the bail petition, the prosecution presented three (3) witnesses: the poseur-buyer, PO3 Sammy Romina Lim (PO3 Lim); the arresting officer, SPO1 Samuel Tan Jacinto (SPO1 Jacinto); and forensic chemist Police Chief Inspector Mercedes D. Diestro (P/C Insp. Diestro).[7]

PO3 Lim of the Philippine National Police Zamboanga City Mobile Group recounted that in the morning of July 26, 2003, an informant reported that a person identified as "Joshua," later identified as Que, was selling shabu. Acting on this report, P/C Insp. Nickson Babul Muksan (P/C Insp. Muksan) organized a buy-bust operation with PO3 Lim as poseur-buyer. PO3 Lim and the informant then left for the area of Fort Pilar. There, the informant introduced PO3 Lim to Que. PO3 Lim then told Que that he intended to purchase ₱100.00 worth of shabu. Que then handed him shabu inside a plastic cellophane. In turn, PO3 Lim handed Que the marked ₱100.00 bill and gave the pre-arranged signal to have Que arrested. [8]

After the arrest, the marked bill and another sachet of shabu were recovered from Que. Que was then brought to the police station where the sachets of shabu and the marked bill were turned over to the investigator, SPO4 Eulogio Tubo (SPO4 Tubo),[9] who then marked these items with his initials. He also prepared the letter request for laboratory examination of the sachets' contents.[10] Arresting officer SPO1 Jacinto also testified to the same circumstances recounted by PO3 Lim.[11]

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[6] *Id*. at 27.

[7] *Id*.

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

[9] *Id*. at 28.

[10] *Id*. at 98.

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

P/C Insp. Diestro recounted their office's receipt of a request for laboratory examination of the contents of two (2) plastic sachets. She noted that these contents tested positive for shabu.[12]

On January 24, 2007, the Regional Trial Court denied Que's plea for bail. Trial on the merits followed. In lieu of presenting evidence, the prosecution manifested that it was adopting the testimonies of the witnesses presented in the hearings for bail.[13]

Que was the sole witness for the defense. He recalled that in the morning of July 26, 2003, he went to Fort Pilar Shrine to light candles and to pray. He then left on board a tricycle. Mid-transit, six (6) persons blocked the tricycle and told him to disembark. After getting off the tricycle, he was brought to a house some five (5) meters away. Two (2) men, later identified as PO3 Lim and SPO1 Jacinto, searched his pockets but found nothing. About 30 minutes later, another man arrived and handed something to SPO1 Jacinto. Que was then brought to the police station and turned over to SPO4 Tubo and was subsequently detained at the Zamboanga City Police Station.[14]

In its July 17, 2008 Judgment,[15] Branch 12, Regional Trial Court, Zamboanga City found Que guilty as charged and rendered judgment as follows:

> WHEREFORE, in view of the foregoing, in Criminal Case No. 4943 (19810), this Court hereby finds the accused, JOSHUA QUE y UTUANIS guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the fine of ₱1,000[,]000.00.
>
> In Criminal Case No. 4944 (19811), this Court likewise finds the accused JOSHUA QUE y UTUANIS guilty beyond reasonable doubt

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[12] *Id*. at 27.

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

[14] *Id*. at 100-101.

[15] *Id*. at 26-39. The Judgment, docketed as Criminal Case Nos. 4943 (19810) & 4944 (19811), was penned by Presiding Judge Gregorio V. De La Pena III of Branch 12, Regional Trial Court, Zamboanga City.

for violation of Section 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and he is hereby sentenced to suffer the indeterminate penalty of TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS of imprisonment and to pay a fine of ₱300,000.00 and, to pay the cost of this suit.

The dangerous drugs seized and recovered from the accused in these cases are hereby ordered confiscated and forfeited in favor of the government and are hereby ordered disposed with in accordance with the pertinent provisions of Republic Act No. 9165 and it[s] implementing rules and regulation.[16]

In its assailed August 12, 2013 Decision, the Court of Appeals affirmed the Regional Trial Court's ruling *in toto*.[17] Thereafter, Que filed his Notice of Appeal.[18]

In its August 6, 2014 Resolution,[19] this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.

On October 3, 2014, the Office of the Solicitor General filed a Manifestation,[20] on behalf of the People of the Philippines, noting that it would no longer file a supplemental brief.

On October 10, 2014, Que filed his Supplemental Brief.[21]

For this Court's resolution is the issue of whether or not accused-appellant Joshua Que's guilt for violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act of 2002 was proven beyond reasonable doubt.

I

Conviction in criminal actions requires proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence spells out this requisite quantum of proof:

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

[17] *Id*. at 93-110.

[18] *Id*. at 174-182 .

[19] *Rollo*, p. 24-A.

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

[21] *Id*. at 32-59.

> Section 2. *Proof beyond reasonable doubt*. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[22]

Proof beyond reasonable doubt is ultimately a matter of conscience. Though it does not demand absolutely impervious certainty, it still charges the prosecution with the immense responsibility of establishing moral certainty. Much as it ensues from benevolence, it is not merely engendered by abstruse ethics or esoteric values; it arises from a constitutional imperative:

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:
>
> > We ruled in People v. Ganguso:
> >
> > > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce

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[22] RULES OF COURT, Rule 133, Sec. 2.

> absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
>
> Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[23]

II

The requisites that must be satisfied to sustain convictions for illegal sale of dangerous drugs under Section 5, and illegal possession of dangerous drugs under Section 11 of the Comprehensive Dangerous Drugs Act are settled.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an 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. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.[24]

On the element of *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic

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[23] *Macayan, Jr. y Malana v. People*, 756 Phil. 202, 213-241 (2015) [Per *J*. Leonen, Second Division], citing CONST. Art. III, Sec. 1; CONST. Art. III, Sec. 14 (2); *People of the Philippines v. Solayao*, 330 Phil. 811, 819 (1996) [Per *J*. Romero, Second Division]; and *Boac v. People of the Philippines*, 591 Phil. 508 (2008) [Per *J*. Velasco, Jr., Second Division].

[24] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J*. Del Castillo, Second Division], citing *People v. Darisan, et al.*, 597 Phil. 479, 485 (2009) [Per *J*. Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per *J*. Tinga, Second Division].

Act No. 10640, spells out the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21(1) to (3) stipulate the requirements concerning custody prior to the filing of a criminal case:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) *The apprehending team* having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment ***shall, immediately after seizure and confiscation****, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:* Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That *noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.*

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.][25] (Emphasis supplied)

In *People v. Nandi,*[26] the four (4) links in the chain of custody are established:

Thus, the following links 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.[27]

People v. Morales[28] explained that "failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*."[29] It "produce[s] doubts as to the origins of the [seized paraphernalia]."[30]

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[25] Rep. Act No. 9165 (2002), Sec. 21, par. 1-3.

[26] 639 Phil. 134 (2010) [Per *J.* Mendoza, Second Division].

[27] *Id*. at 133, citing *People v. Zaida Kamad*, 624 Phil. 289-312 [Per *J*. Brion, Second Division].

[28] *People v. Morales*, 630 Phil. 215-236 (2010) [Per *J*. Del Castillo, Second Division].

[29] *Id*. at 229.

[30] *Id.* citing *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per *J*. Mendoza,

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Non-compliance with them tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. In *People v. Belocura*:[31]

> Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti* itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.
>
> In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. *It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an* ***actual connection with the transaction involved and with the parties thereto***. This is the reason why authentication and laying a foundation for the introduction of evidence are important.[32] (Emphasis supplied, citations omitted)

Fidelity to the chain of custody requirements is necessary because, by nature, narcotics may easily be mistaken for everyday objects. Chemical analysis and detection through methods that exceed human sensory perception, such as specially trained canine units and screening devices, are often needed to ascertain the presence of dangerous drugs. The physical similarity of narcotics with everyday objects facilitates their adulteration and substitution. It also makes planting of evidence conducive.

In *Mallillin v. People*:[33]

Second Division], *as cited in People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758 [Per *J*. Tinga, Second Division].

[31] 693 Phil. 476 (2012) [Per *J*. Bersamin, First Division].

[32] *Id.* at 495-496.

[33] 576 Phil. 576 (2008) [Per *J*. Tinga, Second Division].

Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied,* a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[34] (Emphasis supplied, citations omitted)

People v. Holgado,[35] recognized

Compliance with the chain of custody requirement . . . ensures the integrity of confiscated, seized, and/or surrendered drugs and/or

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[34] *Id*. at 588-589.

[35] G.R. No. 207992, August 11, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf> [Per *J.* Leonen, Third Division].

drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.[36]

When the identity of *corpus delicti* is jeopardized by non-compliance with Section 21, critical elements of the offense of illegal sale and illegal possession of dangerous drugs remain wanting. It follows then, that this non-compliance justifies an accused's acquittal.

In *People v. Lorenzo*:[37]

In both illegal sale and illegal possession of prohibited drugs, *conviction cannot be sustained if there is a persistent doubt on the identity of the drug*. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, *the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.*[38] (Emphasis supplied)

III

As against the objective requirements imposed by statute, guarantees coming from the prosecution concerning the identity and integrity of seized items are naturally designed to advance the prosecution's own cause. These guarantees conveniently aim to knock two (2) targets with one (1) blow. First, they insist on a showing of *corpus delicti* divorced from statutory impositions and based on standards entirely the prosecution's

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[36] *Id*. at 10.

[37] 633 Phil. 393, 401 (2010) [Per *J*. Perez, Second Division].

[38] *Id*. at 401.

own. Second, they justify non-compliance by summarily pleading their own assurance. These self-serving assertions cannot justify a conviction.

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad*[39] explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law."[40] It is not a justification for dispensing with such compliance:

> Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.

From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding

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[39] 624 Phil. 289 (2010). [Per *J.* Brion, Second Division].

[40] *Id*. at 311.

the case; a ruling for acquittal must forthwith issue.[41] (Emphasis supplied, citation omitted)

Thus, jurisprudence has been definite on the consequence of non-compliance. This Court has categorically stated that whatever presumption there is concerning the regularity of the manner by which officers gained and maintained, custody of the seized items is "negate[d]":[42]

In *People v. Orteza*, the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to observe the procedure laid down under the Comprehensive Dangerous Drugs Law, thus:

> First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, i.e., any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. *It negates the presumption that official duties have been regularly performed by the police officers.*
>
> . . . .

IN FINE, *the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved* ***negates*** *the presumption of regularity accorded to acts undertaken by police officers* in the pursuit of their official duties.[43] (Emphasis supplied, citations omitted)

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[41] *Id*.

[42] *People v. Navarrete*, 665 Phil. 738-749 (2011) [Per *J*. Carpio Morales, Third Division]. See also *People v. Ulat*, 674 Phil. 484-501 (2011) [Per *J*. Leonardo-De Castro, First Division].

[43] *Id*. at 748-749.

The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance. Otherwise, the *raison d'etre* of the chain of custody requirement is compromised. Precisely, deviations from it leave the door open for tampering, substitution, and planting of evidence.

Even acts which approximate compliance but do not *strictly* comply with Section 21 have been considered insufficient. *People v. Magat*,[44] for example, emphasized the inadequacy of merely marking the items supposedly seized:

> A review of jurisprudence, even prior to the passage of the R.A. No. 9165, shows that this Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.
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> In *People v. Laxa*, the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the appellant. One policeman even admitted that he marked the seized items only after seeing them for the first time in the police headquarters. The Court held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the *corpus delicti*.
>
> Similarly, in *People v. Kimura*, the Narcom operatives failed to place markings on the alleged seized marijuana on the night the accused were arrested and to observe the procedure in the seizure and custody of the drug as embodied in the aforementioned Dangerous Drugs Board Regulation No. 3, Series of 1979. Consequently, we held that the prosecution failed to establish the identity of the *corpus delicti*.
>
> In *Zaragga v. People*, involving a violation of R.A. No. 6425, the police failed to place markings on the alleged seized shabu immediately after the accused were apprehended. The buy-bust team also failed to prepare an inventory of the seized drugs which accused had to sign, as required by the same Dangerous Drugs Board Regulation

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[44] 588 Phil. 395-407 (2008) [Per *J.* Tinga, Second Division].

No. 3, Series of 1979. The Court held that the prosecution failed to establish the identity of the prohibited drug which constitutes the *corpus delicti*.

In all the foregoing cited cases, the Court acquitted the appellants due to the failure of law enforcers to observe the procedures prescribed in Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974, which are similar to the procedures under Section 21 of R.A. No. 9165. *Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165*.

In the present case, although PO1 Santos had written his initials on the two plastic sachets submitted to the PNP Crime Laboratory Office for examination, it was not indubitably shown by the prosecution that PO1 Santos immediately marked the seized drugs in the presence of appellant after their alleged confiscation. There is doubt as to whether the substances seized from appellant were the same ones subjected to laboratory examination and presented in court.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they have to be subjected to scientific analysis to determine their composition and nature. *Congress deemed it wise to incorporate the jurisprudential safeguards in the present law in an unequivocal language to prevent any tampering, alteration or substitution, by accident or otherwise. The Court, in upholding the right of the accused to be presumed innocent, can do no less than apply the present law which prescribes a more stringent standard in handling evidence than that applied to criminal cases involving objects which are readily identifiable*.

R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the corpus delicti. Thru proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court.[45] (Emphasis supplied, citations omitted)

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[45] *Id.* at 403-406.

IV

The precision required in the custody of seized drugs and drug paraphernalia is affirmed by the amendments made to Section 21 by Republic Act No. 10640.[46]

The differences between Section 21(1) as originally stated and as amended are shown below:

Republic Act No. 9165	**Republic Act No. 10640**
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 *drugs*	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,*

[46] Rep. Act No. 10640 (2013).

	instruments/paraphernalia and/ or laboratory equipment
shall, immediately after seizure and confiscation,	shall, immediately after seizure and confiscation,
physically inventory	*conduct a physical inventory of the seized items*
and photograph the same	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,	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	*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;	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.

Section 21(1) was simultaneously relaxed and made more specific by Republic Act No. 10640.

It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive "and" indicated that Section 21 required the presence of all of the following, in addition to "the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel":

First, a representative from the media;

Second, a representative from the Department of Justice; and

Third, any elected public official.[47]

As amended by Republic Act No. 10640, Section 21(1) uses the disjunctive "or," i.e., "with an elected public official and a representative of the National Prosecution Service *or* the media." Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.[48]

Section 21(1), as amended, now includes a specification of locations where the physical inventory and taking of photographs must be conducted. The amended section uses the mandatory verb "shall" and now includes the following proviso:[49]

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[47] Rep. Act No. 9165 (2002), Sec. 21.

[48] Rep. Act No. 10640 (2013), Sec. 1 *amending* Rep. Act No. 9165 (2002), Sec. 21.

[49] This is not entirely novel. The Implementing Rules and Regulations of Republic Act No. 9165 already stated it. Nevertheless, even if it has

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: . . . [50] (Emphasis supplied)

Lescano v. People[51] summarized Section 21(1)'s requirements:

As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.[52]

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been previously stated elsewhere, it now takes on a greater significance. It is no longer expressed merely in an administrative rule, but in a statute.

[50] Rep. Act No. 10640 (2013), Sec. 1 *amending* Rep. Act No. 9165 (2002), Sec. 21.

[51] G.R. No. 214490, January 13, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf> [Per *J.* Leonen, Second Division].

[52] *Id*. at 11-12.

V

This case is tainted with grave, gratuitous violations of Section 21(1).

There is no showing that a proper inventory and taking of pictures was done by the apprehending officers. The marking of the sachets of shabu supposedly obtained from accused-appellant was conducted at a police station without accused-appellant, or any person representing him, around. There was not even a third person, whose presence was required by Section 21(1) prior to its amendment[53]—"a representative from the media and the Department of Justice (DOJ), *and* any elected public official."

This Court is left with absolutely no guarantee of the integrity of the sachets other than the self-serving assurances of PO3 Lim and SPO1 Jacinto. This is precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent. The very process that Section 21 requires is supposed to be a plain, standardized, even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow Section 21's instructions. They do not even have to profoundly intellectualize their actions.

An admitted deviation from Section 21's prescribed process is an admission that statutory requirements have not been observed. This admitted disobedience can only work against the prosecution's cause.

In *People v. Nandi*,[54] the prosecution failed to account for how the seized items were handled after seizure and prior to turn-over for examination. This Court considered the apprehending officers' lapses to be fatal errors and held that acquittal must ensue:

After a closer look, the Court finds that the linkages in the chain of custody of the subject item were not clearly established. As can

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[53] The buy-bust operation was conducted in 2002.

[54] 639 Phil. 134-147 (2010) [Per *J.* Mendoza, Second Division].

be gleaned from his forequoted testimony, PO1 Collado failed to provide informative details on how the subject shabu was handled immediately after the seizure. He just claimed that the item was handed to him by the accused in the course of the transaction and, thereafter, he handed it to the investigator.

There is no evidence either on how the item was stored, preserved, labeled, and recorded. PO1 Collado could not even provide the court with the name of the investigator. He admitted that he was not present when it was delivered to the crime laboratory. It was Forensic Chemist Bernardino M. Banac, Jr. who identified the person who delivered the specimen to the crime laboratory. He disclosed that he received the specimen from one PO1 Cuadra, who was not even a member of the buy-bust team. Per their record, PO1 Cuadra delivered the letter-request with the attached seized item to the CPD Crime Laboratory Office where a certain PO2 Semacio recorded it and turned it over to the Chemistry Section.

In view of the foregoing, the Court is of the considered view that chain of custody of the illicit drug seized was compromised. Hence, the presumption of regularity in the performance of duties cannot be applied in this case.

> Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.
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> With the chain of custody in serious question, the Court cannot gloss over the argument of the accused regarding the weight of the seized drug. The standard procedure is that after the confiscation of the dangerous substance, it is brought to the

crime laboratory for a series of tests. The result thereof becomes one of the bases of the charge to be filed.[55] (Citations omitted)

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. Hence, the four (4) links were underscored in *Nandi*:[56] first, from the accused to the apprehending officers; second, from the apprehending officers to the investigating officers; third, from the investigating officers to the forensic chemists; and fourth, from the forensic chemists to the courts. The endpoints of each link (e.g., the accused and the apprehending officer in the first link, the forensic chemist and the court in the fourth link) are preordained, their respective existences not being in question. What is prone to danger is not any of these end points but the intervening transitions or transfers from one point to another.

Section 21(1)'s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, minimizes, if not eliminates, room for adulteration or the planting of evidence. The presence of the accused, or a representative, and of third-party witnesses, coupled with their attestations on the written inventory, ensures that the items delivered to the investigating officer are the items which have actually been inventoried.

The prosecution here failed to account for the intervening period between the supposed handover of the sachet from accused-appellant to PO3 Lim, to the marking of the sachets

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

[56] *People v. Nandi,* 639 Phil. 134-147 (2010) [Per *J*. Mendoza, Second Division].

by SPO4 Tubo. Likewise, it absolutely failed to identify measures taken during transit from the target area to the police station to ensure the integrity of the sachets allegedly obtained and to negate any possibility of adulteration or substitution.

The prosecution rested its case without presenting SPO4 Tubo. Not that he would have singularly won the case for the prosecution, but the prosecution could have at least supported its claims about the conduct of the marking even as it was the apprehending officers, not the investigating officer, who should have done this. As it stands, even the claims of PO3 Lim and SPO1 Jacinto that the sachets were marked remained suspect. SPO4 Tubo's testimony, too, would have shed light on the second and third links identified in *Nandi*.

The prosecution's predicament would not be so dire if accused-appellant, or his representative or counsel, and the third-party witnesses required by Section 21(1) of the Comprehensive Dangerous Drugs Act, were present during and had attested to an inventory as reduced to writing.

People v. Garcia[57] emphasized that the mere marking of seized items, unsupported by a proper physical inventory and taking of photographs, and in the absence of the persons whose presence is required by Section 21 will not justify a conviction:

> Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.[58] (Citations omitted)

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[57] 599 Phil. 416 (2009) [Per *J.* Brion, Second Division].

[58] *Id*. at 429.

The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation"[59] necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*,[60] where the presence of these witnesses was characterized as an "insulating presence [against] the evils of switching, 'planting' or contamination":[61]

> Similarly, P/Insp. Lim did not mention in his testimony, the relevant portions of which are quoted hereunder, that a representative from the media or the Department of Justice, or any elected public official was present during the seizure and marking of the sachets of shabu, as follows:
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> . . . .
>
> The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21 (1), supra, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of shabu that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[62]

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[59] Rep. Act No. 9165, Sec. 21, par. 1.

[60] *People v. Mendoza y Estrada*, 736 Phil. 749-771 (2014) [Per *J.* Bersamin, First Division].

[61] *Id*.

[62] *Id*. at 767-768.

In complete disregard of Section 21's unequivocal requirements, no one but police officers witnessed the supposed marking of the sachets obtained from accused-appellant.

It also does not escape our attention that accused-appellant's apprehension was supposedly an occasioned buy-bust or entrapment operation. This operation was allegedly prompted by a tip from an informant. Acting on the tip, P/C Insp. Muksan allegedly organized a buy-bust team. All the niceties of an entrapment operation were furnished: the simulated sale was laid out, a pre-arranged signal was devised, and the marked money was prepared.[63]

Police officers set about what appears to have been a meticulously prepared, self-conscious operation. They had the diligence to secure preliminaries, yet they could not be bothered to secure the presence of the same insulating witnesses who would have ultimately bolstered their case. They paint a picture of themselves as a deliberate, calculated team, yet they utterly failed at observing plain, formulaic statutory requirements.

There is nothing overly complicated, demanding, or difficult in Section 21's requirements. If at all, these requirements have so repeatedly been harped on in jurisprudence, and almost just as certainly on professional and casual exchanges among police officers, that the buy-bust team must have been so familiar with them. The buy-bust team was asked to adhere to a bare minimum. Its utter disregard for Section 21 by not even bothering to conduct an actual inventory, take pictures, or secure the presence of third-party persons to ensure the integrity of their self-proclaimed marking raises grave doubts not only on the integrity of the allegedly seized items, but even on their own.

The prosecution would have itself profit from the buy-bust team's admitted and glaring inadequacies. This Court, the last bastion of civil liberties, must not condone this. The apprehending officers' own inadequacies engender reasonable

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[63] CA *rollo*, p. 27.

doubt and jeopardize the prosecution they initiated. Acquittal must ensue.

VI

Section 21(1), as amended by Republic Act No. 10640, now includes a proviso that sanctions noncompliance under "justifiable grounds":

> 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.[64]

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove "justifiable grounds"; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.

The prosecution here completely and utterly failed to offer a justification for the buy-bust team's deviations from Section 21(1). It would have helped its case if it offered a justification and made an allegation of the steps taken to ensure the integrity and evidentiary value of the allegedly seized sachets. Its silence leaves this Court with absolutely nothing to consider. The Comprehensive Dangerous Drugs Act allows for an open door to accommodate exceptions. The prosecution, however, has not even bothered to extend its hand and open that proverbial door.

This Court cannot be overly licentious to the prosecution and do its work for it. In the face of its failure to plead and

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[64] Rep. Act No. 10640 (2013), Sec. 21, par. 1.

demonstrate exceptional circumstances, there is not even room for considering exceptions.

VII

Of equally grave concern to this Court is the miniscule amount of shabu supposedly obtained from accused-appellant. This amount is not *per se* a badge of innocence or a point justifying acquittal. However, the dubious facts of the seizure and arrest, occasioned by glaring disobedience to the Comprehensive Dangerous Drugs Act, coupled with the tendency for substitution, adulteration, and planting of fungible evidence—which is the very reason for Section 21's strictness—impress upon this Court the need for extreme caution in appraising an accused's supposed guilt.

Lescano v. People[65] explained:

As this court has also previously observed in decisions involving analogous circumstances, "[t]he miniscule amount of narcotics supposedly seized . . . amplifies the doubts on their integrity." What is involved here is all but a single sachet of 1.4 grams of plant material alleged to have been marijuana.

In *People v. Dela Cruz*, we noted that the seizure of seven (7) sachets supposedly containing 0.1405 gram of shabu (a quantity which, we emphasized, was "so miniscule it amount[ed] to little more than 7% of the weight of a five-centavo coin . . . or a one-centavo coin") lent itself to dubiety.

In *Holgado*:

> While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*, this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."

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[65] G.R. No. 214490, January 13, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf> [Per *J*. Leonen, Second Division].

> . . . .
>
> Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered[.] [66] (Citations omitted)

This case merely involves 0.0157 grams and 0.0783 grams of alleged shabu. These are quantities so miniscule they amount to 4.7% of the weight of a one-centavo coin or 2.0 grams.[67] These miniscule amounts were contained in sachets, the handling of which from the target area to the police station was totally bereft of safeguards. As with *Lescano*, *De Leon*, and *Holgado*, the miniscule amount of narcotics seized, coupled with the dubious circumstances of seizure, militates against the prosecution's case.

The buy-bust team's failures bring into question the integrity of the *corpus delicti* of the charge of sale of illegal drugs against accused-appellant. This leaves reasonable doubt on the guilt of accused-appellant Joshua Que. Necessarily, he must be acquitted.

WHEREFORE, the August 12, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00681-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Joshua Que y Utuanis is **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 some other lawful cause.

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[66] *Id.* at 14.

[67] See *People v. Holgado*, G.R. No. 207992, August 11, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf> [Per *J.* Leonen, Third Division].

Let a copy of this decision be furnished to the Director of the Bureau of Corrections 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. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

Let entry of final judgement be issued immediately.

SO ORDERED.

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

Martires,[*] *J.,* on official business.

SECOND DIVISION

[G.R. No. 217135. January 31, 2018]

MANILA SHIPMANAGEMENT & MANNING, INC., and/or HELLESPONT HAMMONIA GMBH & CO. KG and/or AZUCENA C. DETERA, *petitioners, vs.* **RAMON T. ANINANG,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AS A GENERAL RULE, ONLY QUESTIONS OF LAW ARE REVIEWABLE BY THE COURT; EXCEPTIONS.—** As a general rule, only questions of law are reviewable by the Court. This is because it is not a trier of facts; it is not duty-bound to analyze, review and weigh the evidence all over again in the

[*] On official business as per letter dated January 18, 2018.

absence of any showing of any arbitrariness, capriciousness, or palpable error. Thus, 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. In labor cases, this doctrine applies with greater force as questions of fact presented therein are for the labor tribunals to resolve. The Court, however, permitted a relaxation of this rule whenever any of the following circumstances is present: 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 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.

2. **LABOR AND SOCIAL LEGISLATION; 2010 AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON- BOARD OCEAN-GOING SHIPS (POEA CONTRACT); MONETARY LIABILITY OF EMPLOYER WHEN SEAFARER SUFFERS WORK-RELATED ILLNESS DURING THE TERM OF HIS CONTRACT.—** According to Section 20(A)(3) of the 2010 "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships" (POEA Contract), when the seafarer suffers work-related illness during the term of his contract, the employer shall be liable to pay for: (1) the seafarer's wages; (2) costs of medical treatment both in a foreign port and in the Philippines until the seafarer is declared fit to work, or the disability rating is established by the company-designated physician; (3) sickness allowance which shall not exceed 120 days; and (4) reimbursement of reasonable

medicine, traveling, and accommodation expenses.

3. **ID.; ID.; ID.; REQUISITES TO QUALIFY THE SEAFARER FOR THE MONETARY BENEFITS; FAILURE THEREOF, THE SEAFARER SHALL FORFEIT THE BENEFITS.—** [T]o be qualified for the monetary benefits, the seafarer [is required] to submit himself/herself to a post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines, except when he is physically incapacitated to do so. The seafarer is likewise required to report regularly to the company-designated physician during the course of his treatment. x x x This considering, in the event that a seafarer fails to comply with this mandatory reporting requirement, the POEA Contract provides that the seafarer shall not be qualified to receive his/her disability benefits. In fact, and more particularly, the POEA Contract provides that the seafarer shall forfeit these benefits.

APPEARANCES OF COUNSEL

Añover Añover San Diego & Primavera Law Offices for petitioners.

R. Go, Jr. Law Office for respondent.

D E C I S I O N

REYES, JR., *J.*:

The failure of a seafarer to submit himself/herself to a post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines shall result in the forfeiture of his/her right to claim disability benefits.

The Case

Challenged before this Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1]

[1] Penned by Associate Justice Fernanda Lampas-Peralta, and concurred in by Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez; *rollo*, pp. 9-22.

of the Court of Appeals (CA) promulgated on October 29, 2014, which reversed and set aside the Decision[2] and Resolution[3] dated June 10, 2013 and August 30, 2013, respectively, of the National Labor Relations Commission (NLRC). Likewise challenged is the subsequent Resolution[4] of the CA promulgated on February 24, 2015, which upheld the earlier decision.

The Antecedent Facts

As borne by the records, the following are the undisputed facts:

The respondent is a Filipino seafarer, who signed a Contract of Employment[5] as Chief Engineer with HELLESPONT HAMMONIA GMBH & CO. KG (petitioner), through its manning agent in the Philippines, petitioner MANILA SHIPMANAGEMENT & MANNING, INC. The duration of the contract was for six (6) months, with a basic monthly salary of US$2,435.00, and an owner bonus of US$4,600.00. The contract specified a 40-hour work week with subsistence allowance amounting to US$152.00, leave pay of US$649.00, and fixed overtime pay per month of US$1,464.00.[6]

On June 26, 2010, the respondent commenced his duties and departed the Philippines on board "MT HELLESPONT CREATION." Sometime thereafter, and while still aboard the vessel, the respondent experienced chest pain and shortness of breath. As found by the CA, the respondent requested for early repatriation from the master of the vessel, but was refused, and instead, his contract was extended for another month from December 12, 2010 to January 31, 2011. On February 2, 2011, the respondent arrived back in the Philippines.[7]

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[2] *Id*. at 351-365.

[3] *Id*. at 423-424.

[4] *Id*. at 34.

[5] *Id*. at 107.

[6] *Id*.

[7] *Id*. at 10.

It is after this point that the versions of facts of the petitioners and the respondent diverge.

According to the petitioners, after the respondent's repatriation, the latter "never voiced out any health concern nor did he report for a post-employment medical examination."[8] The petitioners further alleged that they had no contact whatsoever with the respondent until the time that they (petitioners) received the complaint filed by the respondent on March 6, 2012. The petitioners pointed out that this complaint was initiated more than one year after the respondent's disembarkation from "MT HELLESPONT CREATION."[9]

On the other hand, the respondent asserted that upon his arrival in the Philippines, he "immediately went to private respondent MANSHIP (herein petitioner) for post-employment medical examination, but private respondent MANSHIP failed to refer him to the company-designated physician."[10] According to the respondent, petitioners' refusal prompted him to consult with his personal physician, Dr. Achilles C. Esguerra, who later on diagnosed him with congestive heart failure,[11] and declared him physically unfit for sea service.[12]

According to the respondent, on February 15, 2011, less than two weeks after his arrival in the Philippines, he underwent ECG, ED Echo, and ultrasound procedures in Clinica Caritas. Few days thereafter, on February 26, 2011, he suddenly collapsed and was rushed to the Medical City where he was confined for three days. By September 29, 2011, Dr. Esguerra diagnosed him of his illness. On February 2, 2012, he was once more confined, this time in St. Luke's Medical Center for eight days, and was diagnosed with "dilated cardiomyopathy (non-ischemic) S/P CVD Infarct (2010) and chronic atrial fibrillation."[13]

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[8] *Id*. at 43.

[9] *Id*.

[10] *Id*. at 1003.

[11] *Id*. at 123.

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

[13] *Id*. at 11.

On the basis of the foregoing, the respondent sought from the petitioners the payment of disability benefits; medical, surgical, and hospitalization expenses; and sickness allowance. The petitioners denied the claim.

Hence, on June 1, 2012, the respondent filed with the Labor Arbiter (LA) a complaint against the petitioners.

The LA Ruling

After the submission of the pleadings by both parties, the LA ruled that the respondent suffered from total and permanent disability. This is because "the proximity of the date of repatriation and the time the complainant collapsed is too close that it leads to the conclusion that complainant's ailment was work-aggravated during the term of his contract."[14] The LA also ruled that the respondent was justified in not complying with the mandatory reporting requirement within three days from repatriation because the respondent herein "was not medically repatriated."[15]

On July 31, 2012, the LA rendered a Decision ruling in favor of the respondent. The *fallo* of the LA decision reads:

> IN VIEW OF THE FOREGOING, the respondent [herein petitioner] is directed to pay the complainant [herein respondent] of his disability benefit of SIXTY THOUSAND US DOLLARS (USD60,000.00) and hospitalization expenses of THREE HUNDRED SIXTY-EIGHT THOUSAND SIX HUNDRED TWENTY-TWO AND 70/100 PESOS (PHP368,622.70).
>
> Complainant shall likewise be paid of his attorney's fees equivalent to 10% of the monetary award.
>
> The rest of the claims are DISMISSED.
>
> SO ORDERED.[16]

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[14] *Id*. at 297.

[15] *Id*.

[16] *Id.* at 298.

The NLRC Ruling

Aggrieved, herein petitioners elevated the case to the NLRC, which reversed and set aside the LA decision.

The NLRC stated that the respondent's allegation that he submitted himself to the petitioners within three days from his repatriation are mere self-serving assertions that are not proved by evidence. The NLRC quoted the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) and relevant jurisprudence stating that this reporting is mandatory, and failure to comply thereto would result to the denial of the seafarer's claim.[17]

Also, the NLRC ruled that the respondent failed to substantiate his claim that his illness was work-related, or at the least, work-aggravated. The NLRC said that the respondent "did not even attempt to show the connection of his alleged illnesses with the nature of his work as chief engineer officer, except a mere recital of the fact that he was employed as one, thereby enumerating his functions.[18]

On June 10, 2013, the NLRC promulgated its Decision, the dispositive portion of which states that:

> WHEREFORE, premises considered, the instant (sic) is hereby GRANTED. Accordingly, the appealed Decision is hereby **REVERSED** and **SET ASIDE,** and a new one entered **DISMISSING** the instant complaint for lack of merit.
>
> SO ORDERED.[19]

The CA Ruling

On the basis of the NLRC decision, it was then the respondent that challenged the decision before the CA on Rule 65 of the Rules of Court.

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[17] *Id.* at 360-362.

[18] *Id.* at 363.

[19] *Id.* at 364.

In reversing the NLRC decision, the CA found that: (1) the respondent's medical condition was aggravated by his responsibilities, physical and emotional stress on board the petitioners' vessel;[20] and (2) "there is no denying" that the respondent tried to comply with the three-day medical examination deadline, but was refused and ignored by the petitioners.[21] In so ruling, the CA asserted that strict rules of evidence are not applicable in claims for compensation and disability benefits.[22]

Thus, on October 29, 2014, the CA rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the petition is granted. The Decision dated June 10, 2013 and Resolution dated August 30, 2013 of public respondent National Labor Relations Commission are reversed and set aside, and the Decision dated July 31, 2012 of the labor arbiter is reinstated.
>
> SO ORDERED.[23]

Hence, this petition.

The Issues

The petitioners seek the reversal of the assailed decision and resolution by the CA on the basis of the following grounds:

A — THE COURT OF APPEALS GRAVELY ERRED WHEN IT DECIDED TO IGNORE THE 3-DAY MANDATORY REPORTING REQUIREMENT PROVIDED UNDER THE POEA-SEC.

B — THE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT RESPONDENT WAS ABLE TO PROVE THAT HIS ILLNESS IS WORK-RELATED AND THAT HE CONTRACTED HIS ILLNESS DURING THE TERM OF HIS EMPLOYMENT.

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[20] *Id.* at 19.

[21] *Id.* at 20.

[22] *Id.* at 21.

[23] *Id.* at 22.

C — THE COURT OF APPEALS GRAVELY ERRED WHEN IT REINSTATED THE AWARD OF HOSPITALIZATION EXPENSES AND ATTORNEY'S FEES.[24]

In essence, the Court is called upon to rule on the following issues: (1) whether or not the respondent complied with the post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines; and (2) whether or not the respondent's illness was work-related and was contracted during the term of his employment.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds that there is merit in the petition and that the arguments of the respondent fail.

As a general rule, only questions of law are reviewable by the Court. This is because it is not a trier of facts;[25] it is not duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error.[26] Thus, 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.[27] In labor cases, this doctrine applies with greater force as questions of fact presented therein are for the labor tribunals to resolve.[28]

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[24] *Id.* at 46.

[25] *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 512 Phil. 679, 706 (2005), as cited in *Van Clifford Torres y Salera v. People of the Philippines*, G.R. No. 206627, January 18, 2017.

[26] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997); *Bautista v. Puyat*, 416 Phil. 305, 308 (2001), as cited in *Van Clifford Torres y Salera v. People of the Philippines*, G.R. No. 206627, January 18, 2017.

[27] *De Leon v. Maunlad Trans, Inc.*, G.R. No. 215293, February 8, 2017.

[28] *Id.*

The Court, however, permitted a relaxation of this rule whenever any of the following circumstances is present:

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 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.[29]

To be sure, the issues in this case are questions of fact, which the Court would generally not disturb. Nonetheless, in light of the apparent conflict among the findings of facts of the LA, NLRC and CA, and on the strength of the relaxation of the rules quoted above, the Court can and will delve into the present controversy.

According to Section 20(A)(3) of the 2010 "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships" (POEA Contract), when the seafarer suffers work-related illness during the term of his contract, the employer shall be liable to pay for: (1) the seafarer's wages; (2) costs of medical treatment both in a foreign port and in the Philippines until the seafarer

[29] *Id*.

is declared fit to work, or the disability rating is established by the company-designated physician; (3) sickness allowance which shall not exceed 120 days; and (4) reimbursement of reasonable medicine, traveling, and accommodation expenses.[30]

However, to be qualified for the foregoing monetary benefits, the same section of the POEA Contract requires the seafarer to submit himself/herself to a post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines, except when he is physically incapacitated to do so. The seafarer is likewise required to report regularly to the company-designated physician during the course of his treatment.[31]

The mandatory character of this three-day reporting requirement has been recently reiterated by the Court in the case of *Scanmar Maritime Services, Inc. v. De Leon.*[32] In that case, the Court had occasion to, once more, explain the *ratio* behind this rule. The Court said:

> **The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury.** Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[33] (Emphasis and underscoring supplied)

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[30] Philippine Overseas Employment Administration Memorandum Circular No. 10, series of 2010, "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships", Sec. 20(A)(3).

[31] *Id.* at paragraph 3.

[32] G.R. No. 199977, January 25, 2017.

[33] *Id.*, citing *lnterOrient Maritime Enterprises, Inc. v. Creer III*, 743

This considering, in the event that a seafarer fails to comply with this mandatory reporting requirement, the POEA Contract provides that the seafarer shall not be qualified to receive his/her disability benefits. In fact, and more particularly, the POEA Contract provides that the seafarer shall forfeit these benefits. It said:

> Failure of the seafarer to comply with the mandatory reporting requirement shall result in his **forfeiture** of the right to claim the above benefits.[34] (Emphasis and underscoring supplied)

Thus, in *lnterOrient Maritime Enterprises, Inc. v. Creer III*,[35] the Court ruled that the respondent's non-compliance with the three-day rule on post-employment medical examination was fatal to his cause. As a consequence, his right to claim for compensation and disability benefits was forfeited. The Court ruled that the complaint should have been dismissed outright.[36]

In the case at hand, the determination of whether or not the respondent did indeed present himself to the petitioners for medical treatment within three days from his disembarkation resulted to varying findings of facts among the LA, NRLC, and CA, which eventually germinated three different conclusions.

In the LA decision, the LA found that the respondent did fail to comply with the requirement, but the LA found that "[t]here is justifiable cause for the failure to comply with the reporting requirement as the complainant was not medically repatriated."[37] In the same way, the NLRC likewise averred that the respondent failed to comply with the requirement, but contrary to the LA decision, it found no justifying cause thereto. Still, in yet another finding, the CA asserted that the respondent indeed presented

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Phil. 164, 179 (2014); *See* also *Wallem Maritime Services, Inc. v. Tanawan*, 693 Phil. 416, 429 (2012).

[34] *Supra*, note 30.

[35] 743 Phil. 164, 179 (2014).

[36] *Id.*

[37] *Rollo*, p. 297.

himself before the petitioners and that "there is no denying this fact."[38]

In light of these conflicting findings, the Court poured over the records of the case, and after a detailed study thereof, rules against the respondent.

Aside from the self-serving allegations of the respondent in his pleadings, there is no evidence that would suggest that he presented himself before the petitioners upon disembarkation. Indeed, he presented no witnesses that would support his allegations. He did not even bother to tell the Court who it is that he talked with in the petitioners' office—if indeed he went to the petitioners' office—on the day of the meeting. He did not even relay how his request for medical treatment was supposedly refused, and by whom. No date was even alleged.

To be sure, there was a conspicuous lack of details to his supposed meeting that it has failed to convince the LA, the NLRC, and even this Court of the truthfulness of this allegation.

In addition, the LA decision which exempts him from the application of the mandatory reporting requirement has no leg to stand on. The POEA Contract is clear and admits of no exceptions, save from the instance when the seafarer is physically incapacitated to report to the employer. In which case, Section 20(A)(c) requires him to submit a written notice to the agency within the same period as compliance. This has not happened in this case.

More, when the CA decision admitted the respondent's allegations as fact, it has pointed to no evidence that would support this assertion. On this issue, the CA decision stated the following, and nothing more:

> There is no denying that petitioner tried to comply with the mandatory 3-day medical examination deadline provided in Section 20(B), paragraph (3) of the POEA-SEC by going to private respondent MANSHIP's office after his repatriation on February 2, 2011 and

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[38] *Id.* at 20.

requesting referral to the company-designated physician. However, private respondent MANSHIP refused to accommodate him and ignored his request. Section 20 (B), paragraph (3) of the POEA-SEC reads:[39]

x x x x x x x x x

Thus, against this factual backdrop, the respondent would be hard-pressed to convince the Court of his arguments. And in this light, the Court could enter no other conclusion than that the respondent failed to comply with the requirements of Section 20(A)(c) of the POEA Contract. Necessarily therefore, the ruling of the CA and the LA must be reversed and set aside.

In view of the foregoing disquisitions, the Court thus finds no need to discuss the other issues presented.

As a final word, the Court has time and again upheld the primacy of labor, for it is through the effort of the Filipino worker that the economy is stirred and is steered to the right direction. However, as before, the Court shall not be an instrument to the detriment of the employer if the most basic rules in the POEA Contract are not complied with—as in this case.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals dated October 29, 2014 and February 24, 2015, respectively, are hereby **REVERSED and SET ASIDE.** The Decision of the National Labor Relations Commission dated June 10, 2013, which reversed and set aside the Decision of the Labor Arbiter dated July 31, 2012 and dismissed the Complaint for lack of merit, is hereby **REINSTATED.**

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[39] *Id.*

[*] Additional member as per raffle dated April 15, 2015.

FIRST DIVISION

[G.R. No. 218427. January 31, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMILIANO DE CHAVEZ,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY INCONSISTENCIES IN THE TESTIMONY OF A RAPE VICTIM CONSIDERING THAT THE PAINFUL EXPERIENCE IS OFTENTIMES NOT REMEMBERED IN DETAILS.—** Inaccuracies and inconsistencies in the testimony of a rape victim is not unusual considering that the painful experience is oftentimes not remembered in detail as "[i]t causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget." Besides, the determination of the credibility of a witness is best left to the trial court, which had the opportunity to observe the deportment and demeanor of the witness while testifying.
2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; LACERATIONS, WHETHER HEALED OR FRESH, ARE THE BEST PHYSICAL EVIDENCE OF FORCIBLE DEFLORATION.—** [T]he Court has consistently ruled that there is sufficient basis to conclude the existence of carnal knowledge when the testimony of a rape victim is corroborated by the medical findings of the examining physician as "[l]acerations, whether healed or fresh, are the best physical evidence of forcible defloration." In this case, the victim's testimony is corroborated not only by her sister but also by the medical findings of the examining physician, who testified that the presence of deep healed lacerations on the victim's genitalia is consistent with the dates the alleged sexual acts were committed.

APPEARANCES OF COUNSEL

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

RESOLUTION

DEL CASTILLO, *J.*:

This is an appeal filed by Emiliano De Chavez (appellant) from the June 20, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06133, affirming with modification the February 27, 2013 Consolidated Decision[2] of the Regional Trial Court (RTC) of Calamba City, Branch 92, in Criminal Case Nos. 13940-06-C, 13941-06-C, 13942-06-C, and 13943-06-C finding the appellant guilty beyond reasonable doubt of two counts of rape by sexual assault and two counts of qualified rape.

The Factual Antecedents

Appellant was charged under the following Informations:

Criminal Case No. 13940-06-C

That on or about June 2, 2005, x x x Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design through force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit an act of sexual assault upon his daughter, "XXX,"[3] a thirteen (13) year-old minor, by inserting his finger inside her genitalia against her will and consent to her damage and prejudice.

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[1] *Rollo*, pp. 2-19; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Ramon A. Cruz.

[2] CA *rollo*, pp. 24-45; penned by Judge Alberto F. Serrano.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

Contrary to law.[4]

Criminal Case No. 13941-06-C

That on or about June 3, 2005, x x x Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design through force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter, "XXX," a thirteen (13) year-old minor, against her will and consent to her damage and prejudice.

Contrary to law.[5]

Criminal Case No. 13942-06-C

That on or about September 30, 2005, x x x Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design through force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter, "XXX," a thirteen (13) year-old minor, against her will and consent to her damage and prejudice.

Contrary to law.[6]

Criminal Case No. 13943-06-C

That on or about June 4, 2005, x x x Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design through force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit an act of sexual assault upon his daughter, "XXX," a thirteen (13) year-old minor, by inserting his finger inside her genitalia against her will and consent to her damage and prejudice.

Contrary to law.[7]

Appellant pleaded not guilty to the crimes charged.[8]

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[4] CA *rollo*, p. 25.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 26.

[8] *Id*.

Version of the Prosecution

During the trial, the prosecution presented the testimonies of private complainant "XXX," her sister "YYY," and Dr. Roy Camarillo, the Medico-Legal Officer of the Philippine National Police Crime Laboratory, Camp Vicente Lim.

The evidence of the prosecution as summarized by the CA is as follows:

Private complainant "XXX" is the daughter of appellant and "ZZZ". Appellant and "XXX" live in x x x Laguna together with "XXX's" two younger siblings, "YYY" and her brother, "AAA".

On June 2, 2005, "XXX," who was then thirteen (13) years old, was sleeping on the floor of their room while her siblings were sleeping with their father on the bed. "XXX" was suddenly awakened when her father lay [beside her]. She asked him what he was doing. Appellant did not answer, then slowly he raised her shirt. He whispered "Sundin mo na lang ako at pag hindi mo ako sinunod ay papatayin ko ang mga kapatid mo at guguluhin ko ang nanay mo x x x," then he told "XXX" "ibaba mo ang jogging pants at panty mo." Because of fear, "XXX" followed her father's order. Appellant then started kissing her and inserted his finger into her vagina. She told her father to stop but he continued what he was doing. "XXX" cried as she felt pain in her vagina. She did not ask for help because she was afraid of her father's threat. After a few minutes, appellant removed his finger and returned to bed.

The following day, June 3, 2005, "XXX" was awakened when her father lay on top of her. He started kissing her lips, neck and breast then he removed her jogging pants and panty. Appellant inserted his penis into "XXX's" vagina. She begged him to stop, saying "Papa masakit" but he just ignored her and did a pumping motion for few minutes, then went back to bed.

Meanwhile, "YYY," "XXX's" younger sister, who was sleeping on the bedside beside the mat where "XXX" was sleeping was awakened when she saw appellant on top of the latter. Moments later, appellant removed his penis and returned to his bed. The following morning, "YYY" told "XXX" that she saw what the appellant did to her. That same day, June 4, 2005, appellant inserted again his finger into "XXX's" vagina.

On September 30, 2005, "XXX" was awakened when her father removed her clothes and inserted his penis into her vagina. The following morning, "XXX" noticed a white discharge on her panty.

"XXX" was prompted to proceed to the house of her mother x x x to report what appellant did to her when the latter hurt her brother. Immediately, they went to the police station and filed a complaint.

Dr. Roy Camarillo, Medico-Legal Officer, PNP Crime Laboratory, Camp Vicente Lim, conducted a laboratory examination on "XXX." The Medical Legal Report contained the following findings and conclusions:

> Fairly-nourished, normally-developed, conscious, coherent, ambulatory female subject. Breasts are conical in shape with light brown areola and nipples from which no secretions could be pressed out. Abdomen is soft and flat.
>
> There's scanty growth of pubic hairs. Labia majora are full, convex and coaptated with light brown and non-hypertophied labia minora presenting in between. On separating the same is disclosed annular type of hymen, thin with PRESENCE OF DEEP HEALED LACERATIONS at 3 o'clock and 9 o'clock positions. The peri-hymenal, urethra, periurethral area and fossa navicularis have no evident injury noted at the time of examination. There is no discharge noted.
>
> Vaginal & Periurethral Swabbing: NON-REACTIVE to Seminal Stain Reagent.
>
> CONCLUSION:
>
> MEDICAL EXAMINATION SHOWS DEFINITE EVIDENCE OF ABUSE OF SEXUAL CONTACT.
>
> THERE ARE NO EXTRA-GENITAL INJURIES NOTED AT THE TIME OF EXAMINATION.[9]

Version of the Appellant

Appellant, on the other hand, testified that the accusations of his daughter against him were done in retaliation because

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[9] *Rollo*, pp. 5-7.

he scolded his children and severely punished his youngest child.[10]

Ruling of the Regional Trial Court

On February 27, 2013, the RTC rendered a Consolidated Decision finding the appellant guilty of the charges against him, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in the above-captioned cases, as follows:

1. In Criminal Case No. 13940-06-C, the Court finds the accused Emiliano De Chavez guilty beyond reasonable doubt of [the] crime of sexual assault defined under paragraph 2 of Article 266-A of the Revised Penal Code and hereby sentences him to imprisonment of ten years of *prision mayor* as minimum to twenty years of *reclusion temporal* as maximum. The accused is further ORDERED to indemnify the private complainant "XXX" the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

2. In Criminal Case No. 13941-06-C, the Court finds the accused Emiliano De Chavez guilty beyond reasonable doubt of [the] crime of rape and hereby sentences him to the penalty of *reclusion perpetua*. In addition, the accused is ORDERED to indemnify the private complainant "XXX" the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

3. In Criminal Case No. 13942-06-C, the Court finds the accused Emiliano De Chavez guilty beyond reasonable doubt of [the] crime of rape and hereby sentences him to the penalty of reclusion perpetua. The accused is also ORDERED to indemnify the private complainant "XXX" the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

4. In Criminal Case No. 13943-06-C, the Court finds the accused Emiliano De Chavez guilty beyond reasonable doubt of [the] crime of sexual assault defined under paragraph 2 of Article 266-A of the Revised Penal Code and hereby sentences him to imprisonment of ten years of *prision mayor* as minimum to twenty years of reclusion temporal as maximum. The accused is further ORDERED to indemnify

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

the private complainant "XXX" the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

With costs against the accused.

SO ORDERED.[11]

Ruling of the Court of Appeals

Appellant elevated the case to the CA.

On June 20, 2014, the CA rendered the assailed Decision, affirming the Consolidated Decision with modification, to wit:

WHEREFORE, the appeal is DENIED. The Consolidated Decision dated February 27, 2013 is AFFIRMED WITH MODIFICATION that exemplary damages in the amount of ₱30,000.00 is awarded for each offense.

SO ORDERED.[12]

Hence, appellant filed the instant appeal.

On July 22, 2015, the Court required both parties to file their respective supplementary briefs; however, they opted not to file the same.[13]

The Court's Ruling

In assailing his conviction, appellant puts in issue the inconsistencies in the testimonies of the prosecution's witnesses, which he believes is an indication that they were coached.[14] Thus, he claims that the prosecution was not able to prove the accusations against him beyond reasonable doubt.[15]

The Court is not persuaded.

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[11] CA *rollo*, p. 45.

[12] *Rollo*, p. 18.

[13] *Id*. at 25-26 and 36.

[14] CA *rollo*, pp. 70-76.

[15] *Id*.

Inaccuracies and inconsistencies in the testimony of a rape victim is not unusual considering that the painful experience is oftentimes not remembered in detail as "[i]t causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget."[16] Besides, the determination of the credibility of a witness is best left to the trial court, which had the opportunity to observe the deportment and demeanor of the witness while testifying.[17]

Moreover, the Court has consistently ruled that there is sufficient basis to conclude the existence of carnal knowledge when the testimony of a rape victim is corroborated by the medical findings of the examining physician as "[l]acerations, whether healed or fresh, are the best physical evidence of forcible defloration."[18]

In this case, the victim's testimony is corroborated not only by her sister but also by the medical findings of the examining physician, who testified that the presence of deep healed lacerations on the victim's genitalia is consistent with the dates the alleged sexual acts were committed. Accordingly, the Court finds no reason to disturb the findings of the RTC, which was affirmed by the CA. It bears stressing that factual findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon the Court.[19]

In fine, we affirm the ruling of the courts below finding appellant guilty beyond reasonable doubt of two counts of qualified rape and two counts of rape by sexual assault.

As regards the penalty imposed in Criminal Case Nos. 13941-06-C and 13942-06-C for qualified rape, both the trial court and the CA properly imposed the penalty of *reclusion perpetua*

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[16] *People v. Sonido*, G.R. No. 208646, June 15, 2016, 793 SCRA 568, 578.

[17] *Id*. at 577.

[18] *People v. Saludo*, 662 Phil. 738, 755 (2011).

[19] *People v. Sonido*, *supra* at 577-578.

in view of the proscription on the imposition of the death penalty. We agree with the courts below that the prosecution had satisfactorily established the minority of "XXX" and the qualifying circumstance of relationship, *i.e.*, that appellant is the father of "XXX."

However, in order to conform to prevailing jurisprudence,[20] the Court finds it necessary to increase the amounts of damages awarded in these cases. Thus, the amounts of exemplary damages, civil indemnity and moral damages are increased to ₱100,000.00 each for each count.

As regards Criminal Case Nos. 13940-06-C and 13943-06-C for rape by sexual assault, we modify the penalty to eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.[21] In addition, the awards of civil indemnity and moral damages are modified to ₱30,000.00 each for each count of sexual assault.[22] The award of exemplary damages at ₱30,000.00 for each count is sustained.

In addition, all damages awarded shall earn legal interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

WHEREFORE, premises considered, the appeal is **DISMISSED**.

The June 20, 2014 Decision of the Court of Appeals finding appellant Emiliano De Chavez guilty beyond reasonable doubt of the charges against him is **AFFIRMED with MODIFICATIONS** that in Criminal Case Nos. 13941-06-C and 13942-06-C, the awards of civil indemnity, moral damages, and exemplary damages are each increased to ₱100,000.00 for

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[20] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 383.

[21] See *People v. Marmol*, G.R. No. 217379, November 23, 2016, 810 SCRA 379, 392-393.

[22] *Id*.

each count. In Criminal Case Nos. 13940-06-C and 13943-06-C, appellant is sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, for each count. In addition, the awards of civil indemnity and moral damages are modified to ₱30,000.00 each for each count

Finally, all the damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

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

Martires,[*] *J.,* on official leave.

FIRST DIVISION

[G.R. No. 219238. January 31, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MOISES DEJOLDE, JR.** ***y*** **SALINO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; PRESIDENTIAL DECREE NOS. 1920 AND 2018 *VIS-A-VIS* MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995 (R.A. 8042); ILLEGAL RECRUITMENT IN LARGE SCALE, PROVEN IN CASE AT BAR; MERE DENIAL CANNOT PREVAIL OVER POSITIVE TESTIMONIES OF WITNESSES.— After a

[*] Designated as additional member per November 29, 2017 raffle vice *J*. Jardeleza who recused due to prior action as Solicitor general.

careful review of the records of this case, the Court finds that the prosecution, through its witnesses, was able to prove that appellant recruited private complainants for employment as caregivers in the United Kingdom and that he collected money from them in the process. Appellant's defense of mere denial could not prevail over the positive testimonies of the prosecution's witnesses as the Court often views with disfavor the defense of denial, especially if it is not substantiated by any clear and convincing evidence. It is an inherently weak defense as it is a self-serving negative evidence that cannot be given more evidentiary weight than the affirmative declarations of credible witnesses.

2. **ID.; REVISED PENAL CODE (RPC); *ESTAFA*; PENALTIES IMPOSED BY THE COURT OF APPEALS, MODIFIED IN VIEW OF THE RECENT ENACTMENT OF RA 10951, WHICH ADJUSTED THE AMOUNT OR THE VALUE OF THE PROPERTY AND DAMAGE ON WHICH THE PENALTY IS BASED, AND THE FINE IMPOSED UNDER THE RPC.—** x x x [I]n view of the recent enactment of RA 10951, there is a need to modify the penalties imposed by the CA insofar as the two counts of estafa, docketed as Criminal Case Nos. 27592-R and 27602-R, are concerned. For committing estafa involving the amounts of ₱440,000.00 and ₱350,000.00, Article 315 of the RPC, as amended by RA 10951, now provides that the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed if the amount involved is over ₱40,000.00 but does not exceed ₱1,200,000.00. There being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of *prision correccional.* Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one (1) month and one (1) day to four (4) months. Thus, the indeterminate penalty for each count of estafa should be modified to a prison term of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

This is an appeal filed by appellant Moises Dejolde, Jr. *y* Salino from the July 31, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04624, affirming with modification the April 3, 2010 Decision[2] of the Regional Trial Court (RTC) of Baguio City, Branch 60, in Crim. Case Nos. 27516-R, 27592-R, and 27602-R, which found appellant guilty beyond reasonable doubt of Illegal Recruitment in large scale defined and penalized under Article 13(b) in relation to Articles 38(b), 34, and 39 of Presidential Decree Nos. 1920 and 2018 and Republic Act (RA) No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), and two counts of Estafa under Article 315 of the Revised Penal Code (RPC).

The Factual Antecedents

Appellant was charged under the following Amended Informations:

<u>Criminal Case No. 27516-R (Illegal Recruitment Committed in Large Scale)</u>

That sometime between the period from January, 2007 and March 2007 in Baguio City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously for [a] fee, recruit and promise employment/job placement as contract workers in United Kingdom to the herein complainants, namely:

1. Fraulein Edoc *y* Pacuyan
2. Naty Loman *y* Nabe[h]et
3. Jessie Doculan *y* Lingon
4. Olivia Gabol *y* Paquito

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[1] *Rollo*, pp. 2-21; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy.

[2] CA *rollo*, pp. 23-35; penned by Judge Edlberto T. Claravall.

5. Rosieline Marcos *y* Pasi and
6. Jerry Diwangan *y* Nabadang

without said accused having first secured the necessary license or authority from the Department of Labor and Employment and [f]ailed to deploy said complainants for the promised jobs in United Kingdom.

Contrary to law.

<u>Criminal Case No. 27602-R (Estafa)</u>

That sometime in the month of January, 2007 and/or subsequent thereto, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud one JESSIE DOCULAN *y* LINGON, in the following manner, to wit: the accused has [represented] and led Jessie Doculan *y* Lingon to believe that the accused has the power, capacity, and influence to work for and secure valid travel papers and documents to enable Jessie Doculan *y* Lingon to enter the United Kingdom legally, which representations, and assurances were all false, and Jessie Doculan y Lingon misled by said false representations, handed the total amount of ₱450,000.00 to the accused as cost of procuring the necessary valid travel documents, which the accused misapplied, misappropriated and converted to his own personal use and benefit, to the damage and prejudice of JESSIE DOCULAN y LINGON in the aforementioned amount of FOUR HUNDRED FIFTY THOUSAND (₱450,000.00) PESOS, Philippine Currency.

Contrary to law.

<u>Criminal Case No. 27592-R (Estafa)</u>

That sometime in the month of January, 2007 and/or subsequent thereto, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously defraud one NATY LOMAN *y* NABE[H]ET, in the following manner, to wit: the accused has [represented] and led Naty Loman *y* Nabe[h]et to believe that the accused has the power, capacity, and influence to work for and secure valid travel papers and documents to enable Naty Loman *y* Nabe[h]et

to enter the United Kingdom legally, which representations, and assurances were all false, and Naty Loman *y* Nabe[h]et misled by said false representations, handed the total amount of ₱400,000.00 to the accused as cost of procuring the necessary valid travel documents, which the accused misapplied, misappropriated and converted to his own personal use and benefit, to the damage and prejudice of NATY LOMAN *y* NABE[H]ET in the aforementioned amount of FOUR HUNDRED THOUSAND (₱400,000.00) PESOS, Philippine Currency.

Contrary to law.[3]

Appellant pleaded not guilty to the crimes charged.[4]

Version of the Prosecution

During trial, the prosecution presented the testimonies of private complainants Naty Loman (Naty), Jessie Doculan (Jessie), and Roseliene Marcos. They testified that the appellant recruited them to work as caregivers in the United Kingdom; that he charged them ₱450,000.00 each for the processing of their visas and cost of plane fares; that Naty paid appellant the amount of ₱400,000.00 while Jessie gave the amount of ₱450,000.00; that they later discovered that the visas were fake and that appellant was not authorized by the Philippine Overseas Employment Administration (POEA); that they demanded the return of their monies; and that appellant returned only the amounts of ₱50,000.00 to Naty and ₱10,000.00 to Jessie.[5]

Version of the Appellant

Appellant, on the other hand, denied that he recruited private complainants to work as caregivers in the United Kingdom. He testified that he was engaged in the business of processing student visa applications for those who want to study in the United Kingdom; that the sums of money he received from private complainants were for the payment of school tuition fees and the processing of the student visas; and that he was

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

[4] *Id*. at 6.

[5] CA *rollo*, pp. 74-76.

not able to process their applications or refund their money because he was arrested.[6]

Ruling of the Regional Trial Court

On April 3, 2010, the RTC rendered a Decision finding the appellant guilty of the charges against him, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby renders as follows:

1) In Criminal Case No. 27516-R, the Court finds the accused MOISES S. DEJOLDE, JR. GUILTY beyond reasonable doubt of the crime of illegal recruitment in a large scale. He is sentenced to suffer the penalty of life imprisonment; and to pay a fine of Php100,000.00;

2) In Crim. Case No. [27602-R], the Court finds the accused MOISES DEJOLDE, JR. GUILTY beyond reasonable doubt x x x of the crime charged against him. There being no aggravating and mitigating circumstances and applying the provisions of the Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of 4 years, 2 months and 1 day of *prision correccional*, as minimum, to 20 years of *reclusion temporal*, as maximum. He is further ordered to pay unto Jessie Doculan y Lingon, the amount of Php440,000.00 by way of actual damages plus interest at the legal rate from the date the Information was filed until the said amount is fully paid; and

3) In Crim. Case No. [27592-R], the Court finds the accused MOISES DEJOLDE, JR. GUILTY beyond reasonable doubt x x x of the crime charged against him. There being no aggravating and mitigating circumstances and applying the provisions of the Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of 4 years, 2 months and 1 day of *prision correccional*, as minimum, to 20 years of *reclusion temporal*, as maximum. He is further ordered to pay unto Naty Loman *y* Nabehet the amount of Php350,000.00 by way of actual damages plus

[6] *Id.* at 76-80.

interest at the legal rate from the date the Information was filed until the said amount is fully paid.

SO ORDERED.[7]

Ruling of the Court of Appeals

Appellant elevated the case to the CA.

On July 31, 2014, the CA rendered the assailed Decision, affirming the RTC Decision with modifications. The CA increased to ₱1,000,000.00 the fine imposed in the case of illegal recruitment in large scale pursuant to Section 7 of RA 8042 and *People v. Chua*,[8] as well modified the indeterminate sentence imposed in the estafa cases, to wit:

WHEREFORE, the instant appeal is DENIED. Accordingly, the Decision of Branch 60, Regional Trial Court of Baguio City, dated 03 April 2010, is hereby AFFIRMED with MODIFICATION, thus:

'WHEREFORE, premises considered, the Court hereby renders as follows:

1) In Criminal Case No. 27516-R, the Court finds the accused MOISES S. DEJOLDE, JR., GUILTY beyond reasonable doubt of the crime of illegal recruitment in a large scale. He is sentenced to suffer penalty of life imprisonment and to pay a fine of one million (₱1,000,000.00) pesos.

2) In Criminal Case No. [27602-R], the Court finds the accused MOISES S. DEJOLDE, JR., GUILTY beyond reasonable doubt of the crime charged against him. There being no aggravating and mitigating circumstances and applying the provisions of Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. He is further ordered to pay unto Jessie

[7] *Id*. at 84.

[8] 695 Phil. 16 (2012).

Doculan *y* Lingon, the amount of Four Hundred Forty Thousand (₱440,000.00) pesos by way of actual damages plus interest at the legal rate from the date the Information was filed until the said amount is fully paid.

3) In Criminal Case No. [27592-R], the Court finds the accused MOISES S. DEJOLDE, JR., GUILTY beyond reasonable doubt of the crime charged against him. There being no aggravating and mitigating circumstances and applying the provisions of Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. He is further ordered to pay unto Naty Loman *y* Nabehet, the amount of three hundred fifty thousand (₱350,000.00) pesos by way of actual damages plus interest at the legal rate from the date the Information was filed until the said amount is fully paid.

SO ORDERED.'

SO ORDERED.[9]

Hence, appellant filed the instant appeal.

The Court required both parties to file their respective supplementary briefs; however, they opted not to file the same.[10]

The Court's Ruling

The appeal is bereft of merit.

After a careful review of the records of this case, the Court finds that the prosecution, through its witnesses, was able to prove that appellant recruited private complainants for employment as caregivers in the United Kingdom and that he collected money from them in the process. Appellant's defense

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[9] *Rollo*, pp. 19-20.

[10] *Id*. at 27-28 and 40.

of mere denial could not prevail over the positive testimonies of the prosecution's witnesses as the Court often views with disfavor the defense of denial, especially if it is not substantiated by any clear and convincing evidence.[11] It is an inherently weak defense as it is a self-serving negative evidence that cannot be given more evidentiary weight than the affirmative declarations of credible witnesses.[12]

Moreover, it is a settled rule that factual findings of the trial courts are accorded great respect because they are in the best position to assess the credibility of the witnesses having had the opportunity to observe their demeanor during the trial.[13] Thus, the Court finds no reason to disturb the factual finding of the RTC, which was affirmed by the CA, that appellant was guilty beyond reasonable doubt of the crimes charged.

However, in view of the recent enactment of RA 10951,[14] there is a need to modify the penalties imposed by the CA insofar as the two counts of estafa, docketed as Criminal Case Nos. 27592-R and 27602-R, are concerned. For committing estafa involving the amounts of ₱440,000.00 and ₱350,000.00, Article 315 of the RPC, as amended by RA 10951, now provides that the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed if the amount involved is over ₱40,000.00 but does not exceed ₱1,200,000.00. There being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of *prision correccional.* Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one (1) month and one (1) day to four (4) months.

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[11] *People v. Monteron*, 428 Phil. 401, 409 (2002).

[12] *People v. Nelmida*, 694 Phil. 529, 564 (2012).

[13] *People v. Tolentino*, 762 Phil. 592, 613 (2015).

[14] An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, August 29, 2017.

Thus, the indeterminate penalty for each count of estafa should be modified to a prison term of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

In addition, an interest rate of 6% *per annum* is likewise imposed on the amounts of ₱440,000.00 and ₱350,000.00 from the date of finality of this Resolution until full payment.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Court **ADOPTS** the findings of the Regional Trial Court as affirmed by the Court of Appeals. The July 31, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04624 finding appellant Moises Dejolde, Jr. *y* Salino guilty beyond reasonable doubt of the charges against him is **AFFIRMED with MODIFICATION** that, insofar as Criminal Case Nos. 27592-R and 27602-R, the indeterminate penalty of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and (1) day of *prision correccional,* as maximum, is hereby imposed for each count of estafa. In addition, an interest rate of 6% *per annum* is likewise imposed on the amounts of ₱440,000.00 and ₱350,000.00 from the date of finality of this Resolution until full payment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 219581. January 31, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MAXIMO DELA PEÑA,** *accused-appellant.*

ROMY REAL, DANNY REAL and ONYONG REYES, *accused.*

SYLLABUS

1. **CRIMINAL LAW; PRESIDENTIAL DECREE (PD) NO. 532; PIRACY; ELEMENTS, SUFFICIENTLY ALLEGED IN THE INFORMATION AND PROVEN IN CASE AT BAR.—** The Information categorically alleged that the incident happened along the river bank of Brgy. San Roque, Municipality of Villareal, Province of Samar. x x x The Information also clearly alleged that the vessel's cargo, equipment, and personal belongings of the passengers were taken by the appellant and his armed companions. It stated, in no uncertain terms, that 13 sacks of copra were taken by the appellant through force and intimidation. Undoubtedly, these sacks of copra were part of the vessel's cargo. The Information also stated that the vessel's equipment which consisted of the engine, propeller tube, and tools were taken and carried away by the appellant. Furthermore, the Information also stated that the personal belongings of the passengers consisting of two watches, jewelry, cellphone, and cash money were taken by the appellant and his armed companions. The appellant was able to seize these items when he, along with armed companions, boarded the victims' pump boat and seized control of the same. Armed with firearms, appellant and his companions tied Jose's hands, covered his head, and operated their pump boat. They travelled to an island in Samar where they unloaded the sacks of copra. Thereafter, appellant and his armed companions travelled to another island where the engine, propeller tube, and tools of the pump boat were taken out and loaded on appellant's boat. From the foregoing, the Court finds that the prosecution was able to establish that the victims' pump boat was in Philippine waters when appellant and his armed companions boarded the same

and seized its cargo, equipment, and the personal belongings of the passengers.

2. **ID.; ID.; ID.; PROPER PENALTY IS *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE.—** x x x [I]t was established that the appellant and his armed companions boarded the victims' pump boat and seized 13 sacks of copra, the boat's engine, propeller tube, and tools, as well as the contents of Julita's bag. Hence, from the provision above, the proper imposable penalty should be death. However, due to Republic Act No. 9346, which prohibits the imposition of the death penalty, the Court thus finds that the penalty imposed by the RTC, which was *reclusion perpetua* without eligibility for parole, was correct since the seizure of the vessel and its cargo was accomplished by boarding the vessel.

3. **ID.; ID.; ID.; CIVIL LIABILITY.—** Anent the award of damages, the Court sustains the modification made by the CA in deleting the amount of ₱49,679.00 as actual damages and instead, awarding Julita temperate damages since she failed to substantiate her losses with the necessary receipts. x x x The award of temperate damages is proper since under Article 2224 of the Civil Code, temperate damages may be recovered when the court finds that some pecuniary loss had been suffered but its amount cannot, from the nature of the case, be proved with certainty. Likewise, the Court finds the deletion of nominal damages proper. The CA is correct in holding that temperate and nominal damages are incompatible and thus, cannot be granted concurrently. Under Article 2221 of the Civil Code, nominal damages are given in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. Lastly, the deletion of the awards of moral and exemplary damages are also proper for lack of factual and legal basis.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION OF THE ACCUSED MADE BY A WITNESS PREVAILS OVER ALIBI.—** The Court finds no reason to doubt the testimony of Julita identifying appellant as one of the assailants who boarded their vessel and seized its cargo, equipment, and the passengers' personal belongings. Julita testified that she was able to identify appellant because of the moonlight that illuminated the area. Further,

she testified that she then had a flashlight that allowed her to see who boarded the vessel. More importantly, Julita had known the appellant for 16 years since they reside in the same *barangay*. Appellant's bare denial and alibi cannot prevail over the positive identification made by Julita."Time and again, this Court has consistently ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable."Since both the RTC and CA found Julita's testimony to be credible and straightforward, the Court thus finds no reason to disturb the same.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Maximo De La Peña (appellant) filed this appeal assailing the December 16, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 00834 which affirmed with modification the October 22, 2007 Decision[2] of the Regional Trial Court (RTC) of Calbiga, Samar, Branch 33, in Criminal Case No. CC-2006-1608 finding him guilty beyond reasonable doubt of the crime of piracy.

Appellant was charged with the crime of piracy defined under Presidential Decree (PD) No. 532 allegedly committed as follows:

That on or about the 24th day of September 2005, at about 1:00 o'clock in the morning, more or less, along the river bank of Barangay San Roque, Municipality of Villareal, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another,

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[1] CA *rollo,* pp. 121-132; penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino.

[2] Records, pp. 118-133; penned by Executive Judge Carmelita T. Cuares.

with deliberate intent to gain, by means of force and intimidation, did then and there willfully, unlawfully and feloniously take and carry away the following items, to wit:

* 13 sacks of dried coconuts (copra) valued at ₱7,537.00[;]
* 2 pieces automatic watch (Seiko and citizen) valued at ₱ 6,796.00[;]
* 1 piece ([S]audi gold) valued at ₱4,731.00[;]
* 1 [N]okia cellphone 3350 valued at ₱3,615.00[;]
* 1 unit Briggs and [Stratton] 16 horse power with propeller valued at ₱26,000.00[;]
* cash money worth [₱]1,000.00,

all in the amount of Forty Nine Thousand Six Hundred Seventy-Nine Pesos (₱49,679.00) to the damage and prejudice of the said owner.

CONTRARY TO LAW.[3]

Appellant pleaded not guilty to the crime charged. His co-accused, Romy Real (Romy), Danny Real (Danny), and Onyong Reyes (Onyong), have not been arrested and remain fugitives from justice.

Version of the Prosecution

On September 24, 2005, at around 1:00 a.m., Julita Nacoboan (Julita), her husband, Jose Nacoboan (Jose), and their son, Marwin Nacoboan (Marwin) were about to board their pump boat loaded with 13 sacks of copra. These sacks of copra were supposed to be loaded and transferred to a bigger passenger boat that would ferry the copra to Catbalogan, Samar. Their *barangay* is situated along a river which opens to the sea. When the tide is low, the bigger passenger boat cannot dock along the shore so a smaller pump boat has to be used to ferry the cargo to a bigger passenger boat.

As the Nacoboan's pump boat was about to depart, a smaller boat suddenly blocked its path. For fear of collision, Jose stopped the engine of their pump boat. Three armed men then immediately boarded the pump boat. One of the armed men pointed a firearm

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

at Jose and ordered him to proceed to the aft or the rear side of the boat. Julita identified him as the appellant. Jose's hands were tied and his head covered.

Another armed person grabbed Julita's bag and took the following items: 1) ₱1,000.00 Cash; 2) Earrings; 3) Cellular phone; and 4) Necklace.

Another person operated the pump boat and docked it on a small island after nearly two hours of travel. During the trip, Marwin's shirt was taken off and used to blindfold Julita. When they arrived at the small island, the appellant unloaded the 13 sacks of copra.

The appellant and his armed companions then brought the pump boat to another island where its engine, propeller tube, and tools were taken and loaded on appellant's boat. Consequently, the Nacoboan's boat was left without an engine and they had to paddle to safety. They discovered that they were already in Equiran, Daram, Samar.

The following day, Julita went to the police authorities in Villareal, Samar to report the incident. She reported that the value of the copra was then ₱15.00 per kilo and that the engine and other equipment lost were valued at ₱30,000.00. She identified the appellant as one of the armed men who took control of their boat and took away its engine, propeller tube, and tools since she had known him for 16 years already and she recognized him when he boarded their boat.

Version of the Defense

Appellant denied the accusation against him and testified that he was a resident of Brgy. San Roque, Villareal, Samar for 15 years. He had been engaged in fishing for 10 years as a source of livelihood. He claimed that from September 5, 2005 up to December 5, 2005 he was fishing in Daram, Samar with Edgar Pojas, Jose Dacletan (Dacletan), Tope Dacletan, Nestor Bombay, and Esok Pojas. During the said period, he stayed at the house of *Barangay Kagawad* Edgar Pojas and used the boat of Dacletan to fish.

After their fishing activity, appellant went home to Brgy. San Roque, Villareal, Samar. On December 6, 2005, four soldiers arrested and beat him up. He was brought to the Municipal Hall thereafter and was imprisoned. He declared that he knew the complainants who were also residents of Brgy. San Roque, Villareal, Samar but did not know his co-accused Romy, Onyong, and Danny.

Ruling of the Regional Trial Court

On October 22, 2007, the RTC of Calbiga, Samar, Branch 33 rendered judgment finding appellant guilty of piracy under PD 532. The RTC was convinced that the testimonies of Julita and Marwin positively identifying the appellant as the one who boarded their boat and took away their cargo through violence or intimidation were credible. The RTC ruled that appellant's denial and alibi could not prevail over the positive identification made by the victims.

The dispositive portion of the RTC's Decision reads:

> WHEREFORE, AND IN VIEW OF ALL THE FOREGOING, the accused MAXIMO DE LA PEÑA is sentenced to the penalty of imprisonment of *RECLUSION PERPETUA*, without [eligibility for] parole, and to pay the victims the following:
>
> 1. ₱49,679.00, total amount lost;
> 2. ₱30,000.00 in exemplary damages;
> 3. ₱15,000.00 in moral damages;
> 4. ₱25,000.00 in nominal damages;
> 5. and to pay the costs.
>
> Let the continued detention of the accused be transferred to the Leyte Regional Prison, as soon as possible.
>
> Issue an alias order for the arrest of Onyong Reyes, Romy Real and Danny Real, accordingly.
>
> Furnish copies of this decision to [the] PNP station, PNP Regional Office and its Directorate for operations.[4]

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[4] *Id*. at 132-133.

Aggrieved by the RTC's Decision, appellant filed an appeal to the CA.

Ruling of the Court of Appeals

On December 16, 2014, the CA affirmed appellant's conviction for the crime of piracy under PD 532 and held as follows:

> WHEREFORE, the appeal is hereby DENIED. The Decision dated October 22, 2007, convicting accused-appellant for the crime of piracy penalized under PD No. 532 and sentencing him accordingly to suffer the penalty of *reclusion perpetua* without [eligibility for] parole is AFFIRMED WITH MODIFICATION as follows:
>
> a. [₱]30,000.00 as temperate damages in lieu of actual damages;
> b. the award of moral damages, nominal damages, and exemplary damages are deleted; and
> c. interest on all damages awarded at the rate of 6% per annum from the date of finality of this judgment until such amounts shall have been fully paid.
>
> Costs against accused-appellant.
>
> SO ORDERED.[5]

Dissatisfied with the CA's Decision, and after denial of his Motion for Reconsideration, appellant filed a Notice of Appeal.[6]

Issue

The issue in this case is whether appellant is guilty of piracy. According to appellant, the prosecution failed to prove the elements of piracy under PD 532. Appellant insists that the RTC erroneously convicted him since the prosecution failed to prove his guilt beyond reasonable doubt.

Our Ruling

The appeal lacks merit.

Section 2(d) of PD 532 defines piracy as follows:

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[5] CA *rollo,* pp. 131-132.

[6] *Id.* at 133.

Any attack upon or seizure of any vessel, or the taking away of the whole or part thereof or its cargo, equipment, or the personal belongings of its complement or passengers, irrespective of the value thereof, by means of violence against or intimidation of persons or force upon things, committed by any person, including a passenger or member of the complement of said vessel, in Philippine waters, shall be considered as piracy. x x x

In his Appellant's Brief, appellant contends that the prosecution failed to prove the elements of piracy under PD 532. He posits that the Information failed to allege the elements of the crime of piracy. Appellant maintains that the Information did not state that the vessel in question was in Philippine waters and that its cargo, equipment, or personal belongings of the passengers or complement were seized.

The Court disagrees.

The Information[7] charged appellant of the crime of piracy to wit:

That on or about the 24th day of September 2005, at about 1:00 o'clock in the morning, more or less, along the river bank of Barangay San Roque, Municipality of Villareal, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with deliberate intent to gain, by means of force and intimidation, did then and there willfully, unlawfully and feloniously take and carry away the following items, to wit:

- 13 sacks of dried coconuts (copra) valued at ₱7,537.00[;]
- 2 pieces automatic watch (Seiko and citizen) valued at ₱ 6,796.00[;]
- 1 piece ([S]audi gold) valued at ₱4,731.00[;]
- 1 [N]okia cellphone 3350 valued at ₱3,615.00[;]
- 1 unit Briggs and [Stratton] 16 horse power with propeller valued at ₱26,000.00[;]
- cash money worth [₱]1,000.00,

all in the amount of Forty Nine Thousand Six Hundred Seventy-Nine Pesos (₱49,679.00) to the damage and prejudice of the said owner.

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[7] Records, pp. 1-2.

CONTRARY TO LAW.

The Information categorically alleged that the incident happened along the river bank of Brgy. San Roque, Municipality of Villareal, Province of Samar. Under Section 2(a) of PD 532, "Philippine waters" is defined as follows:

> [**A**]**ll bodies of water**, such as but not limited to, seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction. (Emphasis supplied)

From this definition, it is clear that a river is considered part of Philippine waters.

The Information also clearly alleged that the vessel's cargo, equipment, and personal belongings of the passengers were taken by the appellant and his armed companions. It stated, in no uncertain terms, that 13 sacks of copra were taken by the appellant through force and intimidation. Undoubtedly, these sacks of copra were part of the vessel's cargo. The Information also stated that the vessel's equipment which consisted of the engine, propeller tube, and tools were taken and carried away by the appellant. Furthermore, the Information also stated that the personal belongings of the passengers consisting of two watches, jewelry, cellphone, and cash money were taken by the appellant and his armed companions. The appellant was able to seize these items when he, along with armed companions, boarded the victims' pump boat and seized control of the same. Armed with firearms, appellant and his companions tied Jose's hands, covered his head, and operated their pump boat. They travelled to an island in Samar where they unloaded the sacks of copra. Thereafter, appellant and his armed companions travelled to another island where the engine, propeller tube, and tools of the pump boat were taken out and loaded on appellant's boat.

From the foregoing, the Court finds that the prosecution was able to establish that the victims' pump boat was in Philippine

waters when appellant and his armed companions boarded the same and seized its cargo, equipment, and the personal belongings of the passengers.

The Court finds no merit in appellant's contention that he was not positively identified by the prosecution's witnesses. From the testimony of Julita, she positively identified the appellant as follows:

> Q: Among the three (3) accused, can you recall who particularly pointed and levelled at your husband with his knife?
> A: It was Maximo De la Peña, ma'am
>
> x x x x x x x x x
>
> Q: Who [among the three (3) accused unloaded the 13 sacks of copra]?
> A: The [ones] who unloaded our [copra] were Maximo De la Peña and the person who was guarding me with a short [fire]arm [whom] I do not know x x x. [T]he other one who was carrying a long [fire]arm [was] in charge of the engine.[8]

The Court finds no reason to doubt the testimony of Julita identifying appellant as one of the assailants who boarded their vessel and seized its cargo, equipment, and the passengers' personal belongings. Julita testified that she was able to identify appellant because of the moonlight that illuminated the area. Further, she testified that she then had a flashlight that allowed her to see who boarded the vessel. More importantly, Julita had known the appellant for 16 years since they reside in the same *barangay*.[9] Appellant's bare denial and alibi cannot prevail over the positive identification made by Julita. "Time and again, this Court has consistently ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable."[10] Since both the RTC and CA found

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[8] TSN, January 19, 2007, pp. 8-12.

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

[10] *People v. Ramos*, 715 Phil. 193, 207 (2013).

Julita's testimony to be credible and straightforward, the Court thus finds no reason to disturb the same.

Lastly, appellant argues that the proper penalty should be *reclusion temporal* in its medium and maximum periods and not *reclusion perpetua* as imposed by the RTC.

Appellant's contention is incorrect. Section 3 of PD 532, provides:

> **Section 3.** *Penalties.* Any person who commits piracy or highway robbery/brigandage as herein defined, shall, upon conviction by competent court be punished by:
>
> a. *Piracy*. The penalty of *reclusion temporal* in its medium and maximum periods shall be imposed. If physical injuries or other crimes are committed as a result or on the occasion thereof, the penalty of *reclusion perpetua* shall be imposed. If rape, murder or homicide is committed as a result or on the occasion of piracy, or when the offenders abandoned the victims without means of saving themselves, **or when the seizure is accomplished by** firing upon or **boarding a vessel**, the mandatory penalty of death shall be imposed. (Emphasis supplied)

In this case, it was established that the appellant and his armed companions boarded the victims' pump boat and seized 13 sacks of copra, the boat's engine, propeller tube, and tools, as well as the contents of Julita's bag. Hence, from the provision above, the proper imposable penalty should be death. However, due to Republic Act No. 9346, which prohibits the imposition of the death penalty, the Court thus finds that the penalty imposed by the RTC, which was *reclusion perpetua* without eligibility for parole, was correct since the seizure of the vessel and its cargo was accomplished by boarding the vessel.

Anent the award of damages, the Court sustains the modification made by the CA in deleting the amount of ₱49,679.00 as actual damages and instead, awarding Julita temperate damages since she failed to substantiate her losses with the necessary receipts. As we explained in *Tan v. OMC Carriers, Inc.*:[11]

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[11] 654 Phil. 443, 454 (2011). Citation omitted.

Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.

The award of temperate damages is proper since under Article 2224 of the Civil Code, temperate damages may be recovered when the court finds that some pecuniary loss had been suffered but its amount cannot, from the nature of the case, be proved with certainty. Likewise, the Court finds the deletion of nominal damages proper. The CA is correct in holding that temperate and nominal damages are incompatible and thus, cannot be granted concurrently. Under Article 2221 of the Civil Code, nominal damages are given in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. Lastly, the deletion of the awards of moral and exemplary damages are also proper for lack of factual and legal basis.

All told, based on the evidence on record, the Court finds no reason to disturb the findings of both the RTC and the CA that appellant was guilty of piracy under PD 532.

WHEREFORE, the appeal is **DISMISSED**. The December 16, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 00834 finding appellant Maximo De La Peña **GUILTY** beyond reasonable doubt of the crime of piracy defined and penalized under Presidential Decree No. 532 and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole is **AFFIRMED**.

SO ORDERED.

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

Martires,[*] *J.,* on official leave.

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[*] Designated as additonal member per October 18, 2017 raffle vice J. Jardeleza who recused dur to prior action as Solicitor General.

THIRD DIVISION

[G.R. No. 220103. January 31, 2018]

SAN MIGUEL FOODS, INC., *petitioner, vs.* **HANNIVAL V. RIVERA, JOVICELL B. FUJA, ENCENARIO B. CORONADO, JR., LEYLANIE O. GULANE, JOSE PEDRO, REY RELLOROSA, CHERRY MAY BRAGA, ROGELIO ALSONADO, JOHN DE VERA, ALBERTO DAGANIO, RHENE PURA, EFREN ESCOBIDO, ALEXANDER D. BUENAOBRA, SUSIE VERIDIANO, ROBERT E. GERMAN, JR., HERMAN B. ESPANUEVA, JR., MARIONITO D. JUMAO-AS, ANTHONY ANTONIO, JESSIE GLENN DELA CRUZ, SOFRONIO SIMPORIOS, JR., RICHARD FLAUTA, ENRIQUE BUNA, JOJIT ORILLOSA, JONATHAN PENA, JENNIFER B. CASTILLO, EDGARDO BARBACENA, JOSE WARLITO INTING, MICHAEL FLORES, LEONCIO M. ISON, ALEXANDER C. ARELLANO, CARMELITO F. FUNTANBA, ALMARO M. ROSEL, NORBERTO PONCE B. PULIDO, JR., ARIAMHER OGANA, DOMINADOR B. SALAZAR, ANGELITO C. TABUCOL, RENATO C. ILLUSTRISIMO, ROGELIO M. DE LEON, FELIPE P. GUILLANO, and SHIRLY M. TOLENTINO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; GENERALLY, THE COURT DOES NOT REVIEW FACTUAL QUESTIONS; EXCEPTIONS; WHERE THERE IS CONFLICT BETWEEN THE FACTUAL FINDINGS OF THE ADMINISTRATIVE BODY AND THE COURT OF APPEALS.—** Generally, this Court does not review factual questions (such as whether an employer-employee relationship exists between the parties), primarily because it is not a trier of facts. This notwithstanding, where, like in this case, there is a conflict between the factual findings of the LA and the

NLRC, on one hand, and those of the CA, on the other, it becomes imperative for the Court, in the exercise of its equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.

2. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; PERMITTED LEGITIMATE JOB CONTRACT DISTINGUISHED FROM PROHIBITED LABOR-ONLY CONTRACTING.—** Article 106 of the Labor Code clearly identified and distinguished the relations that may arise in a situation where there is an employer, a contractor, and employees of the contractor. x x x [T]he two possible relations that may arise among the parties are: (1) the permitted legitimate job contract; or (2) the prohibited labor-only contracting. Obviously, the permitted or permissible or legitimate job contracting or subcontracting is the one allowed and permitted by law. It is an arrangement whereby a principal agrees to put out or farm out with the 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. To determine its existence, these conditions must concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his 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 his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits. Thus, in legitimate job contracting, the employer-employee relationship between the job contractor and his employees is maintained. While the law creates an employer-employee relationship between the employer and the contractor's employees, the same is only for the purpose of ensuring the payment of the employees' wages. In short, the employer becomes jointly and severally liable with the job contractor but only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that,

the employer is not responsible for any claim made by the contractor's employees. In stark contrast, labor-only contracting is a prohibited act and it is not condoned by law. It is an arrangement where the contractor not having substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer.

3. **ID.; ID.; ID.; CONSEQUENCES OF LABOR-ONLY CONTRACTING.—** The guidelines to determine [the] existence [of labor-only contracting] are set forth in Section 5 of Department Order No. 18-02 (DO18-02), the Rules Implementing Articles 106 to 109 of the Labor Code, as amended. x x x Section 7 of the same implementing rules then provides for the consequences of a labor-only contracting. x x x [T]herefrom, a finding of the existence of a labor-only contracting would definitely give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code. To distinguish prohibited labor-only contracting from permissible job contracting, the totality of the facts and the surrounding circumstances of the case shall be considered. Customarily, the 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. But then, where the principal is the one claiming that the contractor is a legitimate contractor, like in this case, the burden to prove the same rests on the principal. Inescapably, the petitioner bears the burden of proving that ICSI is truly an independent contractor, which it successfully did.

APPEARANCES OF COUNSEL

Ma. Celeste Legaspi-Ramos for petitioner.
Dolendo & Associates for respondents.

DECISION

VELASCO, JR., *J.*:

For review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated October 28, 2014 and the Resolution[2] dated August 18, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 118337, which reversed and set aside the Decision[3] dated September 28, 2010 and the Resolution[4] dated December 14, 2010 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-000709-10 and, accordingly, ordered the herein petitioner San Miguel Foods, Inc. (SMFI) to reinstate the herein respondents with full status and rights of regular employees and to grant them all benefits as provided by law or by any existing collective bargaining agreement (CBA). The questioned CA Resolution, on the other hand, denied for lack of merit the motion for reconsideration thereof.

The factual antecedents, as culled from the records, are as follows:

The petitioner, a corporation organized and existing under Philippine laws, is engaged in the feeds, and poultry and meats businesses. Its poultry business involves growing, breeding, dressing, sale and marketing of poultry products. To maximize efficiency and cost effectiveness, the petitioner opted to outsource the invoicing services, which it deems merely ancillary to its business as it simply involved: (1) witnessing and checking the unloading of chicken products in designated outlets; (2) preparation of invoice, delivery receipt and other documents required to complete the delivery in designated outlets; (3)

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[1] Penned by Associate Justice Sesinando E. Villon with Associate Justices Florito S. Macalino and Pedro B. Corales, concurring, *rollo*, pp. 32-42.

[2] *Id.* at 44-45.

[3] Penned by Presiding Commissioner Benedicto R. Palacol with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro, concurring, *id.* at 277-290.

[4] *Id.* at 305-309.

securing from designated outlets such receiving documents and/or information necessary for the liquidation and subsequent collection of the delivery; and (4) submission of reports to the petitioner on actual volumes delivered to designated outlets.[5]

Thus, sometime in 2005, the petitioner forged a six-month invoicing services contract,[6] that is from January 17, 2005 to July 16, 2005, with IMSHR Corporate Support, Inc. (ICSI), an independent contractor duly registered with the Department of Labor and Employment (DOLE) and engaged in the business of providing and supplying various services, like invoicing, to different companies.[7] The parties agreed that after the contract term expired and they still want to continue their relations but without having to execute a written renewal, they shall continue to be governed by the same contract in its entirety, except for the term, which should subsist on a month-to-month basis.[8]

In compliance therewith, ICSI assigned its employees, including the respondents, to the petitioner to perform the invoicing services. Sometime in 2009, however, the petitioner decided to discontinue its invoicing operations at its JMT/GMA office (head office), where the respondents were assigned, and set up a new one at its San Fernando, Pampanga, and Nueva Ecija Plants. This is to standardize its North and South Luzon operations, among others. The petitioner accordingly informed ICSI of this decision and the latter, in turn, informed its employees, including the respondents, of the said development and that all the affected employees shall be considered for assignment in San Fernando, Pampanga. Those interested to be transferred were instructed to submit a Request for Transfer on or before July 13, 2009. Of all the respondents, only one complied with the said directive while the others submitted

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[5] *Id*. at 11-12.

[6] *Id*. at 202-212.

[7] *Id.* at 280.

[8] *Id.* at 204, 212.

their resignation letters, some others continued working and some no longer reported to work.[9]

With the discontinuance of the invoicing operations at the petitioner's head office, the respondents filed their consolidated **Complaints for Constructive Dismissal, Regularization, Underpayment of Salaries and Service Incentive Leave Pay, Non-Payment of 13th Month Pay, Vacation/Sick Leave, Maternity/Paternity Leave, Refund of Cash Bond, Tax Refund, Illegal Deduction – Variance Bond, Moral and Exemplary Damages, and Attorney's Fees** (Complaints), against the former before the Labor Arbiter (LA).[10]

The respondents alleged that the petitioner employed them as Invoicers on different dates, the earliest of which is in January 2005 and the latest is in May 2009, and they were then assigned to its numerous clients, i.e., supermarkets, food chains, hotels and other business establishments. They claimed that the tasks they are performing as such, that is, checking and counting quantity of chickens upon unloading to various outlets, weighing chickens in the presence of customers' representatives, issuing delivery receipt or invoice, and preparing liquidation reports and submitting the same to the petitioner, are necessary and desirable in the latter's usual trade or business. They also averred that it was the petitioner that assigned their individual daily work assignments and the one that monitored their attendance, through an attendance form countersigned by the outlet/client's representative to confirm that they reported for work on that day. Then, at the end of the day, they were obliged to submit the liquidation report and to log out from work at the petitioner's office, where its finance officer, Ric Buena, supervised them. They similarly avowed that they represented the petitioner in their transactions with customers as they wore uniforms and

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[9] Letters dated May 22, 2009 and July 3, 2009, *id*. at 96, 97-98; Petition for Review on *Certiorari* dated October 21, 2015, *id*. at 12-13; CA Decision dated October 28, 2014, *id*. at 34-35; NLRC Decision dated September 28, 2010, *id*. at 283; LA Decision dated February 17, 2010, *id*. at 327-328.

[10] *Id*. at 282.

utilized delivery receipts and other commercial documents, all bearing its name and label. Even the signatories in the receipts showed that they are under the direct supervision of the petitioner. Further, the latter exercises control over the means and methods of accomplishing their tasks and their result as evidenced by the various policies it directly issued to them, like the instructions on how to distribute the Chicken Station Receiving Report (CSRR); the utilization of delivery receipts, invoices and shrinkage forms; development of activity-based system to be strictly followed by them; and listing of its Key Account Managers (KAM) to whom they directly report based on their place of assignment.[11]

They further contended that on May 22, 2009, the petitioner issued a memorandum to ICSI declaring that it will not anymore renew the contract as to the invoicing operations at its head office, where they were all employed; in its stead, new operations will be set up at its San Fernando Plant in San Fernando, Pampanga, which will be subjected to Region 3 labor rates and terms; and those who would not accept these conditions should be properly separated under authorized causes. These prompted them to file a case against the petitioner initially for regularization due to the apparent threat to their employment and the discovery and enlightenment of its real identity as their true and lawful employer. On July 3, 2009, ICSI issued a similarly worded memorandum. On July 16, 2009, however, some of them did not anymore receive their respective schedules and assignments from the petitioner; thus, they amended their Complaints to include constructive dismissal and other monetary claims.[12]

For its part, the petitioner vehemently maintained that it is not the respondents' employer but ICSI as the latter was the one that hired and selected them and they were simply deployed to the former. Also, ICSI was the one that paid the respondents' salaries and made the necessary deductions thereto of their Social Security System (SSS), PAG-IBIG, and Philippine Health

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[11] *Id*. at 316-318.

[12] *Id*. at 318-319.

Insurance Corporation (Philhealth) contributions. The petitioner equally insisted that the power to control the means and manner of performance of the respondents' work rests upon ICSI. With these, the petitioner cannot be made answerable to the respondents' complaints. Moreover, even ICSI itself supported petitioner's positions. ICSI affirmed that it is the respondents' employer having the power to hire, discipline, and terminate their services; it is the one responsible for the payment of their salaries; and it controlled the manner and method of their work. In fact, its Officer-in-Charge (OIC), Invoicing Account was the one who assigned the respondents' daily time records. The respondents received their work assignment or daily schedule from ICSI's Base Controller, Invoicing Account. Even though the respondents are field employees, they are still under the supervision of ICSI's Base Controller and OIC-Invoicing Account. The respondents only reported to the petitioner's KAM in exceptional cases, such as where there are diverted deliveries, meaning, when the outlets where the products are supposed to be delivered have rejected them. This is done merely to inform the petitioner's KAM that the products were rejected and to know where they can deliver the same. The petitioner, therefore, does not have control over the work premises of the respondents and the latter do not use the tools, materials and equipment of the former.[13]

After taking into consideration the parties' respective arguments, the LA rendered a Decision dated February 17, 2010 dismissing the Complaints for lack of merit.

The LA held that ICSI is a legitimate service contractor having substantial capital and investment to carry out its business independently. The right to control the performance of the work of its employees likewise rests upon it. Even the four-fold test to determine the existence of an employer-employee relationship revealed that the same exists between ICSI and the respondents, and not between the petitioner and the respondents. Notably, it was established on record that the

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[13] *Id*. at 325-327, 282, 284-285.

respondents applied with and were hired by ICSI; the latter was also the one that paid their salaries and other labor standard benefits and made the necessary deductions thereto of their SSS, Philhealth, PAG-IBIG and Bureau of Internal Revenue (BIR) contributions; ICSI likewise has the authority to subject the respondents to disciplinary action when they have committed violations of the Basic Policy for Invoicers; and ICSI likewise has the control over the manner of performance of the respondents' functions, being under the direct supervision of its Base Controller, who gives them their work schedule, and its OIC, who monitors their attendance. Though the petitioner's representative at the outlet signs in the respondents' daily time monitoring sheets, the same is only for purposes of validating their presence thereat for that specific time and date. And while it is true that the respondents used the petitioner's invoice and other documents bearing its name, this is not an indication that they used its tools and equipment. Rather, it is just but natural that the invoices or receipts should bear the petitioner's name as they are the owner of the products being delivered and checked by the respondents. Even the fact that the respondents reported to the petitioner at the end of the day does not constitute the latter's control over them. The same is an indication that the petitioner is only after the result of their work, which is the invoice itself being handed to it after completion. Similarly, even if the petitioner had issued action plans or plans of activities on how the respondents should accomplish their work, the same should be considered as mere guidelines to attain the desired result and not to control the manner and means of performing their work. With all of these, the respondents cannot hold the petitioner liable for all the charges in its Complaints. The respondents cannot also be said to have been constructively dismissed as they were hired only for the duration of the petitioner's invoicing project. Their employment is co-terminus with ICSI's contract of invoicing with the petitioner, which is a clear manifestation that they were hired only for a fixed period or for the project's duration; thus, their claim for regularization has no leg to stand on.[14]

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[14] *Id*. at 333-337.

On appeal, the NLRC, in a Decision dated September 28, 2010, dismissed the appeal for lack of merit and affirmed the LA Decision. It also denied for lack of merit the respondents' subsequent Motion for Reconsideration.[15]

On further appeal, the CA, in its now assailed Decision dated October 28, 2014, reversed and set aside the NLRC Decision and Resolution.

The CA held that an employer-employee relationship exists between the petitioner and the respondents; and that ICSI was only its agent or intermediary. Applying the control test, it was the petitioner that exercises direct supervision and control over the respondents. The petitioner was the one that issued to respondents various orders on how to perform their respective tasks from menial instructions on how to distribute the CSSR and how to use delivery receipts, invoice and shrinkage forms, to the more complex ones of chart preparation on its activity-based system. The respondents were also instructed to report to the petitioner's various account managers. Even the power of dismissal appeared to have been exercised by the petitioner. This can be gleaned from its letter to ICSI dated May 22, 2009 ordering the dismissal under authorized causes of those unwilling to abide with the conditions set forth regarding the transfer of its invoicing operations at its San Fernando, Pampanga Plant. Apparently, the petitioner could give instructions to ICSI on how to deal with the employees and it could also direct the termination of their employment. Further, the petitioner could relocate the respondents' workplace relative to the performance of their duties as ICSI's "employees" as it is incapable of providing a suitable one for all of them. Equally, the CA held that the respondents' functions as Invoicers are necessary and desirable in the petitioner's usual trade or business, being engaged in the manufacturing and sale of food products. This too is a clear indication that the respondents are petitioner's employees. As such, both the petitioner and ICSI are solidarily liable for the respondents' rightful claims. And since their respective

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[15] *Id*. at 289, 308.

employments with the petitioner commenced between 2005 and 2009, thus, they have attained the status of regular employees. They cannot, therefore, be dismissed except for valid and lawful reasons. Being unjustly dismissed, the respondents are entitled to (1) reinstatement without loss of seniority rights and other privileges; and (2) payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement.[16]

The petitioner sought reconsideration thereof but was denied in the questioned Resolution dated August 18, 2015.

Hence, this petition raising these arguments: (1) the CA erred in reversing the dismissal of the Complaints and the findings of the NLRC that the respondents are not the petitioner's employees; and (2) the CA erred in directing the petitioner to reinstate the respondents with full status and rights of regular employees and to grant them all benefits as may be provided for by law or any existing CBA.[17]

The petition is impressed with merit.

At the outset, the primordial issue that must first be addressed here is whether ICSI is a legitimate job contractor. On the resolution of this issue depends the determination of the ultimate issue of whether an employer-employee relationship exists between the petitioner and the respondents so as to hold the former liable for the dismissal and all the other claims of the latter.

Generally, this Court does not review factual questions (such as whether an employer-employee relationship exists between the parties), primarily because it is not a trier of facts. This notwithstanding, where, like in this case, there is a conflict between the factual findings of the LA and the NLRC, on one hand, and those of the CA, on the other, it becomes imperative

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[16] *Id.* at 37-40.

[17] *Id*. at 14.

for the Court, in the exercise of its equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.[18]

Article 106 of the Labor Code clearly identified and distinguished the relations that may arise in a situation where there is an employer, a contractor, and employees of the contractor.[19] It provides, thus:

ART. 106. **Contractor or subcontractor**. — 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.

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 may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this 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 <u>or</u> investment in the form of tools, equipment, machineries, work premises, among others**, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person

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[18] *Reyes v. Glaucoma Research Foundation, Inc., et al.*, G.R. No. 189255, June 17, 2015.

[19] *Coca-Cola Bottlers Phils., Inc. v. Agito, et al.*, G.R. No. 179546, February 13, 2009.

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.

From the aforequoted provision, the two possible relations that may arise among the parties are: (1) the permitted legitimate job contract; or (2) the prohibited labor-only contracting.[20]

Obviously, the permitted or permissible or legitimate job contracting or subcontracting is the one allowed and permitted by law. It is an arrangement whereby a principal agrees to put out or farm out with the 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. To determine its existence, these conditions must concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his 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 his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[21] Thus, in legitimate job contracting, the employer-employee relationship between the job contractor and his employees is maintained. While the law creates an employer-employee relationship between the employer and the contractor's employees, the same is only for the purpose of ensuring the payment of the employees' wages. In short, the employer becomes jointly and severally liable with the job contractor but only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that,

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[20] *Coca-Cola Bottlers Phils., Inc.*, *id*.

[21] *Petron Corporation v. Caberte, et al.*, G.R. No. 182255, June 15, 2015.

the employer is not responsible for any claim made by the contractor's employees.[22]

In stark contrast, labor-only contracting is a prohibited act and it is not condoned by law. It is an arrangement where the contractor not having substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer.[23] The guidelines to determine its existence[24] are set forth in Section 5 of Department Order No. 18-02 (DO 18-02),[25] the Rules Implementing Articles 106 to 109 of the Labor Code, as amended, to wit:

> ***Section 5. Prohibition against labor-only contracting***. — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
>
> (i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.
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> The foregoing provisions shall be without prejudice to the application of Article 248 (C) of the Labor Code, as amended.
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> "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly

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[22] *Coca-Cola Bottlers Phils., Inc.*, *supra* note 19.

[23] *Petron Corporation v. Caberte, et al.*, *supra* note 21.

[24] *Coca-Cola Bottlers Phils., Inc.*, *supra* note 19.

[25] The applicable issuance at the time of the filing of the Complaints. The current one is DO No. 174-17.

used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Emphases and italics in the original.)

Section 7 of the same implementing rules then provides for the consequences of a labor-only contracting, thus:[26]

Section 7. Existence of an employer-employee relationship. — The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases as declared by a competent authority:

(a) where there is labor-only contracting; or

(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof. (Emphases and italics in the original.)

Clearly therefrom, a finding of the existence of a labor-only contracting would definitely give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code.[27]

To distinguish prohibited labor-only contracting from permissible job contracting, the totality of the facts and the surrounding circumstances of the case shall be considered.

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[26] *Coca-Cola Bottlers Phils., Inc.*, *supra* note 19.

[27] *Id*.

Customarily, the 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. But then, where the principal is the one claiming that the contractor is a legitimate contractor, like in this case, the burden to prove the same rests on the principal.[28] Inescapably, the petitioner bears the burden of proving that ICSI is truly an independent contractor, which it successfully did.

Here, this Court is more inclined to sustain the findings of both the LA and the NLRC regarding the matter. As succinctly found by these administrative agencies, not only the petitioner but even ICSI had satisfactorily proven that the latter is truly a legitimate contractor and not just a fly-by-night one, and thus, the employer-employee relationship between ICSI and the respondents is maintained. *First*, ICSI has been incorporated and duly registered with the Securities and Exchange Commission (SEC), as well as with the BIR, SSS, Philhealth, PAG-IBIG, and the DOLE with DOLE Certificate of Registration No. NCR-8-0507-236. These may not be conclusive evidence of the status of the petitioner as a contractor but the fact of its registration prevented the legal presumption of it being a mere labor-only contractor from arising.[29] *Second*, ICSI has substantial capital. Per its Articles of Incorporation, ICSI has an authorized capital stock of ₱4 Million while per an Independent Auditor's Report for the year ended on December 31, 2008, it has a gross income of ₱14,192,040 and a total assets amounting to ₱30,820,419.34.[30] Though it is unclear whether they have investment in the form of tools, equipments, machineries, etc., the same would not change the fact that they have substantial capital to be considered as a legitimate contractor. As this Court held in *Neri, et al. v. NLRC, et al.*,[31] the law does not require both substantial capital

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[28] *Alilin, et al. v. Petron Corporation*, G.R. No. 177592, June 9, 2014.

[29] *Valencia v. Classic Vinyl Products Corporation, et al.*, G.R. No. 206390, January 30, 2017.

[30] *Rollo*, pp. 333, 288.

[31] G.R. Nos. 97008-09, July 23, 1993.

and investment in the form of tools, equipment, machineries, etc. and this is clear from the use of the conjunction **"or."** If it is otherwise, then the conjunction **"and"** should have been used.[32] *Third*, ICSI also has other A-list clients apart from the petitioner during the time that its contract with the former was subsisting,[33] which is an indication that it carries on a distinct and independent business. *Fourth*, ICSI also has the control on the performance of the work of its employees. It was the officer or officers of ICSI who has the direct supervision over the respondents. In particular, it was the ICSI's Base Controller, who gives the respondents their work schedule, while its OIC was the one who monitors their attendance. In relation to this, quite telling is the following observations of the LA and the NLRC, thus:

> Lastly, the power of control over the means and manner of performance of the work, weighing the evidence presented by both parties, We find [herein petitioner's] evidence more credible. [Petitioner] outlines its arrangement with [ICSI], viz:
>
> > The Supply Chain Department upon finalization of the delivery schedule shall request through e-mail or fax invoicers from [ICSI's] OIC Invoicing Account, Ms. Jocelyn Lenchico, as may be required Ms. Lenchico would then contact [ICSI's] pool of invoicers and assign such number of invoicers as required and they shall be advised of the delivery route and meeting place with the trucker. Ms. Lenchico would likewise forward to the Route Planner of the company the names of the invoicers assigned for the day which shall be forwarded to the plant and the truckers. Contrary to [herein respondents'] claim that their daily schedule are given by employees of the [petitioner], it has been proven that the schedules are given by the OIC Invoicing Account, who is an employee of [ICSI].
> >
> > The assigned invoicers would then meet the trucker either at the plant of at the first delivery drop-off point. The invoicers are then expected to:
> >
> > 1. witness and check versus the Delivery manifest the unloading of products in the designated outlets;

[32] *Neri*, *id*.

[33] *Rollo*, p. 333.

> 2. prepare invoice, delivery receipt and other documents required to complete the delivery at the designated outlets;
>
> 3. obtain from the designated outlets such receiving documents and/or information necessary for the liquidation and subsequent collection.
>
> Upon completion of the schedued deliveries, the invoicer turns over the delivery documents and reports on actual volumes delivered to designated outlets to the Manual Liquidator.
>
> From the foregoing, it is clear that the interaction between [respondents] and [petitioner's] employees are limited. And [ICSI] controls the means and manner of how they perform their work too.[34]

Further, these invoicing services have never been performed by the petitioner's regular employees, being merely incidental to its selling activities. And again, as held in *Neri*, while these services, like the invoicing services in this case, may be considered directly related to the principal business of the employer, nevertheless, they are not necessary in the conduct of the principal business of the employer. This Court has already taken judicial notice of the general practice adopted in several government and private institutions and industries of hiring independent contractors to perform special services ranging from janitorial, security, and even technical or other specific services, like invoicing in this case.[35]

With the foregoing, it cannot be gainsaid that ICSI is a legitimate contractor. Being a legitimate contractor, the employer-employee relationship between ICSI and the respondents is maintained. Even with the application of the four-fold test to determine the existence of employer-employee relationship, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal;

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[34] *Id*. at 287-288.

[35] *Neri*, *supra* note 31.

and (4) the power of control,[36] all pointed to ICSI as the respondents' employer.

In the case under consideration, it was sufficiently found by both the LA and the NLRC that the respondents applied with and were hired by ICSI, as evidenced by their individual Personal Information Sheets, employment contracts and Letters of Appointment. Concomitantly, ICSI issued them their individual identification cards as borne by the records. Even the payment of respondents' wages and other labor standard benefits were also made by ICSI, as shown by their payrolls and disbursement vouchers. More so, ICSI itself reported the respondents as its employees with the SSS, Philhealth, PAG-IBIG, and BIR. Also, ICSI was the one that made the necessary deductions on the respondents' salaries for their contributions (their premium share) thereto, which were all properly remitted to the said agencies. As to the power of dismissal and to discipline, it was also ICSI that exercised the same. This is evident from the Notice to Explain and Memorandum it issued to its erring employees who violated its rules and regulations. Contrary to the claim of the respondents, which the CA affirmed, this Court holds that the controverted letter dated May 22, 2009 issued by the petitioner to ICSI contained no instruction from the former for the latter to transfer or even terminate the respondents. This Court finds satisfactory the petitioner's explanation that such letter merely informed ICSI of the changes in their agreement regarding the invoicing services that the invoicing operations at its head office would be discontinued and would be transferred to San Fernando, Pampanga. At the same time, the petitioner was just reminding ICSI to ensure that in the event there will be employees unwilling to comply with the new terms and conditions of their agreement, they should be properly dealt with in accordance with law. Stated differently, the petitioner only wanted to make sure that ICSI would not renege on its obligations to its employees. Lastly, the power of control similarly rests upon ICSI. As previously stated, it was ICSI's officers who have direct supervision over

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[36] *Valencia v. Classic Vinyl Products Corporation, et al.*, *supra* note 29.

the respondents. ICSI's Base Controller and OIC were the ones who gave the respondents their work schedule and monitored their attendance, respectively.[37] As keenly observed by the LA, thus:

> The only interaction [herein respondents] have with the representatives of [herein petitioner] is when the deliveries are rejected and the products need to be diverted. Thus, they call the KAM to inform them of the rejected products and also to inquire if there are other outlets where these rejects could be accommodated. At the end of the day, the invoices issued by [respondents] are submitted to [petitioner] precisely because these are used by the latter in monitoring their products. Moreover, the only function of [respondents] is the invoicing and not to keep the records. The fact that they report to [petitioner] at the end of the day does not constitute control by [the latter] over them. On the contrary, this is an indication that [petitioner] is only after the result of [respondents'] work, which is the invoice itself that is being handed to them after completion of their work. Moreover, if [petitioner has] issued action plans or plans of activities on how [respondents] should accomplish their work, these should be considered as mere guidelines to attain the desired result and not to control the manner and means of performing their work.[38]

It is worthy to note this Court's pronouncement in *Royale Homes Marketing Corporation v. Alcantara*,[39] citing *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*,[40] viz.:

> Not every form of control is indicative of employer-employee relationship. A person who performs work for another and is subjected to its rules, regulations, and code of ethics does not necessarily become an employee. **As long as the level of control does not interfere**

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[37] LA Decision dated February 17, 2010, *id*. at 335-336; NLRC Decision dated September 28, 2010, *id*. at 286-287; Petition for Review on *Certiorari* dated October 21, 2015, *id*. at 17.

[38] *Id*. at 336-337.

[39] G.R. No. 195190, July 28, 2014.

[40] 259 Phil. 65 (1989).

with the means and methods of accomplishing the assigned tasks, the rules imposed by the hiring party on the hired party do not amount to the labor law concept of control that is indicative of employer-employee relationship. In *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission* (citation omitted) it was pronounced that:

> Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. x x x (Emphases and italics supplied.)

With all the foregoing, this Court holds that no employer-employee relationship exists between the petitioner and the respondents. It is an error, therefore, on the part of the CA to order the petitioner to reinstate the respondents and to grant them all the benefits and privileges of regular employees. Not being petitioner's employees, thus, they cannot attain the regular status. Along side, the petitioner cannot be charged of constructive illegal dismissal for it is beyond its power to dismiss the respondents as they were never its employees.

WHEREFORE, premises considered, the present petition is hereby **GRANTED**. The CA Decision and Resolution dated October 28, 2014 and August 18, 2015, respectively, in CA-G.R. SP No. 118337 are hereby **REVERSED** and **SET ASIDE**. The NLRC Decision and Resolution dated September 28, 2010 and December 14, 2010, respectively, are hereby **REINSTATED**.

SO ORDERED.

Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

Martires, J., on official leave.

FIRST DIVISION

[G.R. No. 222159. January 31, 2018]

PAZ E. REBADULLA, PERRAIN E. REBADULLA, JOCELYN E. REBADULLA, CLEVIS E. REBADULLA, HAZEL R. RIGUERA, ARIEL E. REBADULLA,GIOVANNI CLYDE E. REBADULLA, ROEL E. STA. MARIA, KLEINER KYLE R. STA. MARIA, AND KERSCHEL R. STA. MARIA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, THE SECRETARY OF PUBLIC WORKS & HIGHWAYS, AND ENGR. TOMAS L. BUEN, PROJECT MANAGER, DPWH-PMO-SWIM PROJECT,** *respondents.*

[G.R. No. 222171. January 31, 2018]

REPUBLIC OF THE PHILIPPINES, THE SECRETARY OF PUBLIC WORKS AND HIGHWAYS, AND ENGR. TOMAS L. BUEN, PROJECT MANAGER, DPWH-PMO-SWIM PROJECT, *petitioners, vs.* **PAZ E. REBADULLA, PERRAIN E. REBADULLA, JOCELYN E. REBADULLA, CLEVIS E. REBADULLA, PAZ R. STA. MARIA, REPRESENTED BY HER COMPULSORY HEIRS HAZEL R. RIGUERA, ARIEL E. REBADULLA, GIOVANNI CLYDE E. REBADULLA, ROEL E. STA. MARIA, KLEINER KYLE R. STA. MARIA, AND KERSCHEL R. STA. MARIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; ALTHOUGH THE CASE FILED WAS ONE FOR MA*NDAMUS* AND DAMAGES, THE ALLEGATIONS AND RELIEFS PRAYED FOR WAS FOR PAYMENT OF JUST**

COMPENSATION.— Jurisprudence clearly provides for the landowner's remedies when his property is taken by the government for public use: he may recover his property if its return is still feasible or, if it is not, he may demand payment of just compensation for the land taken. In this case, the return of the subject properties is no longer feasible as they had been used in the construction of dams for the DPWH's SWIM project which was already completed. Thus, the Rebadullas' relief was to recover just compensation. It is true that the case filed by the Rebadullas was one for "*mandamus* and damages." x x x [However,] it is a hornbook principle that the nature of an action is determined based on the averments in the complaint and the character of the relief prayed for. The Rebadullas' complaint plainly sought to recover just compensation for the taking of their properties, in an amount to be determined as the fair market value thereof by the court. It has been more than two decades since the subject properties were taken for public use without compensation to the Rebadullas. As the CA explained, "(t)o construe the *mandamus* case solely as a means to compel the government to just file expropriation proceedings would only further prolong injustice." In fine, the allegations and the reliefs prayed for in the Complaint make out a case for payment of just compensation as determined by the court, damages (plus interest) and attorney's fees.

2. **ID.; CIVIL PROCEDURE; APPEALS; NO QUESTION WILL BE ENTERTAINED ON APPEAL UNLESS IT HAS BEEN RAISED IN THE PROCEEEDINGS BELOW.—** The Government argues that even if the action were to be deemed as one for sum of money, it must still be dismissed for lack of jurisdiction due to the Rebadullas' alleged failure to pay the required docket fees. This issue, however, appears to have been belatedly raised before this Court. Time and again, the Court held: "It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel." Furthermore, Section 1, Rule 9 of the Rules of Court provides that: *Defenses*

and objections not pleaded. — **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.**

3. **ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; DETERMINATION THEREOF.—** Just compensation is "the sum equivalent of the market value of the property, broadly described as the price fixed in open market by the seller in the usual and ordinary course of legal action or competition, or the fair value of the property as between one who receives and who desires to sell it, fixed at the time of the actual taking by the government." The word "just" is used to emphasize the meaning of the word "compensation" so as to convey the idea that the equivalent to be rendered for the property to be taken should be real, substantial, full and ample. The nature and character of the land at the time of taking is thus the principal criterion in determining just compensation. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must be considered. The "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property. x x x Among the factors to be considered in determining the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of land, its size, shape, location, and the tax declaration thereon. The measure is not the taker's gain but the owner's loss. To be just, the compensation must be fair not only to the owner but also to the taker. Since the determination of the value of the property is factual in nature, the Court finds a need to remand the case to the trial court to determine its value. The determination shall reflect the value of the property at the time of taking, and not at the time of filing of petitioners' Complaint.

4. **ID.; ID.; ID.; ID.; APPOINTMENT OF COMMISSIONERS TO ASCERTAIN THE JUST COMPENSATION; DISPENSABLE WHEN THERE IS NO ACTION FOR EXPROPRIATION AND THE CASE INVOLVES ONLY A COMPLAINT FOR JUST COMPENSATION.—** The Government is of the view that pursuant to Rule 67 of the Rules of Court, commissioners must be appointed by the trial court to initially ascertain the just compensation, failing which the

trial court's valuation will be ineffectual. On this matter, the Court's ruling in *Republic of the Philippines v. Court of Appeals, et al*. finds application. There, the Court ruled that "when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (i.e., provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable." Even so, the Court held that the appointment of commissioners was "not improper," as it was mainly meant to aid the Court in determining the just compensation and was not opposed by the parties, and the trial court had the discretion either to adopt the commissioners' valuation or to substitute its own estimate of the value based on the records.

5. **ID.; ID.; ID.; ID.; PROPRIETY OF INTEREST ON JUST COMPENSATION.—** Section 9, Article III of the 1987 Constitution provides that "no private property shall be taken for public use without just compensation." Ideally, just compensation should be immediately paid to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his property. However, if full compensation is not paid, the State must make up for the shortfall in the earning potential immediately lost due to the taking. Interest on the unpaid compensation becomes due not only as compliance with the constitutional mandate on eminent domain but also as a basic measure of fairness. Interest in eminent domain cases, thus, accrues as a matter of law and follows as a matter of course from the landowner's right to be placed in as good a position as money can accomplish, as of the date of taking.

6. **ID.; ID.; ID.; ID.; JUST COMPENSATION DUE TO THE PROPERTY AS A FORBEARANCE OF MONEY; PROPER LEGAL INTEREST IN CASE AT BAR.—** The just compensation due to the property owner is effectively a forbearance of money. Effective July 1, 2013, Bangko Sentral ng Pilipinas Circular No. 799 amended Central Bank Circular No. 905, Series of 1982, reducing the legal interest on loans and forbearance of money, when not stipulated, from 12% to 6% *per annum*. Accordingly, the Government shall pay legal interest from the time of taking of the property on March 17,

1997 at the rate of 12% *per annum* until June 30, 2013. From July 1, 2013 until the finality of the decision fixing the just compensation, the legal interest is 6% *per annum*. Furthermore, pursuant to Article 2212 of the Civil Code and the guidelines laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals*, as modified in *Nacar v. Gallery Frames*, the interest due shall itself earn interest from the time just compensation was judicially demanded by the Rebadullas on December 23, 2002. From the finality of the decision fixing the just compensation until full payment, the total amount due to the Rebadullas shall earn a straight 6% legal interest as the court's decision takes the nature of a judicial debt.

7. **CIVIL LAW; DAMAGES AND ATTORNEY'S FEES; NOT PROPER IN THE ABSENCE OF BAD FAITH.—** Unless there is a clear showing of malice or bad faith or gross negligence, a public officer is not liable for moral and exemplary damages for acts done in the performance of duties. Furthermore, the general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not awarded each time a party wins a suit, and they are not necessarily equated to the amount paid by a litigant to a lawyer. The fact alone that a claimant was compelled to litigate to protect his rights will not justify the award of attorney's fees where there is no sufficient showing of bad faith. Good faith is presumed and he who alleges bad faith has the duty to prove the same. Bad faith, on the other hand, does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or moral obloquy and conscious doing of a wrong, a breach of known duty due to some motive or interest or ill will that partakes of the nature of fraud. No proof of such malice or bad faith has been adduced to justify the imposition of moral and exemplary damages against Engr. Buen or the award of attorney's fees against the Government.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Riguera & Riguera Law Office for Paz Rebadulla, *et al.*

DECISION

TIJAM, *J.*:

These are consolidated[1] Petitions for Review on *Certiorari* assailing the Decision[2] dated February 24, 2015 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 136787, affirming with modification the December 23, 2013 Decision[3] and May 13, 2014 Order of the Regional Trial Court (RTC), Branch 51 of Manila in SCA No. 02-105424, which ordered the Republic to pay just compensation for the taking of parcels of land belonging to the Rebadulla family (petitioners in G.R. No. 222159 and respondents in G.R. No. 222171), and the CA's January 7, 2016 Resolution[4] denying the latter's Motion for Reconsideration.

The Facts

Paz E. Rebadulla is the widow of Pablo G. Rebadulla with whom she had seven children, Perrain E. Rebadulla, Jocelyn E. Rebadulla, Clevis E. Rebadulla, Hazel R. Riguera, Ariel E. Rebadulla, Giovanni Clyde E. Rebadulla and Paz R. Sta. Maria. Paz R. Sta. Maria died while the case was pending *a quo* and was substituted by her heirs, Roel E. Sta. Maria, Kleiner Kyle R. Sta. Maria and Kerschel R. Sta. Maria.[5] They are collectively referred to herein as "the Rebadullas."

On March 17, 1997, the Department of Public Works and Highways (DPWH) took parcels of land belonging to the Rebadullas for its Small Water Impounding Management Project (SWIM Project) in Macagtas, Catarman, Northern Samar.[6] The

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[1] Resolution dated February 10, 2016. *Rollo* (G.R. No. 222159), p. 8.

[2] Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela. *Id*. (G.R. No. 222159), at 30-47.

[3] Penned by Presiding Judge Merianthe Pacita Manzano Zuraek. *Id*. at 92-101.

[4] *Id*. at 49-50.

[5] *Id*. at 11 and 102.

[6] *Id*. at 32, 69 and 97.

Rebadullas rejected the price offered by the DPWH, at ₱2.50 per square meter, based on the valuation of the Provincial Appraisal Committee (PAC).[7] No expropriation proceedings were instituted by the DPWH.[8]

In 1998, the Rebadullas wrote to the SWIM Project Management Office, requesting for a reappraisal of their property and stating that ₱200.00 per square meter (sq m) was its fair value.[9] In 1999, SWIM Project Manager, Engr. Tomas L. Buen (Engr. Buen), requested a reappraisal from the PAC,[10] which the latter denied.[11] Thereafter, the Rebadullas wrote to the Department of Finance-Bureau of Local Government Finance (DOF-BLGF) asking for the reappraisal of their properties.[12] In 2000, the DOF-BLGF, finding merit in their request, indorsed the matter to the Provincial Assessor of Northern Samar for appropriate action.[13] The Provincial Assessor, however, did not act on the indorsement.[14]

In its letter of April 25, 2001, the DOF-BLGF informed the Rebadullas that although it had recommended a reappraisal of the property, with ₱100.00 per square meter as a benchmark, the PAC declined to change its initial valuation. The DOF-BLGF, thus, suggested that the Rebadullas pursue judicial remedies.[15]

On October 15, 2002, the Rebadullas, through counsel, wrote to Engr. Buen with a final demand for ₱33,010,800.00, or ₱200.00

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[7] *Id*. at 32 and 96. *Rollo* (G.R. No. 222171). p. 14.

[8] *Rollo* (G.R. No. 222159), p. 32.

[9] *Id*. at 32 and 79-80.

[10] *Id*. at 81.

[11] *Id*. at 33 and 82.

[12] *Id*. at 33 and 83-86.

[13] *Id*. at 33 and 87-88.

[14] *Id*. at 33.

[15] *Id*.

per sq m of their properties measuring 165,054 sq m.[16] Subsequently, they filed a Complaint[17] for *mandamus* and damages before the RTC, against the Republic, the Secretary of Public Works and Highways and Engr. Buen (collectively, the "Government"), praying that the Republic and/or DPWH pay just compensation, in the amount to be determined as the fair market value by the RTC, for the taking and use of the following properties located in Catarman, Northern Samar:

Transfer/Original Certificate of Title No. (Registry of Deeds for the Province of Northern Samar)	**Registered Owner(s)**	**Area (sq m)**
TCT No. T-1108	Spouses Pablo G. Rebadulla and Paz C. Escober	30,000
TCT No. T-2547	Perrain Escober Rebadulla	44,945
OCT No. 9501	Pablo G. Rebadulla	90,109
	Total:	165,054[18]

The Rebadullas likewise prayed that the Republic and/or DPWH be directed to pay legal interest on the just compensation at the rate of six percent (6%) *per annum* computed from the taking of the said properties until full payment. They also sought to recover moral and exemplary damages from Engr. Buen and attorney's fees.[19]

The Government's Comment, which questioned the propriety of *mandamus* as a remedy for the payment of just compensation, was not admitted by the RTC for having been filed out of time. During trial, while the Government was already presenting its

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[16] *Id*. at 33 and 91.

[17] *Id*. at 51-62.

[18] *Id*. at 53-54.

[19] *Id*. at 61.

evidence, it filed a Motion to Dismiss essentially repeating the arguments in its Comment. The RTC denied the Motion to Dismiss and after the presentation of evidence was concluded, rendered a Decision on December 23, 2013, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is rendered ordering:

1. The Republic of the Philippines to pay the fair market value based on the BIR zonal valuation at Seven Pesos (Php7.00) per square meter or a total of Php1,081,650.43; and

2. The Republic of the Philippines to pay six (6%) legal interest per annum from the time of filing of the complaint until fully paid.

3. The Republic of the Philippines to pay Sixty Thousand Pesos (Php60,000.00) Attorney's fees.

SO ORDERED.[20]

The RTC held that while the case was one for *mandamus* and damages, the allegations in the complaint establish an action for recovery of just compensation which was the only relief available to the Rebadullas since they already rejected DPWH's offer and it was no longer feasible to demand the return of the property as it was already taken and used in constructing dams for DPWH's SWIM project.

The RTC found that both parties failed to satisfy the quantum of proof to support their respective valuations of the properties. It noted that the Rebadullas' private appraiser failed to show the acquisition cost and to present the deeds of absolute sale of properties in the same location, to justify his valuation. The trial court likewise noted that the Rebadullas were not even certain as to the value of the properties as they "vacillated and had three (3) figures in mind, Two Hundred Pesos (₱200.00), Ninety Five Pesos (₱95.00) and Ten Pesos (₱10.00)."[21] As regards the Government's valuation, the RTC indicated that no witness

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[20] *Id*. at 101.

[21] *Id*. at 98.

was presented to explain how the PAC arrived at its figure of ₱2.50 per sq m. The trial court likewise observed that while the Government entered the properties in 1997, the PAC's valuation was based on a 1994 PAC resolution.

For this reason and holding that courts could exercise their discretion to determine just compensation, the RTC took judicial notice of the Bureau of Internal Revenue's (BIR's) zonal valuation of the properties in 2002, when the case was filed in court, at ₱7.00 per sq m. The RTC reckoned the just compensation in 2002, noting that DPWH's entry into the properties in 1997 was not with an intention to expropriate as it was adamant on closing a negotiated sale and the Rebadullas, at that time, merely consented to the removal of the improvements.

Interest at six percent (6%) *per annum* was imposed by the RTC as a matter of law, to compensate the landowners for the time they were deprived of the enjoyment of their land.

Finally, the RTC awarded attorney's fees, holding that the Government's act of taking possession of the properties without initiating expropriation proceedings and without the Rebadullas' consent, despite the latter's repeated demands for compensation, compelled them to litigate.

The parties' respective Motions for Reconsideration were both denied in the RTC's May 13, 2014 Order for lack of merit. Both parties appealed to the CA.

On February 24, 2015, the CA rendered the assailed Decision, affirming the RTC's determination of just compensation, increasing the interest rate to twelve percent (12%) *per annum*, and deleting the award of attorney's fees. The dispositive portion of the decision reads:

> **WHEREFORE**, the appeals are **DENIED**. The December 23, 2013 Decision and May 13, 2014 Order of the Regional Trial Court, Branch 51, Manila in Civil Case No. 02-105424 is **AFFIRMED**, with **MODIFICATION** that interest rate of 12% per annum should be imposed on the adjudged compensation.

SO ORDERED.[22]

The Rebadullas' Motion for Reconsideration was denied in the CA's January 7, 2016 Resolution.[23]

Both parties impugn the CA's ruling in the instant petitions.

The Rebadullas argued that the CA erred when it: (a) relied on the BIR's zonal valuation as the sole basis for determining just compensation; (b) disregarded the appraisal report of its witness, real estate appraiser Victor R. Salinas; (c) affirmed the trial court's finding that only 154,521.49 square meters were taken; (d) failed to hold Engr. Buen personally liable for moral and exemplary damages; (e) reckoned the interest from the filing of the complaint rather than from the taking of the subject properties; and (f) deleted the award of attorney's fees for failure to adduce evidence in support thereof.

The Government maintains that the determination of just compensation is improper in a *mandamus* proceeding because the same is available only to compel the performance of a ministerial duty, and not one involving the exercise of sound judgment and discretion that takes into consideration several factors such as land classification and location. The Government posits that even assuming that *mandamus* was proper, the CA erred in fixing the just compensation at ₱7.00 per sq m and in raising the interest rate to 12% *per annum*, arguing that zonal valuation cannot be the only basis for determining just compensation and the 6% interest originally fixed by the RTC was not questioned by either party on appeal.

The Court's Ruling

A case for recovery of just compensation

Jurisprudence clearly provides for the landowner's remedies when his property is taken by the government for public use:

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[22] *Id*. at 46.

[23] *Id*. at 50.

he may recover his property if its return is still feasible or, if it is not, he may demand payment of just compensation for the land taken.[24]

In this case, the return of the subject properties is no longer feasible as they had been used in the construction of dams for the DPWH's SWIM project which was already completed.[25] Thus, the Rebadullas' relief was to recover just compensation.

It is true that the case filed by the Rebadullas was one for "*mandamus* and damages." The Government adamantly argues that just compensation cannot be determined or recovered in such a proceeding. However, as both the trial and appellate courts held, the allegations in the complaint are controlling. Indeed, it is a hornbook principle that the nature of an action is determined based on the averments in the complaint and the character of the relief prayed for.[26] The Rebadullas' complaint plainly sought to recover just compensation for the taking of their properties, in an amount to be determined as the fair market value thereof by the court. It has been more than two decades since the subject properties were taken for public use without compensation to the Rebadullas. As the CA explained, "(t)o construe the *mandamus* case solely as a means to compel the government to just file expropriation proceedings would only further prolong injustice."[27] In fine, the allegations and the reliefs prayed for in the Complaint make out a case for payment of just compensation as determined by the court, damages (plus interest) and attorney's fees.

The Government argues that even if the action were to be deemed as one for sum of money, it must still be dismissed for lack of jurisdiction due to the Rebadullas' alleged failure to

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[24] *Secretary of the Department of Public Works and Highways, et al. v. Sps. Tecson*, 713 Phil. 55, 70 (2013).

[25] *Rollo* (G.R. No. 222159), p. 98; *Rollo* (G.R. No. 222171), p. 15.

[26] *Padlan v. Sps. Dinglasan*, 707 Phil. 83, 91 (2013).

[27] *Rollo* (G.R. No. 222159), p. 41.

pay the required docket fees. This issue, however, appears to have been belatedly raised before this Court.

Time and again, the Court held: "It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel."[28] Furthermore, Section 1,[29] Rule 9 of the Rules of Court provides that:

Defenses and objections not pleaded. — **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (Emphasis ours.)

The Court has also held that:

Although the payment of the proper docket fees is a jurisdictional requirement, the trial court may allow the plaintiff in an action to pay the same within a reasonable time before the expiration of the applicable prescriptive or reglementary period. If the plaintiff fails to comply with this requirement, the defendant should timely raise the issue of jurisdiction or else he would be considered in estoppel. In the latter case, the balance between the appropriate docket fees and the amount actually paid by the plaintiff will be considered a lien on any award he may obtain in his favor.[30]

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[28] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752, 760 (2013). *Calanasan v. Sps. Dolorito*, 722 Phil. 1, 7 (2013). *Heirs of Cesar Marasigan, et al. v. Marasigan, et al.*, 572 Phil. 190, 215 (2008).

[29] Rule 9 of the Rules of Court.

[30] *National Steel Corporation v. Court of Appeals*, 362 Phil. 150, 151 (1999).

Amount of just compensation

At the core of these cases is the issue of how much the Rebadullas should be paid as just compensation. Sustained by the CA, the RTC fixed the just compensation based on the zonal valuation of ₱7.00 per sq m effective from December 25, 1995 to December 27, 2002.[31]

Just compensation is "the sum equivalent of the market value of the property, broadly described as the price fixed in open market by the seller in the usual and ordinary course of legal action or competition, or the fair value of the property as between one who receives and who desires to sell it, fixed at the time of the actual taking by the government."[32] The word "just" is used to emphasize the meaning of the word "compensation" so as to convey the idea that the equivalent to be rendered for the property to be taken should be real, substantial, full and ample.[33]

The nature and character of the land at the time of taking is thus the principal criterion in determining just compensation. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must be considered.[34] The "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.[35]

The Court notes with agreement the RTC's finding, as affirmed by the CA, that the evidence adduced by both parties during

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[31] *Rollo* (G.R. No. 222159), p. 99.

[32] *Leca Realty Corporation v. Republic of the Philippines*, 534 Phil. 693, 707 (2006), citing *Rep. of the Phils. v. Court of Appeals,* 433 Phil. 106, 122 (2002); *Rep. of the Phils. v. Rural Bank of Kabacan, Inc., et al*., 680 Phil. 247, 257 (2012).

[33] *Leca Realty Corporation v. Republic of the Philippines, supra* at 707. *National Power Corporation v. Suarez, et al*., 589 Phil. 219, 225 (2008).

[34] *National Power Corporation v. Suarez, et al., supra* at 225.

[35] *Republic of the Philippines v. Asia Pacific Integrated Steel Corporation*, 729 Phil. 402, 415, (2014).

trial failed to sufficiently establish the fair market value of the subject properties. The DPWH's valuation at ₱2.50 per sq m was based on a 1994 PAC resolution whereas the taking was, by both parties' accounts, done in 1997. No evidence was also adduced to explain how such amount was determined by the PAC. Similarly, the private appraisal submitted by the Rebadullas, which ultimately pegged the price at ₱95.00 per sq m in 1997, was not sufficiently substantiated. It failed, for instance, to specify and support by corroborative documents, the comparable land values which the appraiser used to value the properties at the time of taking. As the trial court noted, the appraisal was unsupported by deeds of absolute sale of properties in the same location; it likewise failed to consider other factors such as the zonal valuation and the acquisition cost.

The Court had occasion to rule:

> In *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, the recommended price of the city assessor was rejected by this Court. The opinions of the banks and the realtors as reflected in the computation of the market value of the property and in the Commissioners' Report, were not substantiated by any documentary evidence.
>
> Similarly, in *National Power Corporation v. Diato-Bernal*, this Court rejected the valuation recommended by court-appointed commissioners whose conclusions were devoid of any actual and reliable basis. The market values of the subject property's neighboring lots were found to be mere estimates and unsupported by any corroborative documents, such as sworn declarations of realtors in the area concerned, tax declarations or zonal valuation from the BIR for the contiguous residential dwellings and commercial establishments. Thus, we ruled that a commissioners' report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court.
>
> We find that the trial court did not judiciously determine the fair market value of the subject property as it failed to consider other relevant factors such as the zonal valuation, tax declarations and current selling price supported by documentary evidence. Indeed,

just compensation must not be arrived at arbitrarily, but determined after an evaluation of different factors.[36]

The RTC, however, erred in fixing the just compensation based solely on the zonal valuation of the properties.

Zonal valuation is simply one of the indices of the fair market value of real estate; it cannot be the sole basis of "just compensation."[37] Thus, in *Leca Realty Corporation v. Republic*,[38] the Court held:

> The Republic is incorrect, however, in alleging that the values were exorbitant, merely because they exceeded the maximum zonal value of real properties in the same location where the subject properties were located. The zonal value may be one, but not necessarily the sole, index of the value of a realty. *National Power Corporation v. Manubay Agro-Industrial* held thus:
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> > "xxx [Market value] is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee. However, these values may serve as factors to be considered in the judicial valuation of the property."
>
> The above ruling finds support in *EPZA v. Dulay* in this wise:
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> > "Various factors can come into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts or other crops. Very often land described as 'cogonal' has been cultivated for generations. Buildings are described in terms of only two or

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[36] *Republic of the Philippines v. Asia Pacific Integrated Steel Corporation, supra* note 35, *id*. at 414-415, citing *Leca Realty Corporation v. Rep. of the Phils., supra* note 33, *id*. at 710.

[37] *Evergreen Manufacturing Corporation v. Republic of the Philippines,* G.R. No. 218628, September 6, 2017.

[38] *Supra* note 32, *id*. at 708-709.

three classes of building materials and estimates of areas are more often inaccurate than correct. *Tax values can serve as guides but cannot be absolute substitutes for just compensation*." (Emphasis supplied)

Among the factors to be considered in determining the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of land, its size, shape, location, and the tax declaration thereon. The measure is not the taker's gain but the owner's loss. To be just, the compensation must be fair not only to the owner but also to the taker.[39]

Since the determination of the value of the property is factual in nature, the Court finds a need to remand the case to the trial court to determine its value.[40] The determination shall reflect the value of the property at the time of taking,[41] and not at the time of filing of petitioners' Complaint. Thus, in *Secretary of the Department of Public Works and Highways v. Tecson*,[42] the Court held:

Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, x x x fixed at the time of the actual taking by the government." This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.

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[39] *Republic of the Philippines v. Asia Pacific Integrated Steel Corporation, supra* note 35, *id*. at 417, citing *Rep. of the Phils. v. Court of Appeals, et al*., 612 Phil. 965, 977 (2009).

[40] *Department of Education v. Casibang*, G.R. No. 192268, January 27, 2016, 782 SCRA 326, 343. *Republic of the Philippines v. Asia Pacific Integrated Steel Corporation, supra. Leca Realty Corporation v. Republic, supra* note 33, *id*. at 710.

[41] *Evergreen Manufacturing Corporation v. Republic of the Philippines, supra* note 37. *Secretary of the Department of Public Works and Highways v. Sps. Tecson*, 713 Phil. 55 (2013).

[42] *Supra* at 70-73.

The reason for the rule has been clearly explained in *Republic v. Lara, et al.*, and repeatedly held by the Court in recent cases, thus:

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

The Government is of the view that pursuant to Rule 67 of the Rules of Court, commissioners must be appointed by the trial court to initially ascertain the just compensation, failing which the trial court's valuation will be ineffectual.

On this matter, the Court's ruling in *Republic of the Philippines v. Court of Appeals, et al.*[43] finds application. There, the Court ruled that "when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (i.e., provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable." Even so, the Court held that the appointment of commissioners was "not improper," as it was mainly meant to aid the Court in determining the just compensation and was not opposed by the parties, and the trial court had the discretion either to adopt the commissioners' valuation or to substitute its own estimate of the value based on the records.

Area taken for public use

The RTC and the CA both determined that of the three parcels of land covered by TCT Nos. T-1108 and T-2547 and OCT

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[43] 612 Phil. 965, 978 (2009).

No. T-9501, with a total area of 165,054 sq m, 154,521.49 sq m were taken by the Government for the DPWH's SWIM Project. The Rebadullas, however, maintain that the Government took the total area. For its part, the Government asserts that the project affected only the lots under TCT No. 2547 and OCT No. T-9501 measuring 135,054 sq m, based on a Certification issued by the SWIM Project Engineer on April 25, 2014.

The Court sustains the lower courts' common finding that 154,521.49 sq m of land were taken by the Government. The Court is not a trier of facts. Factual findings of the trial court, when affirmed by the CA, are generally binding on this Court.[44] Neither party has sufficiently shown cause for the Court to depart from the lower courts' shared conclusion. The Government had every opportunity to raise the issue before the trial court, but admittedly failed to present evidence on the exact area covered by the project. The Certification it proffered was issued after the RTC had rendered its decision. The settled rule is that evidence not formally offered cannot be taken into consideration.[45] It bears noting, too, that the Certification appears to be incomplete and uncertain since by the Government's own admission, verification as to the third title (TCT No. T-1108) was "still on-going."[46] The Rebadullas' claim, on the other hand, is belied by the very Certification[47] they attached to, and used to support, their Complaint. Issued by the SWIM Project-in-Charge and Project Engineer on November 15, 1998, it certified that the SWIM Project affected the three lots[48] and utilized a total of 154,521.49 sq m.

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[44] *Rep. of the Phils. v. Heirs of Sps. Pedro Bautista and Valentina Malabanan*, 702 Phil. 284, 297 (2013).

[45] *Heirs of Serapio Mabborang, et al. v. Mabborang, et al.*, 759 Phil. 82, 95 (2015).

[46] *Rollo* (G.R. No. 222159), p. 128.

[47] *Id*. at 70.

[48] Based on the Certification, only 34,382.26 sq m of the lot covered by TCT No. T-2547 was used. *Id*.

Interest on just compensation

Section 9, Article III of the 1987 Constitution provides that "no private property shall be taken for public use without just compensation." Ideally, just compensation should be immediately paid to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his property. However, if full compensation is not paid, the State must make up for the shortfall in the earning potential immediately lost due to the taking. Interest on the unpaid compensation becomes due not only as compliance with the constitutional mandate on eminent domain but also as a basic measure of fairness. Interest in eminent domain cases, thus, accrues as a matter of law and follows as a matter of course from the landowner's right to be placed in as good a position as money can accomplish, as of the date of taking.[49]

The just compensation due to the property owner is effectively a forbearance of money.[50] Effective July 1, 2013, Bangko Sentral ng Pilipinas Circular No. 799 amended Central Bank Circular No. 905, Series of 1982, reducing the legal interest on loans and forbearance of money, when not stipulated, from 12% to 6% per annum.[51] Accordingly, the Government shall pay legal interest from the time of taking of the property on March 17, 1997 at the rate of 12% *per annum* until June 30, 2013. From July 1, 2013 until the finality of the decision fixing the just compensation, the legal interest is 6% *per annum*.[52] Furthermore, pursuant to Article 2212 of the Civil Code and the guidelines laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[53]

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[49] *Evergreen Manufacturing Corporation v. Rep. of the Phils., supra* note 37, citing *Rep. of the Phils., et al. v. Judge Mupas, et al*., 769 Phil. 21, 194-195 (2015).

[50] *Rep. of the Phils., et al. v. Judge Mupas, et al., id*. at 198.

[51] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 280-281 (2013).

[52] *Evergreen Manufacturing Corporation v. Rep. of the Phils., supra* note 37.

[53] 304 Phil. 236, 253 (1994).

as modified in *Nacar v. Gallery Frames*,[54] the interest due shall itself earn interest from the time just compensation was judicially demanded by the Rebadullas on December 23, 2002.

From the finality of the decision fixing the just compensation until full payment, the total amount due to the Rebadullas shall earn a straight 6% legal interest as the court's decision takes the nature of a judicial debt.[55]

Damages and Attorney's Fees

The Court finds no reason to disturb the CA's decision not to grant the damages prayed for and to delete the award of attorney's fees.

Unless there is a clear showing of malice or bad faith or gross negligence, a public officer is not liable for moral and exemplary damages for acts done in the performance of duties.[56]

Furthermore, the general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not awarded each time a party wins a suit, and they are not necessarily equated to the amount paid by a litigant to a lawyer.[57] The fact alone that a claimant was compelled to litigate to protect his rights will not justify the award of attorney's fees where there is no sufficient showing of bad faith.[58]

Good faith is presumed and he who alleges bad faith has the duty to prove the same. Bad faith, on the other hand, does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or moral obloquy and conscious doing of

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[54] *Nacar v. Gallery Frames, et al., supra* note 51.

[55] *Secretary of the Dept. of Public Works and Highways, et al. v. Sps. Tecson*, 758 Phil. 604 (2015). *Evergreen Manufacturing Corporation v. Republic of the Philippines, supra* note 37.

[56] *Saber v. Court of Appeals*, 480 Phil. 723, 747 (2004).

[57] *PNCC v. Apac Marketing Corp.*, 710 Phil. 389, 395 (2013).

[58] *Benedicto v. Villaflores*, 646 Phil. 733, 742, (2010).

a wrong, a breach of known duty due to some motive or interest or ill will that partakes of the nature of fraud.[59]

No proof of such malice or bad faith has been adduced to justify the imposition of moral and exemplary damages against Engr. Buen or the award of attorney's fees against the Government.

Records also show that the Rebadullas gave permission[60] to the DPWH to enter their lots and construct the dams, subject to the payment of just compensation. They were offered, but rejected, the price of ₱2.50 per sq m for their land based on the PAC's valuation. Upon their request, both Engr. Buen and the DOF-BLGF endeavored to ask the PAC for a reappraisal but the latter had been convinced of the propriety of its valuation. In light of these circumstances, the Court is hard-pressed to sustain the Rebadullas' claim that the Government dealt with them in "gross and evident bad faith" and in a "tyrannical and oppressive manner."

WHEREFORE, the Court of Appeals' Decision dated February 24, 2015 in CA-G.R. SP No. 136787 is **AFFIRMED with MODIFICATION** in that:

1. The case is remanded to the Regional Trial Court, Branch 51 of Manila for the proper determination of just compensation in conformity with this Decision. To forestall any further delay in the resolution of the case, the trial court is ordered to make the determination within six (6) months from its receipt of this Decision and afterwards to report its compliance.

2. From the date of taking of the property on March 17, 1997 until June 30, 2013, the amount of just compensation shall earn legal interest at twelve percent (12%) *per annum*. From July 1, 2013 until the finality of the decision fixing the just compensation, the legal interest shall be six percent (6%) *per annum*. The interest due shall itself earn interest from the time

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[59] *Saber v. Court of Appeals, supra* note 56, *id*. at 747-748.

[60] *Rollo* (G.R. No. 222171), pp. 77-78.

of judicial demand on December 23, 2002 until the finality of the decision fixing the just compensation, at the applicable interest rate. The total amount due shall earn a straight six percent (6%) legal interest *per annum*, from the finality of the decision fixing the just compensation until full payment.

3. The Clerk of Court of the Regional Trial Court of Manila is ordered, within the period stated in paragraph 1, to determine any deficiency in the payment of docket fees, in accordance with the foregoing discussion, which deficiency shall constitute a lien on the judgment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227698. January 31, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERNANDO BONGOS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; ROBBERY WITH RAPE; ELEMENTS; IT MUST BE SHOWN THAT THE RAPE WAS COMMITTED BY REASON OR ON THE OCCASION OF A ROBBERY.—** Robbery with rape is a special complex crime under Article 294 of the RPC. To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi;*

and (4) the robbery is accompanied by rape. For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed *by reason or on the occasion* of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.

2. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; SUFFICIENCY THEREOF TO SUSTAIN CONVICTION.—** Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances when the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.

3. **ID.; ID.; ALIBI; FOR ALIBI TO PROSPER, THE ACCUSED MUST PROVE THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED AND THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME.—** Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.

4. **ID.; ID.; DENIAL; BETWEEN THE CATEGORICAL STATEMENTS OF THE PROSECUTION WITNESS AND**

THE BARE DENIAL OF THE APPELLANT, THE FORMER MUST PREVAIL.— [B]etween the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant.

5. **CRIMINAL LAW; ROBBERY WITH RAPE; ALL THOSE WHO TOOK PART THEREIN ARE LIABLE AS PRINCIPALS OF THE CRIME, ALTHOUGH NOT ALL OF THEM TOOK PART IN THE RAPE.—** [T]he rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape. Thus, in *People v. Verceles, et al.,* We have ruled that once conspiracy is established between two accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, *unless any of them proves that he endeavored to prevent the other from committing the rape.*

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING AN INCIDENT OF RAPE DUE TO THREATS DOES NOT AFFECT THE CREDIBILITY OF THE COMPLAINANT.—** Likewise, delay in reporting an incident of rape due to threats does not affect the credibility of the complainant, nor can it be taken against her. The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. AAA explained that she did not immediately report that she was also raped during the occasion of the robbery incident because appellant, who was also a neighbor, threatened to kill her if she does. Nonetheless, the 9-day delay in reporting the rape incident cannot be said to

be unreasonable considering the shame and fear that AAA felt. Such delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be a mere concoction or impelled by some ill motive.

7. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; DWELLING; PROVEN DURING TRIAL BUT NOT ALLEGED IN THE INFORMATION, CANNOT INCREASE THE PENALTY BUT CAN BE APPRECIATED IN DETERMINING THE CIVIL LIABILITY AWARDED.—** [T]he Information should have alleged that the crime was committed inside the dwelling of the victims which was proven during the trial. x x x [This] could have increased the penalty to death although it could not be imposed because of the provisions of RA 9346 and the accused could not be eligible for parole. However, as enunciated in *People v. Jugueta* citing *People v. Catubig,* the said aggravating circumstance can be appreciated but only for determining the civil liability awarded. Accordingly, the award of civil, moral, and exemplary damages should be increased to ₱100,000.00 each.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J*.:

Before this Court is an appeal *via* Rule 45 from the Decision[1] dated October 16, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06774, affirming *in toto* the Decision[2] dated March 7, 2014 of the Regional Trial Court (*RTC*), Branch 10, Legazpi City in Criminal Case No. 11758, convicting accused-appellant

[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring; *rollo*. pp. 2-11.

[2] CA *rollo*, pp. 18-31.

Hernando Bongos y Arevalo of the complex crime of robbery with rape.

On October 14, 2010, the prosecution charged Hernando Bongos y Arevalo *alias* "*Ando/Pat*" and Ronel Dexisne y Altavano *alias "Popoy*" before the RTC, Legazpi City with the complex crime of robbery with rape. Only accused Bongos was arrested, while co-accused Ronel Dexisne was at-large. The Information[3] alleged –

That on or about the 8th day of June, 2010, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another for a common purpose, armed with a gun, did then and there willfully, unlawfully and feloniously with intent to gain and by means of violence and intimidation take, steal, and carry away cash money in the amount of ₱20,000.00 by destroying the lock of the drawer of spouses BBB and CCC without their knowledge and consent; that by reason or on occasion of said robbery, above-named accused conspiring, confederating and helping one another for a common purpose with lewd design, did then and there willfully, unlawfully and feloniously and by means of force and intimidation, have carnal knowledge of one [AAA] househelper of spouses BBB and CCC, against her will and without her consent, and to the damage and prejudice of the aforesaid victims.

CONTRARY TO LAW.

When arraigned on March 15, 2011, Bongos pleaded not guilty to the crime charged, while Dexisne remained at-large. Thereafter, trial on the merits ensued.

The facts are as follows:

At around 7 o'clock in the evening of June 8, 2010, at ██████████ Legazpi City, AAA, helper of BBB and CCC, was left to tend the house when CCC went to her mother's house. While AAA was washing dishes, two male persons entered the house through the kitchen. She identified them as Bongos, the one wearing bonnet up to his forehead, and Dexisne, the

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[3] Records, p. 1.

one wearing black short pants with red stripes on the side. She knew them because they are neighbors of her employers. Bongos pointed a gun at her, while Dexisne pointed his knife. They forced her to enter the room where the money of her employer was and demanded her to open the drawer. Since it was locked, Dexisne forced it open using a steel, while Bongos remained at AAA's side poking the gun at her neck. After they took the money, they forcibly dragged AAA outside the house until they reached a clearing on the lower level of the yard. There, armed with a knife and gun, both accused threatened and ordered AAA to undress herself. When she refused to do so, Dexisne got violent and slashed her leg and then hit her chest near her left breast which caused her to lose consciousness.[4]

When AAA woke up, she no longer had her clothes on and felt pain on her private part. She was afraid so she went to DDD, the grandfather of CCC and asked for help. DDD summoned someone to fetch CCC to come home. Together with CCC, AAA reported the robbery incident to the authorities the following day. However, AAA did not tell CCC of the rape incident because she was ashamed and afraid that accused would really make good of their threat to kill or harm her in case she makes a report about the incident.[5]

CCC confirmed that on June 8, 2010, at around 8 o'clock in the evening, the two maids of her grandfather went to the house of her mother and told her that an incident happened in her house. When she reached the house of her grandfather, she saw AAA crying. She asked AAA what happened and the latter told her that someone entered her house and took money. CCC testified that she immediately went to her house where she discovered that Php20,000.00 was indeed missing from the drawer. CCC also testified that on June 12, 2010, AAA told her that she was likewise raped by the accused. CCC knew accused "Poypoy" as Dexisne and "Ando" as Bongos since both

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[4] TSN, October 13, 2011, pp. 10-11.

[5] *Id*. at 15-21.

were her neighbors. They had the incident blottered at the police station on June 14, 2010.[6]

In the Medico-Legal Report issued on June 17, 2010 by Dr. James Belgira,[7] the genital examination upon AAA revealed that her hymen was dilated and there were deep-healed lacerations at 3 o'clock and 6 o'clock positions, which concluded that there were clear signs of blunt vaginal penetrating trauma. Later, Dr. Belgira testified that the approximate time wherein the deep-healed lacerations were inflicted was around three to five days prior to the examination day. He examined AAA on June 15, 2010. He further testified that the cause of the dilation and lacerations of the hymen may be due to a blunt protruding hard object inserted in the vagina which has a diameter sufficient enough to break the maximum elasticity of the hymenal body.

For its part, the defense alleged that around 1 o'clock in the afternoon of June 8, 2010, Bongos was at the house of his parents in [redacted], Legazpi City to fix the tricycle of his father. Those present at the house were his father and mother, Nimfa Bongos and Dexisne. Bongos claimed that he finished fixing the tricycle at around 8 o'clock in the evening and then he went directly to his house, about 150 meters away from his father's house, while Dexisne was left behind. He only knew of the case against him when he was summoned. Prior to June 8, 2010, he does not know any reason or ill-motive on the part of AAA or spouses BBB and CCC in indicting him in the case. However, later on he was told by CCC that because he testified in favor of Dexisne, he would also be included in the case.

In a Decision[8] dated March 7, 2014, the court *a quo* convicted Bongos of the complex crime of robbery with rape. The dispositive portion of the decision reads as follows:

> Above premises considered, accused Hernando Bongos is hereby declared GUILTY of the complex crime of robbery with rape, as

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[6] TSN, August 14, 2012, pp. 11-12.

[7] Records, p. 14.

[8] CA *rollo,* pp. 18-31.

defined and penalized under Article 294 [1] of the Revised Penal Code. He is hereby sentenced to suffer the penalty of *reclusion perpetua*.

He is also ordered to return the amount of ₱20,000.00, which was proven by the prosecution to have been taken by Bongos and his co-accused, to [CCC] and to pay the latter the amount of ₱50,000.00 as moral damages for accused' act of having violated the sanctity of [CCC's] home. He is also ordered to pay exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00) to [CCC].

Also, accused is hereby ordered to pay [AAA] the following amounts: (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; and (iii) ₱30,000.00 as exemplary damages.

It is further understood that an interest rate of 6% *per annum*, reckoned upon the finality of this judgment, is imposed on all the damages awarded both to [CCC] and [AAA].

The case against Ronel Dexisne is hereby sent to the archives pending his arrest.

So Ordered.[9]

The court *a quo* rejected Bongos' defense of alibi and denial, and instead gave credence and probative weight to AAA's testimony. It held that although AAA did not witness the actual rape as she was unconscious when it happened, the circumstantial evidence taken all together proved that on the occasion of robbery, she was raped by the malefactors. It, likewise, found that there was also conspiracy between Bongos and Dexisne from their coordinated acts from the time they gained entry into BBB and CCC's house, until they have successfully taken the money from AAA through force and intimidation and the eventual rape of her.

Unperturbed, Bongos appealed the court *a quo*'s decision before the Court of Appeals. However, on October 16, 2015, in its disputed Decision,[10] the Court of Appeals affirmed *in toto* the decision of the trial court.

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

[10] *Supra* note 1.

Hence, this appeal, raising the same issue brought before the appellate court, to wit:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The appeal lacks merit.

Robbery with rape is a special complex crime under Article 294 of the RPC. To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[11]

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed *by reason or on the occasion* of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.[12]

After going over the records of the case, We find no compelling reason to disturb the findings of the trial court as affirmed by the appellate court. The prosecution was able to establish that Bongos and Dexisne entered the house of the victims armed with a handgun and knife and took spouses BBB and CCC's money amounting to ₱20,000.00 without consent and by means of violence and intimidation.

During trial, AAA testified as to the identity of Bongos and Dexisne as the perpetrators, as well as the events that transpired during the incident, to wit:

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[11] *People v. Suyu*, 530 Phil. 569, 596 (2006).

[12] *People v. Tamayo,* 434 Phil. 642, 654 (2002).

x x x x x x x x x

ARP CALLEJA

Q And, could you please tell us who were those two persons who entered the house?

A Ronel Dexisne and Hernando Bongos y Arevalo.

Q Is this Ronel Dexisne present in Court now?

A He is not in court.

Q How about Hernando Bongos?

A Yes, Sir.

Q Will you please point to him?

A (At this juncture the witness points to a man seated in front of the row of benches inside the court rooms wearing a yellow t-shirt and light blue pants with white stripes, who when asked of his name answered that he is Hernando Bongos)

Q **Prior to June 8, 2010 are you familiar with Hernando Bongos?**

A Yes, Sir.

Q **Could you tell us the reason why you are already familiar with Hernando Bongos?**

A He is a neighbor of my employer in ██████.

Q **You said that those two persons, Ronel Dexisne and Hernando Bongos, entered the house. After entering the house, what did they do?**

A. The poked a gun and pointed a knife at me.

Q Who was the person who poked a gun at you?

A It was Hernando Bongos, Sir. (At this juncture the witness points to accused Hernando Bongos)

Q How about the person who pointed a knife at you?

A It was Ronel Dexisne, Sir.

Q After those two persons poked a gun and pointed a knife at you, what happened next?

A They forced me to enter the room.

Q And what happened next, after they forced you to enter the room.

A They were asking me to point where the money of my employer was.

Q Did you comply with that order?
A It took me quite a time before I pointed it to them.

Q After you pointed to them where the money was, what happened next?
A After they get (sic) the money they still wanted me to go with them outside.

Q Where was the money placed?
A. Inside the drawer.

Q Who opened the drawer?
A Ronel Dexisne.

x x x x x x x x x

Q **How was it opened by Dexisne?**
A By a steel.

Q You mean he forcibly destroyed the lock then he opened the drawer?
A. Yes, Your Honor.

x x x x x x x x x

Q **While Dexisne was opening the drawer what was Hernando Bongos [d]oing?**
A He was poking a gun at me.

Q How far were you from Dexisne during that time?
A Just near.

Q **On what part of your body was the gun poked?**
A On my neck.

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

ATTY. RAÑESES ON CROSS-EXAMINATION:

Q. Your complaint states that on June 8, 2010 at about 7:00 o'clock in the evening, the two (2) accused with reference to Dexisne and Bongos, **Bongos now being present, entered the house where you were working. The house belonging to [BBB]. Is that true?**
A Yes, Sir.

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[13] TSN, October 13, 2011, pp. 5-8. (Emphasis ours)

Q At that time, Bongos was armed with a gun or a firearm?
A Yes, Sir.

Q And Dexisne was also with a knife
A Yes, Sir.

Q Bongos poked a gun at you?
A Yes, Sir.

Q While Dexisne pointed his knife at you also?
A Yes, Sir.

Q After that and while Bongos was still pointing a gun at you.... (interrupted)

ARP CALLEJA
Your Honor please may I just be clarified if the surname Bongos refers to the accused as the one arraigned?

ATTY. RAÑESES
He is not Atty. Bongos.

ARP CALLEJA
May we know from the defense counsel if that person he mentions as Bongos is the one arraigned and now present in court?

ATTY. RAÑESES
Admitted, Your Honor.

COURT
Atty. Raneses, you are not the counsel for accused Dexisne? Just for accused Bongos?

ATTY. RAÑESES
Yes, only for Bongos. I mentioned Dexisne Your Honor because at that time both of them were present and both of them are supposed to be examined in the rape of [AAA].

Q **Now, while the accused Bongos poked a gun at you and Dexisne pointed his knife at you, they dragged you at a room in the house of your employer, is that correct?**
A Yes, Sir.

Q And what did they do after they dragged you inside the room?
A They forced me to show to them where the money was kept.

Q Which money are you referring to?
A The money of [BBB].

Q Did you not ask them why they knew that there is money kept in the room of your employer?
A No, Sir.

Q And did you point to them where the money was kept?
A Yes, Sir

Q Where was the money kept?
A Inside the drawer.

Q Drawer of the table?
A Yes, Sir.

Q And what did they do after you pointed the place where the money was kept?
A They got it, Sir.

Q Both of them took the money?
A Yes, Sir.

Q How were they able to get the money?
A The drawer was locked. They used a piece of steel to destroy the lock.

Q You mean both of them used the steel to open the lock?
A Yes, Sir.

Q. Who was carrying the piece of steel which they forced to open the lock?
A. Dexisne Sir.

COURT (To the Witness)
Q. **He was the one who forced the lock of the drawer?**
A. Yes, Your Honor.

ATTY. RAÑESES
Q And after Dexisne took the money, where did he place the money?
A. In a bag, Sir.

Q. Whose bag was it?
A. Dexisne Sir.

COURT (To the Witness)
Q You mean when Dexisne and Bongos arrived at the house

of [BBB], Dexisne had a bag with him?
A Yes, Your Honor.

COURT
Okay.

ATTY RAÑESES
Q. In other words, Dexisne had with him a bag and he was likewise armed with a knife?
A. Yes, Sir.[14]

Having established that the personal properties of the victims were unlawfully taken by the accused-appellant, intent to gain was sufficiently proven. Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Thus, the first three elements of the crime were clearly established.

As to the last requirement, the courts *a quo* correctly held that although AAA did not exactly witness the actual rape because she was unconscious at that time, circumstantial evidence shows that the victim was raped by the appellant and his co-accused, to wit:

ARP CALLEJA ON DIRECT EXAMINATION OF AAA

x x x x x x x x x

Q After the two, Dexisne and Bongos, got the money what did they do next?
A They brought me outside of our fence.

Q Could you tell us how were you brought outside of your fence?
A They pulled me.

Q And who was the person who pulled you?
A It was Ronel Dexisne, Sir.

Q And on what part of your body was being pulled by Rone Dexisne?
A Here, Sir. (Witness holding her left arm near the elbow.)

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[14] TSN, March 15, 2012, pp. 3-8. (Emphasis ours)

Q And, while Dexisne was pulling you, what was Bongos doing then?
A He was pushing my back and at the same time poking the gun at me.

Q And after the two pulled you out of the fence what happened next?
A On the lower part of the place outside the fence that was where they raped me.

Q What do you mean by the word rape?
A Before they raped be (sic) they forced me to undress myself but I did not do it.

Q **What was your position when you were being forced to undress?**
A I was then standing Sir.

Q And did you undress yourself?
A No, Sir.

Q And what happened next after you did not comply with their order?
A Ronel Dexisne got mad at me and all I can remember is he hit me here? (Witness pointing at the left side of her body just beside her left breast)

Q After Dexisne hit you what happened next?
A I lost consciousness.

Q For how many minutes did you regain consciousness?
A I do not know, Sir.

Q After you regain (sic) consciousness what did you discover to (sic) your body?
A After I regained consciousness I found out that I have no longer my clothes on.

Q Are you telling us that when you regain (sic) consciousness you were totally naked?
A Yes, Sir.

Q Were you able to locate your dress after you regain (sic) consciousness?
A Yes, Sir.

Q In what particular place?

A A little far from where I was.[15]

x x x x x x x x x

ATTY. RAÑESES ON CROSS-EXAMINATION OF AAA:

Q Actually it was Dexisne who dragged you by holding you by your left hand, is that not correct?
A Yes, Sir.

Q While the accused Bongos was pushing you from behind and at the same time pointing his gun at you?
A Yes, Sir.

Q When they reached the grassy patch with you did Dexisne and Bongos undress you?
A Yes, Sir.

Q And because you refused he delivered a fistic blow at the left side of your breast?
A Yes, Sir.

Q After that, the rape took place?
A I lost consciousness.

Q In other words, you are not sure whether or not you were raped because you were unconscious?
A **When I regained my consciousness, I was already undressed Sir.**

Q I am asking you whether or not you knew that you were raped not whether you were undressed or not after you regained your consciousness.

ARP CALLEJA
May I put into the records Your Honor that the witness is crying while being cross-examined.

COURT (To the Witness)
Q Okay, I think what the counsel wants to ask you is whether you knew that you were being raped actually because you said that you lost consciousness.
A Yes, Your Honor.

Q So you knew. How did you come to know that because you said earlier that you lost consciousness?

[15] TSN, October 13, 2011, pp. 9-11. (Emphasis ours)

A When I regained consciousness, I felt pain in my ....

Q In your vagina?
A Yes, Your Honor.[16]

Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances when the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[17]

Here, the prosecution presented circumstantial evidence that when analyzed and taken together, lead to the obvious conclusion that Bongos and Dexisne also raped AAA on the occasion of the robbery: *first*, after appellant took the money, they forcibly dragged AAA outside of the house's fence;[18] *second,* appellant forced AAA to undress; *third,* when AAA refused, co-accused Dexisne got mad and hit her at her chest causing her to lose consciousness; *fourth,* when AAA regained consciousness, AAA had no longer clothes on; and *fifth,* she felt pain in her private part.

In several decided cases, the victim was unconscious and was not aware of the sexual intercourse that transpired, yet the accused was found guilty on the basis of circumstantial evidence.

In *People v. Gaufo*,[19] the victim was hit on her head by the accused when she fought back and asked for help. The accused then punched her abdomen causing her to lose consciousness.

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[16] TSN, March 15, 2012, pp. 10-12. (Emphasis ours)

[17] *People v. Evangelio*, 672 Phil. 229, 243 (2011).

[18] TSN, October 13, 2011, pp. 9-10.

[19] 469 Phil. 66 (2004).

Upon regaining her bearings, she noticed that she had no more underwear, her private part was bleeding and her body was painful. The combination of these circumstances, among others, led the Court to adjudge the accused guilty of rape.

In *People v. Evangelio*,[20] when one of the robbers stripped off AAA's clothes and AAA resisted and fought back, appellant slammed her head twice against the concrete wall, causing her to lose consciousness. When she regained her senses, appellant and the other robbers were already gone, and she found herself lying on the side on the floor of the comfort room with her feet untied and her hands still tied behind her back. She saw her shorts and panty strewn at her side. She suffered pain in her knees, head, stomach, and her vagina, which was bleeding. The Court found that the accused raped the victim.

In *People v. Pabol,*[21] the victim shouted for help and then accused covered her mouth and she fell unconscious. When she had woken up, she discovered that her ears had been sliced, her blouse opened and her underwear stained with her own blood. She also experienced pain in her private part after the incident. Given the foregoing circumstances, the Court found that the accused raped the victim.

Bongos, however, while he asserted that at the time of the incident, both him and Dexisne were in his father's house in ████████████, Legazpi City, he was unable to show that it was physically impossible for him to be at the scene of the crime considering that his father's house was just around 250 meters away from BBB's house.[22] Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired

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[20] *Supra* note 17.

[21] 618 Phil. 533 (2009).

[22] TSN, November 6, 2013, p. 15.

and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[23]

Thus, between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[24] Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant.[25]

We are also in concurrence with the findings of the courts *a quo* of conspiracy between Bongos and Dexisne. Conspiracy was shown by the coordinated acts of Bongos and Dexisne from the time they gained entry into BBB and CCC's residence, went to their room and forcibly opened the drawer of the bedroom table and took the money inside; and thereafter forcibly dragged AAA outside of the house and raped her. There can be no other conclusion than that the successful perpetration of the crime was done through the concerted efforts of Bongos and Dexisne.

Moreover, the rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape. Thus, in *People v. Verceles, et al.,*[26] We have ruled that once conspiracy is established between two

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[23] *People v. Ohayas*, G.R. No. 207516, June 19, 2017.

[24] *People v. Manchu, et al.*, 593 Phil. 398, 411 (2008).

[25] *Gan v. People*, 550 Phil. 133, 157 (2007).

[26] 437 Phil. 323, 333 (2002).

accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, *unless any of them proves that he endeavored to prevent the other from committing the rape.* The immediately preceding condition is absent in the instant case.[27]

We do not find it necessary anymore to belabor on the issue raised by the appellant on the probative value of the medico-legal report. A medico-legal report is not indispensable to the prosecution of the rape case, it being merely corroborative in nature.[28] At this point, the fact of robbery and rape and the identity of the perpetrators were proven even by the lone testimony of AAA. The credible disclosure of AAA that Bongos and Dexisne raped her on the occasion of the robbery is the most important proof of the commission of the crime.

Likewise, delay in reporting an incident of rape due to threats does not affect the credibility of the complainant, nor can it be taken against her. The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained.[29] AAA explained that she did not immediately report that she was also raped during the occasion of the robbery incident because appellant, who was also a neighbor, threatened to kill her if she does.[30] Nonetheless, the 9-day delay in reporting the rape incident cannot be said to be unreasonable considering the shame and fear that AAA felt. Such delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be a mere concoction or impelled by some ill motive.[31]

Finally, the Information should have alleged that the crime was committed inside the dwelling of the victims which was proven during the trial. We could not, therefore, consider this

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[27] *People v. Belmonte y Sumagit*, G.R. No. 220889, July 5, 2017.

[28] *People v. Pamintuan,* 710 Phil. 414, 424 (2013).

[29] *People v. Madsali*, 625 Phil. 431, 461 (2010).

[30] TSN, January 26, 2012, p. 17.

[31] *People v. Sarcia*, 615 Phil. 97, 117 (2009).

as an aggravating circumstance, although if alleged, it should have been admitted since the crime committed is robbery with violence and thus could have increased the penalty to death although it could not be imposed because of the provisions of RA 9346 and the accused could not be eligible for parole. However, as enunciated in *People v. Jugueta*[32] citing *People v. Catubig,*[33] the said aggravating circumstance can be appreciated but only for determining the civil liability awarded. Accordingly, the award of civil, moral, and exemplary damages should be increased to ₱100,000.00 each.

In view of the foregoing, We find no basis to disturb the findings of the trial court as affirmed by the appellate court with regard to accused-appellant's guilt. The prosecution's evidence established with certainty that accused-appellant, together with Dexisne, conspired with each other in stealing the money of BBB and CCC through violence and intimidation by pointing the gun and poking the knife on AAA who was then left alone in the house at the time of the incident. Furthermore, the prosecution was able to show that, on the occasion of the robbery, AAA was also raped. We, thus, agree with the courts *a quo* in their appreciation that the original intent of Bongos and Dexisne was to take, with intent to gain, the personal effects of BBB and CCC, and rape was committed on the occasion thereof.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 06774 is **AFFIRMED** with **MODIFICATIONS.** Accused-appellant Hernando Bongos is found **GUILTY** beyond reasonable doubt of the complex crime of **ROBBERY WITH RAPE**, and is sentenced to suffer the penalty of *reclusion perpetua.*

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[32] G.R. No. 202124, April 5, 2016.

[33] 416 Phil. 102 (2001).

Accused-appellant is, likewise, **ORDERED TO RETURN** the amount of ₱20,000.00 which was stolen from Spouses BBB and CCC as proven during the trial.

Accused-appellant is further **DIRECTED TO PAY** the victim AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. Interest at the rate of six percent (6%) *per annum* is imposed on all the damages awarded in this case from date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 229512. January 31, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALDO PAZ *y* DIONISIO @ "JEFF,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [A]n appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment

appealed from, increase the penalty, and cite the proper provision of the penal law."

2. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; IN BOTH CIRCUMSTANCES, THE PROSECUTION MUST PROVE WITH MORAL CERTAINTY THE IDENTITY OF THE PROHIBITED DRUG.—** In every prosecution for an unauthorized sale of dangerous drugs, it is essential that the following elements are proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Meanwhile, to convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. In both circumstances, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

3. **ID.; ID.; SECTION 21, ARTICLE II ON THE CHAIN OF CUSTODY RULE.—** Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said provision, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items <u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and</u>**

any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination. x x x It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.

4. **ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS, UNDER JUSTIFIABLE GROUNDS, WILL NOT RENDER VOID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that **the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure**, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. x x x Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.

APPEARANCES OF COUNSEL

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

DECISION

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Ronaldo Paz *y* Dionisio @ "Jeff" (Paz) assailing the Decision[2] dated February 11, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06886, which affirmed the Joint Decision[3] dated February 17, 2014 of the Regional Trial Court of Pasig City, Branch 151 (RTC) in Crim. Case Nos. 16574-D and 16575-D, among other cases, finding him guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from four (4) separate Informations[5] filed before the RTC, charging Paz with the crimes of illegal sale and illegal possession of dangerous drugs, as well as illegal possession of dangerous drugs and paraphernalia during parties, meetings, and gatherings, the accusatory portions of which state:

Criminal Case No. 16574-D

On or about February 6, 2009, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Jeffrey Agbunag *y*

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[1] See Notice of Appeal dated February 29, 2016; *rollo*, pp. 23-24.

[2] *Id*. at 2-22. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring.

[3] CA *rollo*, pp. 28-44. Penned by Presiding Judge Ma. Teresa Cruz-San Gabriel.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] All dated February 9, 2009; records, pp. 1-2, 22-23, 24-26, and 27-29.

Valbuena, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing 0.08 gram of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, known as "shabu," a dangerous drug, in violation of the said law.

Contrary to law.[6]

Criminal Case No. 16575-D

On or about February 6, 2009, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control three (3) heat-sealed transparent plastic sachets containing 0.02 gram of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, known as "shabu," a dangerous drug, in violation of the said law.

Contrary to law.[7]

Criminal Case No. 16576-D

On or about February 6, 2009, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, while at a social gathering/meeting, in the proximate company of three persons and in conspiracy with one another, not being lawfully authorized to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in their possession and under their custody and control one (1) unsealed transparent plastic sachet containing traces of white crystalline substance, in the occasion of its use or sniffing thereof, during a pot session, which substance were found positive to the test for methamphetamine hydrochloride commonly known as "shabu," a dangerous drug, in violation of the said law.

Contrary to law.[8]

Criminal Case No. 16577-D

On or about February 6, 2009, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, being in a pot session,

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[6] *Id.* at 1.

[7] *Id.* at 22.

[8] *Id.* at 24-25.

and in the proximate company of three (3) persons and in conspiracy with one another, without having been duly authorized by law to possess paraphernalia for dangerous drugs, did then and there willfully, unlawfully and knowingly have in their possession and under their custody and control one (1) strip aluminum foil, one (1) rolled aluminium foil tooter and two (2) disposable lighters, said instruments fit or intended for smoking, consuming or introducing methamphetamine hydrochloride, a dangerous drug, the said drug paraphernalias except the disposable lighters contained traces of white crystalline substance, which were found positive to the test for methamphetamine hydrochloride commonly known as "shabu," in violation of the said law.

Contrary to law.[9]

The prosecution alleged that at around 8:30 in the evening of February 6, 2009, a tip was received from a confidential informant that a certain Paz was selling illegal drugs along Market Avenue, Barangay Palatiw, Pasig City (Brgy. Palatiw). Acting on the said tip, a buy-bust operation was organized in coordination with the Philippine Drug Enforcement Agency. At about 11:35 in the evening, the buy-bust team, together with the informant, proceeded to the target area, which was a thrift shop (*ukay-ukay*) located at Brgy. Palatiw. Upon arriving thereat, the informant saw Paz and introduced him to Police Officer 1 Jeffrey Agbunag (PO1 Agbunag), the designated poseur-buyer. When Paz asked PO1 Agbunag if he was going to buy, the latter replied, "I will score in the amount of ₱500.00." Paz then handed over a plastic sachet containing a white crystalline substance to PO1 Agbunag, who, after inspecting the said item, paid Paz using the marked money. Shortly after, PO1 Agbunag introduced himself as a police officer and arrested Paz. PO1 Agbunag then signalled Police Officer 3 Arnold Balagasay (PO3 Balagasay) for assistance, as there were two (2) other persons – later on identified as Rolando Condes *y* Olivas @ Tangkad (Condes) and Abner Laceda *y* Ramos @ Abner (Laceda) – who were purportedly sniffing *shabu* inside the shop. When PO3 Balagasay entered the thrift shop, he immediately arrested Condes and Laceda. Thereafter, PO3 Balagasay noticed some drug

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

paraphernalia placed on top of a sack of clothes, *i.e.*, one (1) unsealed transparent plastic sachet with traces of white crystalline substance, an aluminium foil with traces of white crystalline substance, an aluminium foil used as a tooter, and two (2) disposable lighters, which he subsequently confiscated and marked. Meanwhile, PO1 Agbunag instructed Paz to empty his pockets, which yielded three (3) more heat-sealed plastic sachets of white crystalline substance, the marked money, and three (3) 100-peso bills. Consequently, PO1 Agbunag marked all four (4) plastic sachets.[10] Thereafter, the buy-bust team took the confiscated plastic sachets and drug paraphernalia to the Pasig City Police Station, where the requisite inventory was conducted by PO1 Agbunag. After the inventory, Paz, together with Condes and Laceda, was brought to the Rizal Medical Center for medical examination, which was followed by a drug testing at the EDP Crime Laboratory Service. The confiscated plastic sachets and drug paraphernalia were likewise submitted to the EDP Crime Laboratory Service for qualitative examination.[11]Accordingly, they were received and examined by Forensic Chemist Police Chief Inspector Lourdeliza Gural Cejes (PSI Cejes), who confirmed that they contained *methamphetamine hydrochloride*, a dangerous drug.[12]

For his part, Paz interposed the defense of denial, claiming that he was not caught in a buy-bust operation, for there were no buy-bust money and dangerous drugs recovered from him. He maintained that between seven o'clock to eight o'clock in the evening of February 6, 2009,[13] he was preparing to close the thrift shop with his wife and Condes, when three (3) unidentified armed men suddenly arrived and handcuffed him and Condes. When they asked about their violation, they were told to just explain in the office. After they were brought to the precinct, they were placed inside a detention cell, while

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[10] See *rollo*, pp. 6-7. See also CA *rollo*, pp. 32-35.

[11] *Rollo*, pp. 7-8.

[12] See *rollo*, pp. 7-8 and 18. See CA *rollo*, pp. 31-32.

[13] Inadvertently dated as "February 9, 2006" by the CA. See *rollo*, p. 8. See CA *rollo*, p. 35.

Paz's cellphone and money were taken away from him. The police demanded the amount of ₱100,000.00 in exchange for their release, which amount they purportedly failed to provide. As such, they were brought to Marikina to have their urine samples taken, and thereafter, to the Rizal Medical Center. On February 9, 2009, they were finally brought to the Prosecutor's Office.[14]

As for Condes and Laceda, they corroborated the testimony of Paz, further alleging that they did not file any administrative charges against the arresting officers out of fear of reprisal.[15] Notably, Condes died during the pendency of the case, and accordingly, a death certificate was submitted to the RTC.[16]

The RTC Ruling

In a Joint Decision[17] dated February 17, 2014, the RTC ruled as follows: (*a*) in Crim. Case No. 16574-D, Paz was found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, and hence, sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; (*b*) in Crim. Case No. 16575-D, Paz was found guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165, and thus, sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00; (*c*) in Crim. Case Nos. 16576-D and 16577-D, Paz and Laceda were acquitted of violating Sections 13 and 14, Article II of RA 9165 on the ground of reasonable doubt; and (*d*) the cases against Condes were dismissed in view of his death pursuant to Article 89 (1) of the Revised Penal Code.[18]

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[14] See *rollo*, p. 8. See also CA *rollo*, p. 35.

[15] See *rollo*, p. 8. See also CA *rollo*, p. 35.

[16] CA *rollo*, p. 42.

[17] *Id*. at 28-44.

[18] *Id*. at 43-44.

The RTC held that all the elements of the crimes for illegal sale and illegal possession of dangerous drugs were satisfactorily proven to convict Paz of the said crimes.[19] Further, it ruled that the absence of an elected public official and a representative from the media and the Department of Justice (DOJ) did not render the buy-bust operation illegal, as the chain of custody over the dangerous drugs was competently proven by the prosecution. More significantly, it was shown that the integrity and evidentiary value of the seized drugs had been preserved from the time they were seized, marked, and inventoried by PO1 Agbunag until they were brought to the Crime Laboratory for examination.[20]

Meanwhile, the RTC found that Condes and Laceda could not be convicted of violations of Sections 13 and 14, Article II of RA 9165. The RTC noted that PO3 Balagasay, as the officer responsible for the arrest of Condes and Laceda, failed to sign the inventory of the seized paraphernalia. As such, it was probable that the items seized from them were not the same items listed in the inventory. Also, the amount or quantity of suspected *shabu* found in the unsealed transparent plastic sachet – which was previously recovered from Condes and Laceda – could barely be determined, as the sachet merely contained traces or residue of the suspected drug.[21]

Similarly, the RTC held that Paz could not be charged of Sections 13 and 14, Article II of RA 9165 as well, considering that he was not caught in the company of Condes and Laceda when he was selling *shabu* to PO1 Agbunag. In fact, PO1 Agbunag testified that Condes and Laceda were caught having a pot session without Paz around them.[22]

Aggrieved, Paz appealed[23] to the CA.

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[19] See *id*. at 36-40.

[20] See *id*. at 43.

[21] See *id*. at 41-42.

[22] See *id*. at 42-43.

[23] See Notice of Appeal dated May 6, 2014; *id*. at 45.

The CA Ruling

In a Decision[24] dated February 11, 2016, the CA affirmed the RTC ruling with modification, adjusting the penalty in Crim. Case No. 16575-D (that is, for violation of Section 11, Article II of RA 9165) to an indeterminate prison term of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum.[25] It held that despite the arresting officers' failure to both conduct an inventory of the seized drugs immediately after the arrest and take photographs thereof in the presence of Paz and the required witnesses, it was nevertheless established that the integrity of the chain of custody of the seized drugs was preserved.[26] On the contrary, it declared that the origin of the buy-bust money and the non-presentation of the confidential informant in court were inconsequential to the prosecution of the crimes charged. It likewise added that the absence of a prior surveillance was neither required for the validity of a buy-bust operation, nor was it fatal to the prosecution's case.[27]

Hence, the instant appeal.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly upheld Paz's conviction for the crimes charged.

The Court's Ruling

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[28] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to

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[24] *Rollo*, pp. 2-22.

[25] *Id.* at 21-22.

[26] See *id.* at 12-18.

[27] See *id.* at 19-20.

[28] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[29]

In this case, Paz was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. In every prosecution for an unauthorized sale of dangerous drugs, it is essential that the following elements are proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[30] Meanwhile, to convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[31]

In both circumstances, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[32]

In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling

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

[30] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[31] *People v. Bio*, 753 Phil. 730, 736 (2015).

[32] See *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565 (2011) and *People v. Denoman* , 612 Phil. 1165 (2009).

the seized drugs in order to preserve their integrity and evidentiary value.[33] Under the said provision, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items** **<u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official</u>** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.[34] In the case of *People v. Mendoza*,[35] the Court stressed that "**<u>[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence</u>** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **<u>negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused</u>**. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[36]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[37] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage

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[33] See *People v. Sumili*, *supra* note 30, at 349-350.

[34] See Section 21 (1) and (2), Article II of RA 9165.

[35] 736 Phil. 749 (2014).

[36] *Id*. at 764; emphases and underscoring supplied.

[37] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

of RA 10640[38] – provide that **the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure**, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary**

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[38] 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.
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> x x x x x x x x x"

value of the seized items are properly preserved by the apprehending officer or team.[39] Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[40] In *People v. Almorfe*,[41] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[42] Also, in *People v. De Guzman*,[43] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[44]

In this case, Paz ultimately prayed for his acquittal in view of the police officers' non-compliance with Section 21, Article II of RA 9165 and its IRR, as well as their failure to proffer a plausible explanation therefor.[45] In particular, he claims that there were no elected public official and a representative from the media and the DOJ to witness the requisite inventory of the seized items; and that there were no photographs taken during the conduct of the same.[46]

Such contentions are meritorious.

An examination of the records reveals that while the marking and inventory of the seized items were conducted in the presence

[39] See Section 21 (a), Article II of the IRR of RA 9165. See *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[40] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[41] 631 Phil. 51 (2010).

[42] *Id.* at 60.

[43] 630 Phil. 637 (2010).

[44] *Id.* at 649.

[45] See CA *rollo*, pp. 72-78.

[46] *Id*. at 73.

of Paz and the other apprehending officers, the same were not done in the presence of an elected public official and a representative from the media and the DOJ. During his re-direct examination, PO3 Balagasay testified that:

Q: Who were present when the inventory was made at your office?

A: **The operatives, my companions, and the suspects, sir.**

Q: Only them?

A: **Yes, sir.**

Q: You do not have any elected official there?

A: None, sir.

x x x x x x[47] (Emphases and underscoring supplied)

Furthermore, in an attempt to justify such absence, PO3 Balasagay maintained that:

Q: Why?

A: **The practice is that it is only when we have search warrant that we invite barangay official and media, sir.**

x x x x x x[48] (Emphasis and underscoring supplied)

Given the above, it appears that PO3 Balagasay clearly misconstrued the law and its application in buy-bust operations. His justification was likewise grossly insufficient and without legal basis for the saving-clause to apply. As the Court observed in the case of *People v. Geronimo*,[49] there is nothing in the law which exempts the apprehending officers from securing the presence of an elected public official and a representative from the media and the DOJ, particularly in instances when they are not equipped with a search warrant.[50] Verily, RA 9165 and its

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[47] TSN, September 2, 2010, pp. 16-17.

[48] *Id.* at 17.

[49] See G.R. No. 225500, September 11, 2017.

[50] See *id*.

IRR provide that non-compliance with the required procedure can only be allowed under exceptional circumstances, provided that justifiable grounds are given and proven as a fact by the apprehending officers,[51] which PO3 Balagasay also failed to show.

In addition, records reveal that the prosecution did not present any photographs of the supposed conduct of inventory during trial. More apparent is the failure of the witnesses to state or mention whether or not any photographs were indeed taken. When asked during his cross-examination, PO3 Balagasay merely stated that he "cannot recall already if there was a photograph of the evidence."[52]

Observably, the procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[53] It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[54] As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, as well as its IRR, Paz's acquittal is perforce in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the

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[51] See *id*.

[52] TSN, September 2, 2010, pp. 12.

[53] See *People v. Sumili*, *supra* note 30, at 350 and 352.

[54] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.[55]

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the <u>initiative</u> to not only <u>acknowledge</u> but also <u>justify</u> any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 11, 2016 of the Court of Appeals in CA-G.R. CR HC No. 06886 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Ronaldo Paz *y* Dionisio @ "Jeff" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

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[55] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

SECOND DIVISION

[G.R. No. 229671. January 31, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOVENCITO MIRANDA *y* TIGAS,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [A]n 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." x x x It is axiomatic that an appeal in criminal cases confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from. Accordingly, "errors in an appealed judgment [of a criminal case], **even if not specifically assigned,** may be corrected *motu propio* by the court **if the consideration of these errors is necessary to arrive at a just resolution of the case**." The rationale behind this rule stems from the recognition that an accused waives the constitutional safeguard against double jeopardy once he appeals from the sentence of the trial court. As such, it is incumbent upon the appellate court to render such judgment as law and justice dictate, whether it be favorable or unfavorable to him.
2. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** Miranda was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Case law states that in every prosecution of illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the

consideration; and (*b*) the delivery of the thing sold and the payment. Meanwhile, in order to convict an accused charged of illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. In both instances, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

3. **ID.; ID.; CHAIN OF CUSTODY RULE; PRESENCE OF REPRESENTATIVE WITNESSES REQUIRED DURING THE SEIZURE AND MARKING OF THE SEIZED DRUGS.—** Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items** **<u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official</u>** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. In the case of *People v. Mendoza*, the Court stressed that "**<u>[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence</u>** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous*

Drugs Act of 1972) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused**. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

4. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS, UNDER JUSTIFIABLE GROUNDS, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER OR TEAM.— The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe,* **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**. Also, *in People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J*.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Jovencito Miranda *y* Tigas (Miranda) assailing the Decision[2] dated July 29, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07580, which affirmed the Decision[3] dated March 10, 2015 of the Regional Trial Court of Makati City, Branch 64 (RTC) in Crim. Case Nos. 13-906 and 13-907, finding Miranda guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," respectively.

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Miranda of the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, the accusatory portions of which state:

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[1] See Notice of Appeal dated August 26, 2016; *rollo*, pp. 17-19.

[2] *Id*. at 2-16. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda concurring.

[3] CA *rollo*, pp. 51-57. Penned by Judge Gina M. Bibat-Palamos.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Both dated March 19, 2013. Records, pp. 2-5 and 6-9.

Criminal Case No. 13-906

On the 18th day of March 2013, in the city of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute and give away Methamphetamine Hydrochloride (*shabu*) weighing zero point zero two (0.02) gram, a dangerous drug.

CONTRARY TO LAW.[6]

Criminal Case No. 13-907

On the 18th day of March 2013, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drugs without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control zero point zero two (0.02) gram of white crystalline substance containing methamphetamine hydrochloride (*shabu*), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[7]

The prosecution alleged that on March 18, 2013, an informant tipped the Makati Anti-Drug Abuse Council (MADAC) that Miranda, alias "Thunder," was selling illegal drugs along Infanta Street, Barangay Olympia, Makati City. After verifying the said tip, a buy-bust operation was organized in coordination with the Philippine Drug Enforcement Agency (PDEA), and the team, together with the informant, proceeded to the target area along Infanta Street at ten (10) o'clock in the evening. Upon arriving, the informant introduced MADAC operative Delno A. Encarnacion (Encarnacion), the designated poseur-buyer, to Miranda as the buyer of *shabu* worth ₱300.00. Encarnacion then gave the marked money to Miranda, while the latter simultaneously handed over one (1) transparent sachet of suspected *shabu*. After inspecting the item, Encarnacion executed the pre-arranged signal by wiping his face with a white towel,

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[6] *Id.* at 2.

[7] *Id.* at 6.

prompting the buy-bust team to rush towards the scene and arrest Miranda. Subsequently, a body search was conducted on Miranda, whose pockets purportedly yielded another plastic sachet of *shabu* and the buy-bust money. Since Miranda allegedly resisted and attempted to escape, the team was constrained to pull out from the site and bring him to the barangay hall of Barangay Olympia. Thereat, Encarnacion marked (with "THUNDER" and "THUNDER-1") and inventoried the seized sachets of *shabu* in the presence of Miranda and Barangay Kagawad Noe Lyndon Gonzales, among others. Photos of the seized drugs, together with the witnesses, were likewise taken. Encarnacion turned over the items to Senior Police Officer 1 Nildo T. Orsua[8] (SPO1 Orsua), who prepared a letter-request for examination. After securing the letter-request, Encarnacion retrieved the items from SPO1 Orsua and brought them to the Philippine National Police (PNP) crime laboratory for qualitative examination. At 11:15 in the evening, the same were received by forensic chemist Police Senior Inspector Rendielyn L. Sahagun (PSI Sahagun) and confirmed that they indeed contained *methamphetamine hydrochloride*, a dangerous drug.[9]

For his part, Miranda denied the allegations against him, claiming that at around 3:30 in the afternoon of March 18, 2013, he was in No. 7420 Infanta Street, Makati City installing a window screen of a house when two (2) unidentified persons suddenly held his back, handcuffed him, and boarded him inside a van. He averred that he was taken to the Station Anti-Illegal Drugs Office, where he was photographed with two (2) plastic sachets placed on a table. Thereafter, he was brought to the barangay hall and was made to face a *barangay kagawad*. Shortly after, he was again photographed together with said official and the plastic sachets. They proceeded to the Scene of the Crime Operatives Office and then to the Pasay Hospital. Consequently, Miranda was placed in detention at the Criminal Investigation Division for two (2) weeks.[10]

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[8] "Ursua" in some parts of the records.

[9] See CA *rollo*, pp. 36-37 and 53-54. See also *rollo*, pp. 5-7.

[10] See CA *rollo*, pp. 37-38. See also *rollo*, p. 8.

The RTC Ruling

In a Decision[11] dated March 10, 2015, the RTC ruled as follows: (*a*) in Crim. Case No. 13-906, Miranda was found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, without subsidiary imprisonment in case of insolvency; and (*b*) in Crim. Case No. 13-907, Miranda was found guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 and, accordingly, sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of ₱400,000.00, without subsidiary imprisonment in case of insolvency.[12] The RTC found that the prosecution sufficiently established all the elements of the crimes charged. On the contrary, Miranda failed to overturn the presumption of regularity afforded to police officers, as he only proffered a denial, to prove that the evidence obtained against him were tampered or meddled with.[13]

Furthermore, the RTC declared that the integrity and evidentiary value of the seized items were properly preserved from the time of their seizure by Encarnacion until their turnover to PSI Sahagun at the PNP crime laboratory. It was shown that Encarnacion marked and inventoried the said items and handed them over to SPO1 Orsua for further investigation. SPO1 Orsua then returned the said items to Encarnacion, who subsequently delivered them to PSI Sahagun for laboratory testing. After examination, the latter revealed that they contained *methamphetamine hydrochloride*.[14]

Aggrieved, Miranda appealed[15] to the CA.

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[11] CA *rollo*, pp. 51-57.

[12] *Id*. at 56-57.

[13] See *id*. at 55-56.

[14] See *id*.

[15] See Notice of Appeal dated March 20, 2015; CA *rollo*, p. 18.

The CA Ruling

In a Decision[16] dated July 29, 2016, the CA affirmed Miranda's conviction for the crimes charged.[17] It held that all the elements of the crime of illegal sale of dangerous drugs were adequately proven, given that: (a) an illegal sale of *shabu*, a dangerous drug, actually took place during a valid buy-bust operation; (b) Miranda was positively identified as the seller of the said *shabu*; and (c) both the sachet of *shabu* and buy-bust money were presented and duly identified in open court as the same items recovered from Miranda. It also ruled that Miranda had no right to possess the other sachet of *shabu* incidentally recovered from him during his arrest.[18]

Moreover, the CA declared that the police officers — notwithstanding their failure to immediately mark, inventory, and photograph the seized items at the place of arrest — substantially complied with the chain of custody rule, as it was shown that the integrity and evidentiary value of the said items were preserved. It added that the non-presentation of PSI Sahagun's testimony, as well as the use of Miranda's alias in marking the seized items (*i.e.*, "THUNDER" and "THUNDER-1"), neither affected their integrity and evidentiary value. Besides, the marking, inventory, and photography of the items were witnessed by a *barangay kagawad*, which thus belied any incidents of tampering or switching of evidence.[19]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Miranda's conviction for the crimes charged.

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[16] *Rollo*, pp. 2-16.

[17] *Id*. at 16.

[18] See *id*. at 14-15.

[19] See *id*. at 11-14.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[20] "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."[21]

In this case, Miranda was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Case law states that in every prosecution of illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[22] Meanwhile, in order to convict an accused charged of illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[23]

In both instances, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence.

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[20] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

[22] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[23] *People v. Bio*, 753 Phil. 730, 736 (2015).

Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[24]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[25] Under the said section, the apprehending team shall, among others, **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, or 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, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[26] In the case of *People v. Mendoza*,[27] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence**that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugsl that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused**. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[28]

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[24] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[25] See *People v. Sumili*, *supra* note 22, at 349-350.

[26] See Section 21 (1) and (2), Article II of RA 9165.

[27] 736 Phil. 749 (2014).

[28] *Id*. at 764; emphases and underscoring supplied.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[29] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[30] — provide that the said inventory and photography

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[29] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[30] 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.
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> > x x x x x x x x x"

may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 - under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[31] Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[32] In *People v. Almorfe*,[33] **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**.[34] Also, in *People v. De Guzman*,[35] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[36]

In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Miranda.

Records reveal that while the seized items were marked by Encarnacion in the presence of Miranda and an elected public

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[31] See Section 24 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[32] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[33] 631 Phil. 51 (2010).

[34] See *id*. at 60.

[35] 630 Phil. 637 (2010).

[36] *Id*. at 649.

official, the same was not done in the presence of any representative from the DOJ and the media. During the cross-examination of Encarnacion, he testified that:

ATTY. PUZON:

Who was present at the time of the preparation and signing of the Inventory?

WITNESS:

The witness, Kagawad Lyndon Gonzales; me; the accused and my immediate back-up, PO2 Renie Aseboque.

ATTY. PUZON:

Was there any representative coming from DOJ?

WITNESS:

None, Ma'am.

ATTY. PUZON:

Likewise, no representative coming from the media?

WITNESS:

None, Ma'am.

ATTY PUZON:

The accused was not likewise represented by his own counsel at that time?

WITNESS:

No, Ma'am.

ATTY. PUZON:

That would be all, Your Honor. x x x x x x x x x[37] (Underscoring supplied)

The law requires the presence of an elected public official, as well as a representative from the DOJ and the media in order to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of

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[37] TSN, June 11, 2014, pp. 34-35.

evidence. Despite the non-observance of this requirement, the prosecution did not even proffer a plausible explanation therefor. No practicable reasons were given by the police officers, such as a threat to their safety and security or the time and distance which the other witnesses might need to consider.[38] Thus, considering the police officers' unjustified non-compliance with the prescribed procedure under Section 21 of RA 9165, the integrity and evidentiary value of the confiscated drugs are clearly put into question.

At this juncture, it is important to clarify that the fact that Miranda raised his objections against the integrity and evidentiary value of the drugs purportedly seized from him only for the first time before the CA **does not preclude** it or even this Court from passing upon the same.

To recount, the CA held that "[any] [l]apses in the safekeeping of the seized illegal drugs[,] [which affect] their integrity and evidentiary value should be raised at the trial court level."[39] As basis, the CA cited the case of *People v. Mendoza (Mendoza)*,[40] which in turn, cited the case of *People v. Sta. Maria*[41] *(Sta. Maria)* wherein it was opined that:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping

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[38] *Cf. People v. Belmonte*, G.R. No. 224143, June 28, 2017 (in this case, the Court found that the apprehending officers' non-compliance with the chain of custody procedure was adequately justified).

[39] *Rollo*, p. 13.

[40] 683 Phil. 339, 351 (2012).

[41] 545 Phil. 520 (2007).

of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[42]

Based on this premise, the Court, in *Mendoza*, thus ruled that when an accused fails to raise any issues on the chain of custody before the trial court and yet questioned the same only upon appeal, whatever justifiable ground which may excuse the police officers from complying with Section 21 of RA 9165 will remain in obscurity but will not adversely affect the prosecution's case.[43]

The *Sta. Maria* pronouncement may further be traced to *People v. Uy*[44] *(Uy)*, which, for its part, cited the annotation of "FRANCISCO, VICENTE J., 1 The Revised Rules of Court, Vol. 1, Part II, 1997 ed., 405," stating the general principle on evidence that:

Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[45]

Notably, *Mendoza, Sta. Maria*, and *Uy*, are all criminal cases for violation of RA 9165, particularly involving objections to the chain of custody of seized drugs, which were then ultimately rejected by the Court since the same were raised only for the first time on appeal.

After a thorough study of these cases, however, this Court holds that that the aforesaid declarations espouse misplaced rulings, as the same clearly run counter to the fundamental rule

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[42] *Id*. at 534.

[43] See *People v. Mendoza*, *supra* note 46, at 351.

[44] 384 Phil. 70 (2000).

[45] *Id*. at 93.

that "**<u>an appeal in criminal cases throws the whole case open for review</u>**."[46]

It is axiomatic that an appeal in criminal cases confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from.[47] Accordingly, "errors in an appealed judgment [of a criminal case], **<u>even if not specifically assigned</u>**, may be corrected *motu propio* by the court **<u>if the consideration of these errors is necessary to arrive at a just resolution of the case</u>**."[48] The rationale behind this rule stems from the recognition that an accused waives the constitutional safeguard against double jeopardy once he appeals from the sentence of the trial court. As such, it is incumbent upon the appellate court to render such judgment as law and justice dictate, whether it be favorable or unfavorable to him.[49]

Thus, in *People v. Gatlabayan*,[50] this Court considered every glaring deficiency in each link of the custody, even if the same was not raised as an error on appeal, and reversed the judgment of conviction, given that **<u>what was at stake was no less than the liberty of the accused</u>**.[51]

In *Villareal v. People*,[52] this Court clarified that unlike in civil cases, the assignment of errors in criminal cases is not essential to invoke the court's appellate review, considering that it will nevertheless review the record, and accordingly, reverse or modify the appealed judgment if it finds that errors

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[46] See *Sindac v. People*, G.R. No. 220732, September 6, 2016, 802 SCRA 270, 278; emphasis and underscoring supplied.

[47] See *id*.

[48] See *Dela Cruz v. People*, G.R. No. 209387, January 11, 2016, 779 SCRA 34, 52; emphasis and underscoring supplied.

[49] See *Lontoc v. People,* 74 Phil. 513, 519 (1943), citing *U.S. v. Abijan*, 1 Phil. 83 (1902) and *People v. Olfindo*, 47 Phil. 1 (1924).

[50] 669 Phil. 240 (2011).

[51] See *id.* at 251.

[52] 84 Phil. 264 (1949).

which are prejudicial to the rights of the accused have been committed, including those errors "**which go to the sufficiency of evidence to convict**":

> The rule means that, **notwithstanding the absence of an assignment of errors, the appellate court will review the record and reverse or modify the appealed judgment**, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, **but also on prejudicial errors to the right of accused which are plain, fundamental, vital, or serious, or on errors which go to the sufficiency of the evidence to convict**.[53] (Emphases and underscoring supplied)

In this case, the Court cannot simply turn a blind eye against the unjustified deviations in the chain of custody on the sole ground that the defense failed to raise such errors in detail before the trial court. Considering the nature of appeals in criminal cases as above-discussed, it is then only proper to review the said errors even if not specifically assigned. Verily, these errors, which go to the sufficiency of the evidence of the *corpus delicti* itself, would indeed affect the court's judgment in ultimately ascertaining whether or not the accused should be convicted and hence, languish in prison for possibly a significant portion of his life. In the final analysis, a conviction must prudently rest on the moral certainty that guilt has been proven beyond reasonable doubt. Therefore, if doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.

To be sure, this Court is not impervious to the sentiments of the State when it is left to deal with the seemingly unfair situation of having a drug conviction overturned upon grounds that it was not able to meet in the proceedings *a quo*. However, there is no gainsaying that these sentiments must yield to the higher imperative of protecting the fundamental liberties of the accused.

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[53] *Id*. at 267-268.

Besides, the law itself apprises our law enforcement authorities about the requirements of compliance with the chain of custody rule. Case law exhorts that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[54] **Therefore, as the requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review**.

In this case, the prosecution failed to provide justifiable grounds for the police officers' non-compliance with Section 21 of RA 9165, as well as its IRR. Thus, even though these lapses have only surfaced on appeal, reasonable doubt now persists in upholding the conviction of the accused. As the integrity and evidentiary value of the *corpus delicti* had been compromised,[55] Miranda's acquittal is perforce in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike

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[54] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[55] See *People v. Sumili*, *supra* note 22, at 352.

against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.[56]

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 29, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07580 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jovencito Miranda *y* Tigas is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

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[56] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

FIRST DIVISION

[G.R. No. 230404. January 31, 2018]

IN THE MATTER OF THE INTESTATE ESTATE OF REYNALDO GUZMAN RODRIGUEZ; ANITA ONG TAN, *petitioner, vs.* **ROLANDO C. RODRIGUEZ, RACQUEL R. GEGAJO,**[*] **ROSALINDA R. LANDON, REYNALDO C. RODRIGUEZ, JR., ESTER R. FULGENCIO, RAFAEL C. RODRIGUEZ and REYNEST C. RODRIGUEZ,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; BANKING LAWS; JOINT ACCOUNT; THE NATURE OF JOINT ACCOUNT IS GOVERNED BY THE RULE ON CO-OWNERSHIP EMBODIED IN ARTICLE 485 OF THE CIVIL CODE.—** A joint account is one that is held jointly by two or more natural persons, or by two or more juridical persons or entities. Under such setup, the depositors are joint owners or co-owners of the said account, and their share in the deposits shall be presumed equal, unless the contrary is proved. The nature of joint accounts is governed by the rule on co-ownership embodied in Article 485 of the Civil Code, to wit: Art. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void. The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved. While the rule is that the shares of the owners of the joint account holders are equal, the same may be overturned by evidence to the contrary. Hence, the mere fact that an account is joint is not conclusive of the fact that the owners thereof have equal claims over the funds in question. In line with this, it is also indispensable to consider whether or not there exists a survivorship agreement between the co-depositors. In said agreement, the co-depositors agree that upon the death of either of them, the share pertaining to the deceased shall accrue to the surviving co-depositor or he can withdraw the entire deposit.

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[*] Referred to as Raquel R. Gegajo in the Petition for review on *Certiorari.*

2. **REMEDIAL LAW; JURISDICTION; PROBATE COURTS; EVEN IF THE PROBING ARMS OF AN INTESTATE COURT IS LIMITED, IT IS EQUALLY IMPORTANT TO CONSIDER THE CALL OF THE EXERCISE OR ITS POWER OF ADJUDICATION WHEN THE CASE CALLS FOR THE SAME.—** [N]oteworthy is the fact that even if the probing arms of an intestate court is limited, it is equally important to consider the call of the exercise of its power of adjudication especially so when the case calls for the same, x x x The facts obtaining in this case call for the determination of the ownership of the funds contained in the BPI joint account; for the intestate estate of Reynaldo has already been extrajudicially settled by his heirs. The trial court, in this case, exercised sound judiciousness when it ruled out the inclusion of the BPI joint account in the estate of the decedent. Equally important is the rule that the determination of whether or not a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a jurisdictional question. It is in essence a procedural question involving a mode of practice "which may be waived." Such waiver introduces the exception to the general rule that while the probate court exercises limited jurisdiction, it may settle questions relating to ownership when the claimant and all other parties having legal interest in the property consent, expressly or impliedly, to the submission of the question to the probate court for adjudgment. Such waiver was evident from the fact that the respondents sought for affirmative relief before the court *a quo* as they claimed ownership over the funds in the joint account of their father to the exclusion of his co-depositor.

APPEARANCES OF COUNSEL

Adarlo Caoile & Asociates for petitioner.
Generoso S. Fulgencio, Jr. for respondents.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated June 13, 2016 and Resolution[3] dated March 3, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 105665 filed by petitioner Anita Ong Tan (Anita).

The Facts of the Case

Respondents Rolando Rodriguez, Racquel Gegajo, Rosalinda Landon, Reynaldo Rodriguez, Jr., Ester Fulgencio, Rafael Rodriguez and Reynest Rodriguez are children of Reynaldo Rodriguez (Reynaldo) and Ester Rodriguez (Ester), who died on August 27, 2008 and September 11, 2004 respectively.[4]

Reynaldo and Ester left several properties to their surviving children. On February 13, 2009, respondents executed an Extrajudicial Settlement of the Estate of the late Reynaldo and Ester.[5]

On the other hand, Anita is a co-depositor in a Joint Account under the name Anita Ong Tan and Reynaldo with account number 003149-0718-56 in the Bank of the Philippine Islands (BPI). When Reynaldo passed away, said joint account continued to be in active status.[6]

On August 31, 2009, BPI sent a letter to Anita and informed her that her joint account with Reynaldo would become dormant

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[1] *Rollo*, pp. 29-95.

[2] Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser; *id.* at 99-109.

[3] *Id.* at 110-112.

[4] *Id.* at 10.

[5] *Id.*

[6] *Id.*

if no transaction will be made. As such, Anita decided to withdraw her funds. BPI, however, required her to submit additional requirements, one of which is the extrajudicial settlement of the heirs of Reynaldo.[7] To comply with the same, Anita approached respondents and asked them to sign a waiver of rights to the said joint account. Respondents refused to sign the waiver as they believed that the funds in the said joint account belonged to their father.[8]

Respondents then submitted documents to BPI for the release of half of the funds deposited in said joint account.[9]

BPI withheld the release of the funds because of the conflicting claims between Anita and respondents.[10]

In 2011, Anita filed before the trial court a petition for the: (a) settlement of the Intestate Estate of the late Reynaldo; and(b) issuance of letters of administration to any competent neutral willing person, other than any of the heirs of Reynaldo.

Anita alleged that the funds used to open the BPI joint account were her exclusive funds, which came from her East West Bank (East West) account. To prove her claim, she presented as evidence a Debit Memo from East West Bank, which was used for the issuance of a Manager's Check in the amount of One Million Twenty-One Thousand Eight Hundred Sixty- Eight and 30/100 Pesos (₱1,021,868.30), which exact amount was deposited to the BPI joint account.[11] Anita presented the testimony of Mineleo Serrano, Branch Manager of East West in Tomas Morato, to corroborate her testimony that the subject amount came from her East West account.[12]

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[7] *Id.* at 218.

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

[9] *Id.* at 11.

[10] *Id.*

[11] *Id.* at 11.

[12] *Id.* at 218.

Respondents filed a Motion to Dismiss, arguing that the funds deposited in the BPI joint account belonged exclusively to Reynaldo.

In 2014, Rolando Rodriguez was appointed and took his oath as an administrator of the subject estate.

In an Order[13] dated March 13, 2015, the Regional Trial Court (RTC) ruled in favor of Anita. The RTC held that Anita sufficiently adduced evidence to rebut the presumption that the funds deposited under the BPI joint account of Anita and Reynaldo were owned by them in common. The *fallo* reads:

WHEREFORE, petitioner's claim against the estate of deceased Reynaldo G. Rodriguez is hereby **GRANTED**. Accordingly, Rolando Rodriguez, in his capacity as the appointed Administrator of the intestate estate of Reynaldo G. Rodriguez, is hereby directed to withdraw, together with the petitioner, the funds under Joint Account No. 003149-0718-56 deposited with the Bank of the Philippine Islands, Kamuning Branch, Quezon City and the entire proceeds thereof be given to petitioner.

SO ORDERED.[14]

Respondents filed a motion for reconsideration, but it was denied in an Order dated May 25, 2015.

Undaunted, respondents filed an appeal before the CA.

In a Decision[15] dated June 13, 2016, the CA reversed the ruling of the RTC. In giving credence to respondents' contention, the CA maintained that the presumption of co-ownership as regards the nature of joint accounts was not sufficiently overturned, as Anita failed to prove that she is indeed the sole owner of the funds therein. The CA disposed thus:

WHEREFORE, the instant appeal is hereby PARTIALLY GRANTED. The assailed *Order* dated March 13, 2015 and *Order*

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[13] Penned by RTC Judge Celso R.L. Magsino, Jr.; *id*. at 217-219.

[14] *Id*. at 219.

[15] *Id.* at 9-22.

dated May 25, 2015 of the Region[al] Trial Court [,] Branch 74, Malabon City is hereby MODIFIED.

The bank deposit under the Joint Account number 003149-0718-56 is to be divided in equal shares between Petitioner-appellee on one hand and the Respondents-appellants on the other on a 50-50 proposition.

SO ORDERED.[16]

Anita filed a motion for reconsideration, which was denied in a Resolution[17] dated March 3, 2017, thus:

WHEREFORE, petitioner-appellee's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[18]

The Issue

In sum, the sole issue in this case is whether or not the CA erred in declaring Anita and Reynaldo as co-owners of the subject bank deposits despite the evidence submitted by Anita to prove otherwise.

The Ruling of the Court

A joint account is one that is held jointly by two or more natural persons, or by two or more juridical persons or entities. Under such setup, the depositors are joint owners or co-owners of the said account, and their share in the deposits shall be presumed equal, unless the contrary is proved.[19] The nature of joint accounts is governed by the rule on co-ownership embodied in Article 485 of the Civil Code, to wit:

Art. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.

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[16] *Id*. at 108.

[17] *Id.* at 110-112.

[18] *Id.* at 112.

[19] *Apique v. Fahnenstich*, 765 Phil. 915, 922 (2015).

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

While the rule is that the shares of the owners of the joint account holders are equal, the same may be overturned by evidence to the contrary. Hence, the mere fact that an account is joint is not conclusive of the fact that the owners thereof have equal claims over the funds in question.

In line with this, it is also indispensable to consider whether or not there exists a survivorship agreement between the co-depositors. In said agreement, the co-depositors agree that upon the death of either of them, the share pertaining to the deceased shall accrue to the surviving co-depositor or he can withdraw the entire deposit.[20]

It must be noted that there exists no survivorship agreement between Anita and Reynaldo. Hence, it is but rightful to determine their respective shares based on evidence presented during trial.

On this note, the Court agrees with the findings of the lower court that Anita sufficiently proved that she owns the funds in the BPI joint account exclusively.

It can be gleaned from the records that the money in the BPI joint account amounts to One Million Twenty-One Thousand Eight Hundred Sixty-Eight Pesos and Thirty Centavos (₱1,021,868.30), and it is undisputed that said amount came from Anita's personal account with East West. In East West, Anita opened a Trust Placement in August 2007 with the amount of Two Million Fourteen Thousand Twenty-Four Pesos and Twenty-Five Centavos (₱2,014,024.25). Based on East West's records, as testified to by its Branch Manager, two withdrawals were subsequently made: first, in the amount of One Million Twenty-One Thousand Eight Hundred Sixty-Eight Pesos and 30 Centavos (₱1,021,868.30); and second, in the amount of One Million Three Thousand One Hundred Eleven Pesos and Eleven Centavos (₱1,003,111.11). In all such withdrawals, manager's checks were issued.

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[20] *Rivera v. People's Bank and Trust Co.*, 73 Phil. 546 (1942).

The exact amount which was first withdrawn from the East West account, i.e., One Million Twenty-One Thousand Eight Hundred Sixty-Eight Pesos and Thirty Centavos (₱1,021,868.30), was the exact amount used to open the BPI joint account. Notable is the fact that these transactions occurred within the same day on November 14, 2007.[21] It is also significant to consider that no further transaction in said joint account was made after the same was opened until the death of Reynaldo.

With all these, it is apparent that Anita owned the funds exclusively as she sufficiently overturned the presumption under the law. It bears stressing that despite the evidence shown by Anita, respondents failed to refute her evidence, other than their bare allegations that Anita and Reynaldo had an amorous relationship and that Anita had no source of income to sustain the funds in a bank.[22]

The Court also takes note of the fact that respondents admitted that they knew the existence of the joint account, yet they still failed to include the same in the list of included properties in the inventory when they executed an extrajudicial settlement. Their failure to include said joint account in the list of the items owned by Reynaldo for the purposes of determining his estate obviously refutes their claim that Reynaldo was the sole owner of the funds in said joint account.

Taken together, the Court finds the ruling of the trial court that Anita is the sole owner of the funds in question proper.

Lastly, noteworthy is the fact that even if the probing arms of an intestate court is limited, it is equally important to consider the call of the exercise of its power of adjudication especially so when the case calls for the same, to wit:

While it may be true that the Regional Trial Court, acting in a restricted capacity and exercising limited jurisdiction as a probate court, is competent to issue orders involving inclusion or exclusion of certain properties in the inventory of the estate of the decedent, and to adjudge,

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[21] *Rollo*, p. 219.

[22] *Id*. at 237.

albeit, provisionally the question of title over properties, **it is no less true that such authority conferred upon by law and reinforced by jurisprudence, should be exercised judiciously, with due regard and caution to the peculiar circumstances of each individual case.**[23]

The facts obtaining in this case call for the determination of the ownership of the funds contained in the BPI joint account; for the intestate estate of Reynaldo has already been extrajudicially settled by his heirs. The trial court, in this case, exercised sound judiciousness when it ruled out the inclusion of the BPI joint account in the estate of the decedent.

Equally important is the rule that the determination of whether or not a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a jurisdictional question. It is in essence a procedural question involving a mode of practice "which may be waived."[24]

Such waiver introduces the exception to the general rule that while the probate court exercises limited jurisdiction, it may settle questions relating to ownership when the claimant and all other parties having legal interest in the property consent, expressly or impliedly, to the submission of the question to the probate court for adjudgment.[25]

Such waiver was evident from the fact that the respondents sought for affirmative relief before the court *a quo* as they claimed ownership over the funds in the joint account of their father to the exclusion of his co-depositor.

In this case, the Court notes that the parties submitted to the jurisdiction of the intestate court in settling the issue of the ownership of the joint account. While respondents filed a Motion to Dismiss, which hypothetically admitted all the allegations

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[23] *Lim v. Court of Appeals*, 380 Phil. 60, 74-75 (2000).

[24] *Id.* at 72.

[25] *Id.* citing *Valera v. Inserto*, 233 Phil. 552, 561 (1987).

in Anita's petition, the same likewise sought affirmative relief from the intestate court. Said affirmative relief is embodied in respondents' claim of ownership over the funds in said joint account to the exclusion of Anita, when in fact said funds in the joint account was neither mentioned nor included in the inventory of the intestate estate of the late Reynaldo. Therefore, respondents impliedly agreed to submit the issue of ownership before the trial court, acting as an intestate court, when they raised an affirmative relief before it. To reiterate, the exercise of the trial court of its limited jurisdiction is not jurisdictional, but procedural; hence, waivable.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated June 13, 2016 and Resolution dated March 3, 2017 of the Court of Appeals in CA-G.R. CV No. 105665 are **REVERSED** and **SET ASIDE**. Accordingly, the Order dated March 13, 2015 of the Regional Trial Court of Malabon City, Branch 74 is **REINSTATED**.

SO ORDERED.

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

INDEX

INDEX

ACTIONS

Accion reinvindicatoria — An action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession; it is a suit to recover possession of a parcel of land as an element of ownership; the judgment in such a case determines the ownership of the property and awards the possession of the property to the lawful owner. (Heirs of Alfonso Yusingco *vs.* Busilak, G.R. No. 210504, Jan. 24, 2018) p. 454

–– Is different from *accion interdictal* or *accion publiciana* where plaintiff merely alleges proof of a better right to possess without claim of title. (*Id.*)

Action in personam — A judgment directing a party to deliver possession of a property to another is *in personam*; it is conclusive, not against the whole world, but only between the parties and their successors in interest by title subsequent to the commencement of the action. (Heirs of Alfonso Yusingco *vs.* Busilak, G.R. No. 210504, Jan. 24, 2018) p. 454

–– An action to recover a parcel of land is a real action but it is an action in personam, for it binds a particular individual only although it concerns the right to a tangible thing; any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard; however, this rule admits of the exception that even a non-party may be bound by the judgment in an ejectment suit where he is any of the following: (a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or occupant of the premises with the permission of the defendant; (c) transferee *pendente lite*; (d) sublessee; (e) co-lessee; or (f) member of the family, relative or privy of the defendant. (*Id.*)

Recovery of possession — When parties raised the issue of ownership, the Supreme Court may pass upon the issue

of ownership, the same is limited to the determination of who between the parties has a better right to possess the property; this adjudication, however, is not a final and binding determination on the issue of ownership; since the determination of ownership is merely provisional, the same is not a bar to an action between the same parties involving title to the property. (Arbilon *vs.* Manlangit, G.R. No. 197920, Jan. 22, 2018) p. 73

ACTS OF LASCIVIOUSNESS

Commission of — Elements of Acts of Lasciviousness under Art. 336 of the RPC are as follows: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: a) through force, threat or intimidation; b) where the offended party is deprived of reason or otherwise unconscious; c) by means of fraudulent machination or grave abuse of authority; d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (3) that the offended party is another person of either sex. (People *vs.* Bejim *y* Romero, G.R. No. 208835, Jan. 19, 2018) p. 10

ADMINISTRATIVE LAW

Administrative charges — Mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member of the bench; the withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent. (Atty. Lood *vs.* Delicana, A.M. No. P-18-3796 [Formerly OCA IPI No. 16-4545-P], Jan. 22, 2018) p. 64

Administrative proceedings — In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.

(Rep. of the Phils. *vs*. N. Dela Merced & Sons, Inc., G.R. No. 201501, Jan. 22, 2018) p. 87

Mines and mining — In cases where a claim owner or lessee is involved in a mining dispute, it shall just submit a "Letter of Intent to file the necessary Mineral Agreement application;" the actual mineral agreement application, however, should only be filed within thirty (30) days from the final resolution of the dispute of the case. (Asiga Mining Corp. *vs*. Mla. Mining Corp., G.R. No. 199081, Jan. 24, 2018) p. 381

–– "Proof of actual work obligations;" the failure to perform actual work obligations that would give rise to abandonment; there is no "automatic abandonment" on the basis of the non-submission of the AAWO alone; if the claim owners or lessees did indeed fail to perform their obligations as required in Sec. 27 of the Mineral Resources Development Decree of 1974, as amended, then the cancellation of their mining claims could only be considered proper upon observance of due process. (*Id.*)

Omnibus Rules on Leave — An official or employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. (Re: Dropping from the Rolls of Lemuel H. Vendiola, Sheriff IV, OCC, RTC of Biñan City, Laguna, A.M. No. 17-11-272-RTC, Jan. 31, 2018) p. 842

Quasi-legislative power — Exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers from the separation of the branches of the government; administrative agencies are necessarily authorized to fill in the gaps of a statute for its proper and effective implementation. (H. Villarica Pawnshop, Inc. *vs*. Social Security Commission, G.R. No. 228087, Jan. 24, 2018) p. 613

AGGRAVATING CIRCUMSTANCES

Dwelling — Aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor; in robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house; it is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode. (People *vs*. Bringcula *y* Fernandez, G.R. No. 226400, Jan. 24, 2018) p. 585

ALIBI

Defense of –– For alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime; physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. (People *vs*. Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

–– Positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. (People *vs*. Dela Peña, G.R. No. 219581, Jan. 31, 2018) p. 949

ALIBI AND DENIAL

Defense of –– If not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law; they are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted; denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant. (People *vs*. Bringcula *y* Fernandez, G.R. No. 226400, Jan. 24, 2018) p. 585

2010 AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON- BOARD OCEAN-GOING SHIPS (POEA CONTRACT)

Monetary benefits — To be qualified for the monetary benefits, the seafarer is required to submit himself/herself to a post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines, except when he is physically incapacitated to do so; the seafarer is likewise required to report regularly to the company-designated physician during the course of his treatment. (Mla. Shipmanagement & Manning, Inc. *vs.* Aninang, G.R. No. 217135, Jan. 31, 2018) p. 916

Work-related illness — When the seafarer suffers work-related illness during the term of his contract, the employer shall be liable to pay for: (1) the seafarer's wages; (2) costs of medical treatment both in a foreign port and in the Philippines until the seafarer is declared fit to work, or the disability rating is established by the company-designated physician; (3) sickness allowance which shall not exceed 120 days; and (4) reimbursement of reasonable medicine, traveling, and accommodation expenses. (Mla. Shipmanagement & Manning, Inc. *vs.* Aninang, G.R. No. 217135, Jan. 31, 2018) p. 916

***AMPARO*, WRIT OF**

Petition for — Requires the *amparo* respondent to state in the return the actions that have been or will still be taken: (a) to verify the identity of the aggrieved party; (b) to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible; (c) to identify witnesses and obtain statements from them concerning the death or disappearance; (d) to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance; (e) to identify and apprehend the person or persons

involved in the death or disappearance; and (f) to bring the suspected offenders before a competent court. (Gen. Bautista *vs.* Atty. Dannug-Salucon, G.R. No. 221862, Jan. 23, 2018) p. 293

–– The petition for the writ of *amparo* partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. (*Id.*)

–– The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty; the respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade the responsibility or liability. (*Id.*)

APPEALS

Appeal in criminal cases — 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. (People *vs.* Miranda *y* Tigas, G.R. No. 229671, Jan. 31, 2018) p. 1042

(People *vs.* Jugo *y* Villanueva, G.R. No. 231792, Jan. 29, 2018) p. 743

(Rivac *vs.* People, G.R. No. 224673, Jan. 22, 2018) p. 156

–– Opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper

provision of the penal law. (People *vs*. Paz *y* Dionisio, G.R. No. 229512, Jan. 31, 2018) p. 1025

(People *vs*. Mamangon *y* Espiritu, G.R. No. 229102, Jan. 29, 2018) p. 728

–– 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. (People *vs*. Miranda *y* Tigas, G.R. No. 229671, Jan. 31, 2018) p. 1042

Appeal in labor cases — With the service by registered mail being complete, the respondents only had 10 calendar days from the return of the mail within which to appeal in accordance with the Labor Code; when they did not so appeal, the LA's decision became final and executory; with the LA's decision attaining finality, it was no longer legally feasible or permissible to modify the ruling through the expediency of a petition claiming that the termination of the petitioner's employment had been legal. (Asayas *vs*. Sea Power Shipping Enterprises, Inc., G.R. No. 201792, Jan. 24, 2018) p. 399

Factual findings of labor officials — 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 and affirmed by the CA, in the exercise of its expanded jurisdiction to review findings of the NLRC. (Phil. Geothermal, Inc. Employees Union (PGIEU) *vs*. Chevron Geothermal Phils. Holdings, Inc., G.R. No. 207252, Jan. 24, 2018) p. 426

Petition for review on certiorari to the Supreme Court under Rule 45 — 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. (St. Paul College, Pasig *vs*. Mancol, G.R. No. 222317, Jan. 24, 2018) p. 520

–– As a general rule, the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced before the lower tribunals; however, this rule allows for exceptions; one of these is when the findings of fact of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA; when there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again. (Minsola *vs*. New City Builders, Inc., G.R. No. 207613, Jan. 31, 2018) p. 864

–– It is not duty-bound to analyze, review and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error; 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. (Mla. Shipmanagement & Manning, Inc. *vs*. Aninang, G.R. No. 217135, Jan. 31, 2018) p. 916

–– The Supreme Court does not review factual questions such as whether an employer-employee relationship exists between the parties, primarily because it is not a trier of facts. (San Miguel Foods, Inc. *vs*. Rivera, G.R. No. 220103, Jan. 31, 2018) p. 961

Points of law, theories, issues and arguments –– No question will be entertained on appeal unless it has been raised in the proceedings below; points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. (Rebadulla *vs*. Rep. of the Phils., G.R. No. 222159, Jan. 31, 2018) p. 982

ARRESTS

Legality of — An accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment; any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. (People *vs*. Bringcula *y* Fernandez, G.R. No. 226400, Jan. 24, 2018) p. 585

ATTORNEYS

Code of Professional Responsibility — A lawyer shall account for all money or property collected or received for or from the client; lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him. (De Mesa *vs*. Atty. Olaybal, A.C. No. 9129, Jan. 31, 2018) p. 825

–– A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct; a lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system. (Apolinar-Petilo *vs*. Atty. Maramot, A.C. No. 9067, Jan. 31, 2018) p. 811

–– Acts, whether taken singly or together, manifested the respondent's dishonesty and deceit towards the complainant, his client, in patent violation of Rule 1.01 of the *Code of Professional Responsibility*. (Domingo *vs*. Atty. Revilla, Jr., A.C. No. 5473, Jan. 23, 2018) p. 217

–– Any breach of the fidelity towards the client that an attorney commits justifies the penalty of his suspension from the practice of law for a period of time. (De Mesa *vs*. Atty. Olaybal, A. C. No. 9129, Jan. 31, 2018) p. 825

–– The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith; the highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his

client; a lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. (Yuzon *vs*. Atty. Agleron, A.C. No. 10684, Jan. 24, 2018) p. 321

Disbarment — Although the amicable settlement obliterated the legal obligation to return to the complainant the amounts obtained by deceit, the respondent was not entitled to demand the dismissal of the charges against him for that reason; he ought to have known that his professional responsibilities as an attorney were distinct from his other responsibilities. (Domingo *vs*. Atty. Revilla, Jr., A.C. No. 5473, Jan. 23, 2018) p. 217

–– In human experience, remorse and repentance, if coupled with sincerity, have always been regarded as the auspicious start of forgiving on the part of the offended, and may eventually win even an absolution for the remorseful; the Court will not be the last to forgive though it may not forget. (*Id*.)

–– Respondent's commission of various offenses constituting professional misconduct only demonstrated his unworthiness to remain as a member of the legal profession; he ought to be disbarred for such offenses upon this complaint alone. (*Id*.)

–– The primary objective of administrative cases against lawyers is not only to punish and discipline the erring individual lawyers but also to safeguard the administration of justice by protecting the courts and the public from the misconduct of lawyers, and to remove from the legal profession persons whose utter disregard of their Lawyer's Oath has proven them unfit to continue discharging the trust reposed in them as members of the bar. (*Id*.)

Liability of — A lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of

the trust reposed in him/her by his/her client. (Yuzon *vs.* Atty. Agleron, A.C. No. 10684, Jan. 24, 2018) p. 321

–– As a lawyer, respondent should not invoke good faith and good intentions as sufficient to excuse him from discharging his obligation to be truthful and honest in his professional actions; truthfulness and honesty had the highest value for attorneys. (Apolinar-Petilo *vs.* Atty. Maramot, A.C. No. 9067, Jan. 31, 2018) p. 811

–– Failure to immediately serve the penalties in the penalties of suspension from practice of law against him upon receipt of the decision is a contumacious act. (Atty. Bartolome *vs.* Atty. Basilio, A.C. No. 10783, Jan. 31, 2018) p. 833

BILL OF RIGHTS

Equal protection clause — Equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed; it does not forbid discrimination as to things that are different; neither is it necessary that the classification be made with mathematical nicety. (H. Villarica Pawnshop, Inc. *vs.* Social Security Commission, G.R. No. 228087, Jan. 24, 2018) p. 613

–– Guarantees that no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances; however, the concept of equal protection does not require a universal application of the laws to all persons or things without distinction; what it simply requires is equality among equals as determined according to a valid classification. (*Id.*)

CERTIORARI

Petition for –– Grave abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive

duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. (Asayas *vs*. Sea Power Shipping Enterprises, Inc., G.R. No. 201792, Jan. 24, 2018) p. 399

–– In an action for certiorari, the primordial task of the court is to ascertain whether the court *a quo* acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment, such that the act was done in a capricious, whimsical, arbitrary or despotic manner; Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. (Lara's Gift and Decors, Inc. *vs*. PNB General Insurers Co., Inc., G.R. Nos. 230429-30, Jan. 24, 2018) p. 652

CLEAN WATER ACT OF 2004 (R.A. NO. 9275)

Application of — An entity's compliance with the environmental requirements is not excused by the issuance of certificate of non-coverage in its name. (Rep. of the Phils. *vs*. N. Dela Merced & Sons, Inc., G.R. No. 201501, Jan. 22, 2018) p. 87

Section 28 –– Assailing the constitutionality of Sec. 28 of R.A. No. 9275 constitutes a collateral attack; this is contrary to the rule that issues of constitutionality must be pleaded directly; unless a law is annulled in a direct proceeding, the legal presumption of the law's validity remains. (Rep. of the Phils. *vs*. N. Dela Merced & Sons, Inc., G.R. No. 201501, Jan. 22, 2018) p. 87

–– Fines under R.A. No. 9275 still cannot be classified as excessive; for a penalty to be considered obnoxious to the Constitution, it needs to be more than merely being harsh, excessive, out of proportion, or severe; to come under the prohibition, the penalty must be flagrantly and plainly oppressive or so disproportionate to the offense committed as to shock the moral sense of all reasonable

persons as to what is right and proper under the circumstances. (*Id.*)

CLERKS OF COURT

Conduct unbecoming a court employee –– Demanding and receiving money from relatives of an accused and failure to account for the court's property constitute conduct unbecoming of a court employee. (Judge Castilla *vs.* Duncano, A.M. No. P-17-3771 [Formerly OCA IPI No. 11-3689-P], Jan. 24, 2018) p. 329

Duties –– A clerk of court's office is the nucleus of activities both adjudicative and administrative, performing, among others, the functions of keeping the records and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records. (Judge Castilla *vs.* Duncano, A.M. No. P-17-3771 [Formerly OCA IPI No. 11-3689-P], Jan. 24, 2018) p. 329

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody –– As regards the items seized and subjected to marking, Sec. 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing; Sec. 21(1) is specific as to when and where these actions must be done; as to when, it must be immediately after seizure and confiscation; as to where, it depends on whether the seizure was supported by a search warrant; if a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served; in case of warrantless seizures, these actions must be done at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable. (People *vs.* Que *y* Utuanis, G.R. No. 212994, Jan. 31, 2018) p. 882

–– In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove justifiable grounds; and second, it must establish that despite non-

compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved; Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. (*Id.*)

–– Marking must be done immediately upon the seizure of the illegal drugs and in the presence of the apprehended violator of law; such prompt marking is important because the subsequent handlers of the seized items will use the marking as reference. (People *vs.* Gajo *y* Buenafe, G.R. No. 217026, Jan. 22, 2018) p. 140

–– Non-compliance with the requirements of Sec. 21 of R.A. No. 9165 under justifiable grounds will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. (People *vs.* Miranda *y* Tigas, G.R. No. 229671, Jan. 31, 2018) p. 1042

–– Refers to recorded authorized movements and custody of confiscated dangerous drugs, or controlled substances; it involves testimony on every link in the chain from the confiscation of the illegal drugs to its receipt in the forensic laboratory up to its presentation in court. (People *vs.* Gajo *y* Buenafe, G.R. No. 217026, Jan. 22, 2018) p. 140

–– Sec. 21(1) requires at least three (3) persons to be present during the physical inventory and photographing; these persons are: *first*, the accused or the person/s from whom the items were seized; *second*, an elected public official; and *third*, a representative of the National Prosecution Service; there are, however, alternatives to the first and the third; as to the first (*i.e.*, the accused or the person/s from whom items were seized), there are two (2) alternatives: *first*, his or her representative; and *second*, his or her counsel; as to the representative of the National Prosecution Service, a representative of the media may be present in his or her place. (People *vs.* Que *y* Utuanis, G.R. No. 212994, Jan. 31, 2018) p. 882

—— Strict compliance to procedural rules may not be always possible, nonetheless, the prosecution has the burden to prove justifiable reason for its non-compliance. (People *vs.* Gajo *y* Buenafe, G.R. No. 217026, Jan. 22, 2018) p. 140

—— The absence of a physical inventory and the lack of a photograph of the seized items are not sufficient justifications to acquit the appellant as the Court in several cases has affirmed convictions despite the failure of the arresting officers to strictly comply with the Chain of Custody Rule as long as the integrity and identity of the *corpus delicti* of the crime are preserved. (People *vs.* Villahermoso, G.R. No. 218208, Jan. 24, 2018) p. 499

—— The apprehending team shall, among others, 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, or 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, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. (People *vs.* Miranda *y* Tigas, G.R. No. 229671, Jan. 31, 2018) p. 1042

(People *vs.* Paz *y* Dionisio, G.R. No. 229512, Jan. 31, 2018) p. 1025

(People *vs.* Mamangon *y* Espiritu, G.R. No. 229102, Jan. 29, 2018) p. 728

—— The failure to establish the existence of the *corpus delicti* must inevitably result in the acquittal of the accused-appellant; it is axiomatic that in all criminal prosecutions, all the elements constitutive of the crime charged must be duly established; otherwise, it becomes the constitutional duty of the Court to acquit the accused-appellant, his guilt not having been proved beyond reasonable doubt. (People *vs.* Abelarde, G.R. No. 215713, Jan. 22, 2018) p. 122

–– The following links 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. (People *vs.* Que *y* Utuanis, G.R. No. 212994, Jan. 31, 2018) p. 882

–– 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. (People *vs.* Paz *y* Dionisio, G.R. No. 229512, Jan. 31, 2018) p. 1025

–– The mere marking of seized items, unsupported by a proper physical inventory and taking of photographs and in the absence of the persons whose presence is required by Sec. 21 will not justify a conviction; the presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items; the requirement of conducting the inventory and taking of photographs immediately after seizure and confiscation necessarily means that the required witnesses must also be present during the seizure or confiscation. (People *vs.* Que *y* Utuanis, G.R. No. 212994, Jan. 31, 2018) p. 882

–– The prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. (People *vs.* Mamangon *y* Espiritu, G.R. No. 229102, Jan. 29, 2018) p. 728

–– The said inventory and photograph may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure and that non-compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 under justifiable grounds will not render void and invalid the seizure and custody over the seized

items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. (People *vs.* Jugo *y* Villanueva, G.R. No. 231792, Jan. 29, 2018) p. 743

–– The term "chain of custody" as the duly recorded authorized movements and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination, until it is presented in court. (*Id.*)

Illegal possession of dangerous drugs — To convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (People *vs.* Paz *y* Dionisio, G.R. No. 229512, Jan. 31, 2018) p. 1025

Illegal sale of dangerous drugs — Case law states that in every prosecution of illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. (People *vs.* Miranda *y* Tigas, G.R. No. 229671, Jan. 31, 2018) p. 1042

–– For an accused to be convicted of illegal sale of dangerous drugs, the prosecution must establish the following elements: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. (People *vs.* Flor *y* Mora, G.R. No. 216017, Jan. 19, 2018) p. 46

–– For the case of illegal sale of *shabu*, the prosecution must prove: 1) the identity of the buyer and the seller as well as the object and consideration of the sale; and 2) the delivery and payment of the object sold. (People *vs.* Gajo *y* Buenafe, G.R. No. 217026, Jan. 22, 2018) p. 140

— In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. (People *vs*. Que *y* Utuanis, G.R. No. 212994, Jan. 31, 2018) p. 882

— In every prosecution of unauthorized sale of dangerous drugs, it is essential that the following elements are proven beyond reasonable doubt: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. (People *vs*. Mamangon *y* Espiritu, G.R. No. 229102, Jan. 29, 2018) p. 728

— It is necessary to establish: 1) the possession of the accused of an identified prohibited drug; 2) such possession was not legally authorized; and 3) the accused freely and consciously possessed it. (People *vs*. Gajo *y* Buenafe, G.R. No. 217026, Jan. 22, 2018) p. 140

— Prior surveillance is not a prerequisite for the validity of an entrapment operation especially if the buy-bust team is accompanied to the target area by their informant. (People *vs*. Villahermoso, G.R. No. 218208, Jan. 24, 2018) p. 499

— The failure of the police officers to immediately take an inventory of the seized *shabu* is not fatal to the prosecution of the case; it did not render the arrest of the appellant who was caught in *flagrante delicto* illegal nor did the omission render the seized drugs inadmissible; what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. (People *vs*. Flor *y* Mora, G.R. No. 216017, Jan. 19, 2018) p. 46

— To properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. (People *vs*. Jugo *y* Villanueva, G.R. No. 231792, Jan. 29, 2018) p. 743

CONTRACTS

Perfection of — As a rule, a contract is perfected upon the meeting of the minds of the two parties; it is perfected by mere consent, that is, from the moment that there is a meeting of the offer and acceptance upon the thing and the cause that constitute the contract. (Sps. Ong *vs*. BPI Family Savings Bank, Inc., G.R. No. 208638, Jan. 24, 2018) p. 439

CORPORATIONS

Merger — The surviving corporation not only acquires all the rights, privileges and assets of the constituent corporation but likewise acquires the liabilities and obligations of the latter. (Sps. Ong *vs*. BPI Family Savings Bank, Inc., G.R. No. 208638, Jan. 24, 2018) p. 439

COURT PERSONNEL

Duties — The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women therein, from the judges to the most junior clerks; their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. (Atty. Lood *vs*. Delicana, A.M. No. P-18-3796 [Formerly OCA IPI No. 16-4545-P], Jan. 22, 2018) p. 64

Grave misconduct — It is grave misconduct when the court employee participated or consented to the commission of the unlawful acts of tampering receipts and over withdrawals from court funds simply because of following the orders or instructions of her superior. (Office of the Court Administrator *vs*. Tomas, A.M. No. P-09-2633, Jan. 30, 2018) p. 761

Habitual absenteeism — A civil servant is considered habitually absent when he or she incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year.

(Judge Balloguing *vs*. Dagan, A.M. No. P-17-3645 [Formerly OCA IPI No. 15-4415-P], Jan. 30, 2018) p. 788

–– Mere failure to file leave of absence does not by itself result in any administrative liability; however, unauthorized absence is punishable if the same becomes frequent or habitual; absences become habitual when an officer or employee in the civil service exceeds the allowable monthly leave credit (2.5 days) within the given time frame. (*Id.*)

Insubordination –– Failure to file his comment despite notice to do so, such court employee committed insubordination. (Judge Balloguing *vs*. Dagan, A.M. No. P-17-3645 [Formerly OCA IPI No. 15-4415-P], Jan. 30, 2018) p. 788

Liability of –– Considering his service in the Judiciary for more than 36 years; his unqualified and candid acknowledgement of his offense; his feeling of remorse; his full restitution of the shortages amounting to ₱98,652.81; his advancing age and medical condition; and his nearing the mandatory retirement by January 4, 2019, the Court finds that the circumstances listed by the respondent merit the mitigation of the ultimate penalty of dismissal from the service with forfeiture of all retirement benefits (excluding earned leave credits), with prejudice to his re-employment in the Government, including government-owned or government-controlled corporations imposed upon him. (Office of the Court Administrator *vs*. Egipto, Jr., A.M. No. P-05-1938, Jan. 30, 2018) pp. 757-758

Simple misconduct –– Classified as a less grave offense; it is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. (Atty. Lood *vs*. Delicana, A.M. No. P-18-3796 [Formerly OCA IPI No. 16-4545-P], Jan. 22, 2018) p. 64

CRIMINAL PROCEDURE

Motion to reopen the case –– A motion to reopen may be filed even after the promulgation of a judgment and before

the same lapses into finality, and the only guiding parameter is to avoid the miscarriage of justice. (Rivac *vs*. People, G.R. No. 224673, Jan. 22, 2018) p. 156

Variance doctrine –– Under the variance doctrine embodied in Sec. 4, in relation to Sec. 5, Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence, even though the crime charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape. (People *vs*. Dagsa *y* Bantas, G.R. No. 219889, Jan. 29, 2018) p. 704

DAMAGES

Attorney's fees — The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate; they are not awarded each time a party wins a suit, and they are not necessarily equated to the amount paid by a litigant to a lawyer. (Rebadulla *vs*. Rep. of the Phils., G.R. No. 222159, Jan. 31, 2018) p. 982

Award of — Good faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious. (Gambito *vs*. Bacena, G.R. No. 225929, Jan. 24, 2018) p. 542

Moral damages –– Unless there is a clear showing of malice or bad faith or gross negligence, a public officer is not liable for moral and exemplary damages for acts done in the performance of duties. (Rebadulla *vs*. Rep. of the Phils., G.R. No. 222159, Jan. 31, 2018) p. 982

Nominal damages — Under Art. 2221 of the Civil Code, nominal damages are given in order that a right of the plaintiff which has been violated or invaded by the

defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. (People *vs*. Dela Peña, G.R. No. 219581, Jan. 31, 2018) p. 949

DENIAL

Defense of — An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness; alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law; they are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. (People *vs*. Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

—— Appellant's defense of mere denial could not prevail over the positive testimonies of the prosecution's witnesses as the Court often views with disfavor the defense of denial, especially if it is not substantiated by any clear and convincing evidence. (People *vs*. Dejolde, Jr. *y* Salino, G.R. No. 219238, Jan. 31, 2018) p. 939

—— It is an inherently weak defense as it is a self-serving negative evidence that cannot be given more evidentiary weight than the affirmative declarations of credible witnesses. (*Id.*)

DEPOSIT

Joint account — A joint account is one that is held jointly by two or more natural persons, or by two or more juridical persons or entities; under such setup, the depositors are joint owners or co-owners of the said account, and their share in the deposits shall be presumed equal, unless the contrary is proved; the nature of joint accounts is governed by the rule on co-ownership embodied in Art. 485 of the Civil Code. (In the Matter of the Intestate Estate of Reynaldo Guzman Rodriguez *vs*. Rodriguez, G.R. No. 230404, Jan. 31, 2018) p. 1061

DUE PROCESS

Right to — A party cannot invoke deprivation of due process if he or she was given the opportunity of a hearing, through either oral arguments or pleadings; the hearing does not have to be a trial-type proceeding in all situations. (Land Bank of the Phils. *vs*. Manzano, G.R. No. 188243, Jan. 24, 2018) p. 339

EJECTMENT

Action for — An owner of a registered land does not lose his rights over a property on the ground of laches as long as the opposing claimant's possession was merely tolerated by the owner; a torrens title is irrevocable and its validity can only be challenged in a direct proceeding; a torrens title is an indefeasible and imprescriptible title to a property in favor of the person in whose name the title appears. (Gatchalian *vs*. Flores, G.R. No. 225176, Jan. 19, 2018) p. 57

–– The only issue for the Court's resolution is, who between the parties is entitled to the physical or material possession of the subject property; issues as to ownership are not involved, except only for the purpose of determining the issue of possession. (*Id.*)

EMINENT DOMAIN

Just compensation –– Commissioners must be appointed by the trial court to initially ascertain the just compensation, failing which the trial court's valuation will be ineffectual; when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (*i.e.*, provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable. (Rebadulla *vs*. Rep. of the Phils., G.R. No. 222159, Jan. 31, 2018) p. 982

–– No private property shall be taken for public use without just compensation; ideally, just compensation should be immediately paid to the property owner so that he may

derive income from this compensation, in the same manner that he would have derived income from his property; if full compensation is not paid, the State must make up for the shortfall in the earning potential immediately lost due to the taking; interest on the unpaid compensation becomes due not only as compliance with the constitutional mandate on eminent domain but also as a basic measure of fairness. (*Id.*)

–– The just compensation due to the property owner is effectively a forbearance of money. (*Id.*)

–– The sum equivalent of the market value of the property, broadly described as the price fixed in open market by the seller in the usual and ordinary course of legal action or competition, or the fair value of the property as between one who receives and who desires to sell it, fixed at the time of the actual taking by the government. (*Id.*)

Power of — Landowner's remedies when his property is taken by the government for public use: he may recover his property if its return is still feasible or, if it is not, he may demand payment of just compensation for the land taken. (Rebadulla *vs*. Rep. of the Phils., G.R. No. 222159, Jan. 31, 2018) p. 982

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — The four-fold test is the established standard for determining the existence of an employer-employee relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control over the employee's conduct; of the four elements, the power of control is the most important. (Mago *vs*. Sunpower Mfg. Ltd., G.R. No. 210961, Jan. 24, 2018) p. 464

EMPLOYMENT, TERMINATION OF

Abandonment — To be valid, the employer must prove, by substantial evidence, the concurrence of the employee's failure to report for work for no valid reason and his categorical intention to discontinue employment.

(St. Paul College, Pasig *vs*. Mancol, G.R. No. 222317, Jan. 24, 2018) p. 520

Constructive dismissal — Also known as a dismissal in disguise, exist where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. (Minsola *vs*. New City Builders, Inc., G.R. No. 207613, Jan. 31, 2018) p. 864

–– Arises when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee; in such cases, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment. (St. Paul College, Pasig *vs*. Mancol, G.R. No. 222317, Jan. 24, 2018) p. 520

–– It is constructive dismissal when resignation was made under compulsion or under circumstances approximating compulsion, such as when an employee's act of handing in his or her resignation was a reaction to circumstances leaving him or her no alternative but to resign. (Pascua *vs*. Bank Wise, Inc., G.R. No. 191460, Jan. 31, 2018) p. 846

Illegal dismissal –– In claims for payment of salary differential, service incentive leave, holiday pay and 13th month pay, the burden rests on the employer to prove payment; this standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. (Minsola *vs*. New City Builders, Inc., G.R. No. 207613, Jan. 31, 2018) p. 864

–– The employer has the burden of proving, in illegal dismissal cases, that the employee was dismissed for a just or authorized cause; even if the employer claims

that the employee resigned, the employer still has the burden of proving that the resignation was voluntary. (Pascua *vs.* Bank Wise, Inc., G.R. No. 191460, Jan. 31, 2018) p. 846

Just causes –– An employee who knowingly defies a return-to-work order issued by the Secretary of Labor is deemed to have committed an illegal act which is a just cause to dismiss the employee under Art. 282 of the Labor Code. (Tolentino *vs.* Philippine Airlines, Inc., G.R. No. 218984, Jan. 24, 2018) p. 505

Resignation –– The voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment; in order to prove that resignation is voluntary, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment. (Pascua *vs.* Bank Wise, Inc., G.R. No. 191460, Jan. 31, 2018) p. 846

Retirement –– May be granted only to those who have satisfactorily met the requisites for retirement. (Tolentino *vs.* Philippine Airlines, Inc., G.R. No. 218984, Jan. 24, 2018) p. 505

–– Retirement benefits, especially those which are given before the mandatory retirement age, are given as a form of reward for the services rendered by the employee to the employer; thus, it would be contrary to the rationale of retirement benefits to reward an employee who was terminated due to just cause, or who committed an act that was enough to merit his dismissal. (*Id.*)

–– The result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agree to sever his or her employment with the former. (*Id.*)

ESTAFA

Commission of –– Elements of *Estafa* under Art. 315 (1) (b) of the RPC are as follows: (a) the offender's receipt of money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received. (Rivac *vs*. People, G.R. No. 224673, Jan. 22, 2018) p. 156

EVIDENCE

Allegations — Mere allegation without sufficient proof is not evidence of the existence of a fact or of the truthfulness of an allegation. (Arbilon *vs*. Manlangit, G.R. No. 197920, Jan. 22, 2018) p. 73

Burden of proof — He who alleges a fact has the burden of proving it and a mere allegation is not evidence. (Arbilon *vs*. Manlangit, G.R. No. 197920, Jan. 22, 2018) p. 73

Circumstantial evidence — A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator. (People *vs*. Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

–– Also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances when the existence of the main fact may be inferred according to reason and common experience; sufficient to sustain conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. (*Id*.)

Hearsay evidence –– Under the totality of evidence standard, hearsay testimony may be admitted and appreciated depending on the facts and circumstances unique to each petition for the issuance of the writ of *amparo* provided such hearsay testimony is consistent with the admissible evidence adduced. (Gen. Bautista *vs.* Atty. Dannug-Salucon, G.R. No. 221862, Jan. 23, 2018) p. 293

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. (People *vs.* Que *y* Utuanis, G.R. No. 212994, Jan. 31, 2018) p. 882

Recantation –– An affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention; affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration; recanted testimony is exceedingly unreliable as there is always the probability that it will later be repudiated; only when there exist special circumstances in the case which, when coupled with the retraction, raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld. (Rivac *vs.* People, G.R. No. 224673, Jan. 22, 2018) p. 156

–– Recantations are viewed with suspicion and reservation; the Court looks with disfavor upon retractions of testimonies previously given in court. (*Id.*)

EXPROPRIATION

Expropriation proceedings –– Absent any expropriation proceedings and without any evidence that the petitioner donated or sold the subject property to the municipal government, the same is still private property. (Gatchalian *vs.* Flores, G.R. No. 225176, Jan. 19, 2018) p. 57

Just compensation –– The amount of just compensation must be determined based on the fair market value of the

property at the time of the taking. (Land Bank of the Phils. *vs*. Manzano, G.R. No. 188243, Jan. 24, 2018) p. 339

–– The determination of just compensation is a judicial function which cannot be curtailed or limited by legislation, much less by an administrative rule. (*Id.*)

–– The full and fair equivalent of the property which must be paid to the owners of the land within a reasonable time from its taking; this is because without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. (Yared *vs*. Land Bank of the Phils., G.R. No. 213945, Jan. 24, 2018) p. 487

–– The government, upon its taking of the landholding, must properly compensate the landowner through its payment of the full valuation of the property with imposition of legal interest; this is the only way to achieve a fair exchange for the property and the potential income loss of the landowner. (*Id.*)

–– The imposition of legal interest per annum on the just compensation due to the landowner was "in the nature of damages for delay in payment." (Land Bank of the Phils. *vs*. Manzano, G.R. No. 188243, Jan. 24, 2018) p. 339

FORUM SHOPPING

Concept — Act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another. (Galang *vs*. Peakhold Finance Corp., G.R. No. 233922, Jan. 24, 2018) p. 674

–– Committed in three ways; (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). (*Id.*)

–– To determine whether a party violated the rule against forum shopping, it is essential to ask whether a final judgment in one case will amount to *res judicata* in another or whether the following elements of *litis pendentia* are present: (*a*) identity of parties, or at least such parties as representing the same interests in both actions; (*b*) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (*c*) the identity of the two (2) preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. (*Id.*)

GENERAL APPROPRIATIONS ACT OF 2014 (2014 GAA)

Motor Vehicle License Plate Standardization Program (MVPSP) — The 2014 GAA itself contained the direct appropriation necessary to implement the MVPSP; under the circumstances, there was no unconstitutional transfer of funds because no transfer of funds was made to augment the item Motor Vehicle Registration and Driver's Licensing Regulatory Services to include the funding for the MVPSP. (Hon. Dela Cruz *vs*. Hon. Ochoa, Jr., G.R. No. 219683, Jan. 23, 2018) p. 269

–– The legality of the procurement of the MVPSP, opined that whatever defects had attended its procurement were "cured" by the appropriation for the full amount of the project under the 2014 GAA. (*Id.*)

–– The specific appropriations of money were still found under details of the FY 2014 budget which was attached to the 2014 GAA; they specified and contained the authorized budgetary programs and projects under the GAA; the specific purpose provided under the MFO2 was an appropriation for a Motor vehicle registration system; such specific purpose satisfied the requirement of a valid line-item that the President could discernibly veto. (*Id.*)

***HABEAS DATA*, WRIT OF**

Petition for — The writ of *habeas data* is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party. (Gen. Bautista *vs.* Atty. Dannug-Salucon, G.R. No. 221862, Jan. 23, 2018) p. 293

HUMAN RELATIONS

Unjust enrichment — Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. (Asentista *vs.* Jupp & Co., Inc., G.R. No. 229404, Jan. 24, 2018) p. 639

INTERESTS

Legal interest — Guidelines regarding the manner of computing legal interest, particularly declaring that when judgments of the court awarding a sum of money become final and executory, the rate of legal interest shall be 12% per annum from such finality until its satisfaction, since this interim period is deemed to be by then an equivalent to a forbearance of credit; with the issuance of BSP-MB Circular No. 799, Series of 2013, however, which became effective on July 1, 2013, in the absence of an express stipulation as to the rate of interest that would govern

the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum but shall now be six percent (6%) per annum effective July 1, 2013; consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013, and from July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable. (The Mla. Banking Corp. *vs.* Bases Conversion and Dev't. Authority, G.R. No. 230144, Jan. 22, 2018) p. 193

JUDGES

Grave misconduct and dishonesty –– Defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. (Office of the Court Administrator *vs.* Tomas, A.M. No. P-09-2633, Jan. 30, 2018) p. 761

Liability of –– Tampering of official receipts and over withdrawals from court funds clearly constitute grave misconduct and serious dishonesty. (Office of the Court Administrator *vs.* Tomas, A.M. No. P-09-2633, Jan. 30, 2018) p. 761

Misconduct –– A transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer; to warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling; the misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. (Office of the Court

Administrator *vs.* Judge Salise, A.M. No. RTJ-18-2514 [Formerly A.M. No. 16-10-387-RTC], Jan. 30, 2018) p. 797

Serious misconduct — Unless the acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases; however, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority. (Office of the Court Administrator *vs.* Judge Salise, A.M. No. RTJ-18-2514 [Formerly A.M. No. 16-10-387-RTC], Jan. 30, 2018) p. 797

JUDGMENTS

Execution pending appeal — Under Rule 39, Sec. 2(a), a judgment appealed before the Court of Appeals may still be executed by the Regional Trial Court, provided there are good reasons for the judgment's execution. (Land Bank of the Phils. *vs.* Manzano, G.R. No. 188243, Jan. 24, 2018) p. 339

Immutability of — A judgment, once it has attained finality, can never be altered, amended, or modified, even if the alteration, amendment or modification is to correct an erroneous judgment. (Rep. of the Phils. *vs.* Heirs of Cirilo Gotengco, G.R. No. 226355, Jan. 24, 2018) p. 568

Rendition of — A decision which failed to express clearly and distinctly the facts and the law on which it is based is void. (Go *vs.* East Oceanic Leasing and Finance Corp., G.R. Nos. 206841-42, Jan. 19, 2018) p. 1

JUDICIAL AFFIDAVIT RULE

Application of — In lieu of direct testimony in court, the parties are required to submit the judicial affidavits of their witnesses within a given period; the JA Rule was not devised to supplant or amend existing procedural rules; rather, it is designed to supplement and augment them. (Lara's Gift and Decors, Inc. *vs*. PNB General Insurers Co., Inc., G.R. Nos. 230429-30, Jan. 24, 2018) p. 652

—— Parties are mandated under Sec. 2 of the JA Rule to file and serve the judicial affidavits of their witnesses, together with their documentary or object evidence, not later than five days before pre-trial or preliminary conference; the documentary and testimonial evidence submitted will then be specified by the trial judge in the Pre-Trial Order; the failure to timely submit the affidavits and documentary evidence shall be deemed to be a waiver of their submission. (*Id*.)

—— Submission of evidence beyond the mandated period in the JA Rule is strictly subject to the conditions that: a) the court may allow the late submission of evidence only once; b) the party presenting the evidence proffers a valid reason for the delay; and c) the opposing party will not be prejudiced thereby; trial court has discretion to allow the introduction of additional evidence during trial other than those that had been previously marked and identified during the pre-trial, provided there are valid grounds. (*Id*.)

—— Took effect on January 1, 2013, was promulgated to address congestion and delays in courts; designed to expedite court proceedings, it primarily affects the manner by which evidence is presented in court, particularly with regard to the taking of the witnesses' testimonies. (*Id*.)

Supplemental judicial affidavit — Parties must file with the court and serve on the adverse party the Judicial Affidavits of their witnesses not later than five days before pre-

trial or preliminary conference; while the belated submission of evidence is not totally disallowed, it is still subject to several conditions. (Lara's Gift and Decors, Inc. *vs*. PNB General Insurers Co., Inc., G.R. Nos. 230429-30, Jan. 24, 2018) p. 652

JURISDICTION

Probate court –– If the probing arms of an intestate court is limited, it is equally important to consider the call of the exercise of its power of adjudication especially so when the case calls for the same. (In the Matter of the Intestate Estate of Reynaldo Guzman Rodriguez *vs*. Rodriguez, G.R. No. 230404, Jan. 31, 2018) p. 1061

LABOR CODE

Employee with special qualifications — Employees with special qualifications would be on *equal* footing with their employers, and thus, would need a lesser degree of protection from the State than an ordinary rank-and-file worker. (Pascua *vs*. Bank Wise, Inc., G.R. No. 191460, Jan. 31, 2018) p. 846

–– The presumption is that the employer and the employee are on unequal footing so the State has the responsibility to protect the employee; this presumption, however, must be taken on a case-to-case basis; in situations where special qualifications are required for employment, such as a Master's degree or experience as a corporate executive, prospective employees are at a better position to bargain or make demands from the employer. (*Id*.)

Job contracting –– Job contracting is permissible whether such job, work, or service is to be performed or completed within or outside the premises of the principal for as long as the elements of a labor-only contractor are not present. (Mago *vs*. Sunpower Mfg. Ltd., G.R. No. 210961, Jan. 24, 2018) p. 464

–– The contractor should undertake the performance of the sevices under its contract according to its own manner and method, free from the control and supervision of

the principal; otherwise, the contractor is deemed an illegitimate or labor-only contractor; the control over the employees' performance of the work is usually manifested through the power to hire, fire, and pay the contractor's employees, the power to discipline the employees and impose the corresponding penalty, and more importantly, the actual supervision of the employees' performance. (*Id.*)

–– The law and the relevant regulatory rules require the contractor to have substantial capital or investment, in order to be considered a legitimate and independent contractor; DOLE DO No. 18-A, series of 2011, provides that substantial capital refers to paid-up capital stocks/ shares of at least 3,000,000.00 in the case of corporations. (*Id.*)

Kinds of employees — The Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (iii) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (iv) casual employees or those who are not regular, project, or seasonal employees; jurisprudence has added a fifth kind; fixed-term employees or those hired only for a definite period of time. (Minsola *vs.* New City Builders, Inc., G.R. No. 207613, Jan. 31, 2018) p. 864

Labor only contracting — A finding of the existence of a labor-only contracting would definitely give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code; to distinguish prohibited

labor-only contracting from permissible job contracting, the totality of the facts and the surrounding circumstances of the case shall be considered; the 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. (San Miguel Foods, Inc. *vs*. Rivera, G.R. No. 220103, Jan. 31, 2018) p. 961

Legitimate job contracting –– In legitimate job contracting, the employer-employee relationship between the job contractor and his employees is maintained; while the law creates an employer-employee relationship between the employer and the contractor's employees, the same is only for the purpose of ensuring the payment of the employees' wages; the employer becomes jointly and severally liable with the job contractor but only for the payment of the employees' wages whenever the contractor fails to pay the same. (San Miguel Foods, Inc. *vs*. Rivera, G.R. No. 220103, Jan. 31, 2018) p. 961

–– The permitted or permissible or legitimate job contracting or subcontracting is the one allowed and permitted by law; it is an arrangement whereby a principal agrees to put out or farm out with the 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. (*Id*.)

–– To determine its existence, these conditions must concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his 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 his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational

safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits. (*Id.*)

Management prerogative –– Gives an employer freedom to regulate according to their discretion and best judgment, all aspects of employment including work assignment, working methods, the processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. (Phil. Geothermal, Inc. Employees Union (PGIEU) *vs*. Chevron Geothermal Phils. Holdings, Inc., G.R. No. 207252, Jan. 24, 2018) p. 426

–– Reemployment, on the condition that the employee will be treated as a new employee, is a valid exercise of the employer's prerogative, as long as it is not done with anti-union motivation. (Tolentino *vs*. Philippine Airlines, Inc., G.R. No. 218984, Jan. 24, 2018) p. 505

Project employees — For employment to be regarded as project-based, it is incumbent upon the employer to prove that: (i) the employee was hired to carry out a specific project or undertaking; and (ii) the employee was notified of the duration and scope of the project; in order to safeguard the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project. (Minsola *vs*. New City Builders, Inc., G.R. No. 207613, Jan. 31, 2018) p. 864

–– In a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time; the services of the project employee may be lawfully terminated upon the completion of such project or phase. (*Id.*)

Wage distortion — Elements of wage distortion, to wit: (1) an existing hierarchy of positions with corresponding

salary rates; (2) a significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one; (3) the elimination of the distinction between the two levels; and (4) the existence of the distortion in the same region of the country. (Phil. Geothermal, Inc. Employees Union (PGIEU) *vs*. Chevron Geothermal Phils. Holdings, Inc., G.R. No. 207252, Jan. 24, 2018) p. 426

–– Upon the enactment of R.A. No. 6727 (Wage Rationalization Act, amending among others, Art. 124 of the Labor Code) on June 9, 1989, the term "Wage Distortion" was explicitly defined as "a situation where an increase in prescribed wage rate results in the elimination or severe contraction of intentional quantitative differences in wage or salary rate between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service or other logical bases of differentiation. (*Id*.)

Wages — Employee's wage has been defined as remuneration of earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. (Asentista *vs*. Jupp & Co., Inc., G.R. No. 229404, Jan. 24, 2018) p. 639

–– In cases involving non-payment of monetary claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law. (*Id*.)

LACHES

Elements — To wit: 1) conduct on the part of the defendant, or one under whom he claims, giving rise to the situation that led to the complaint and for which the complaint seeks a remedy; 2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; 3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and 4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held barred. (Rep. of the Phils. *vs*. Heirs of Cirilo Gotengco, G.R. No. 226355, Jan. 24, 2018) p. 568

Principle of –– Defined as the 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. (Gambito *vs*. Bacena, G.R. No. 225929, Jan. 24, 2018) p. 542

LAND REGISTRATION

Free patent –– The issuance of free patent over a land cannot affect the private ownership over the same. (Gambito *vs*. Bacena, G.R. No. 225929, Jan. 24, 2018) p. 542

LEASE

Contract of — A consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor. (Racelis *vs*. Sps. Javier, G.R. No. 189609, Jan. 29, 2018) p. 684

–– Art. 1658 of the Civil Code allows a lessee to postpone the payment of rent if the lessor fails to either (1) make the necessary repairs on the property or (2) maintain the

lessee in peaceful and adequate enjoyment of the property leased. (*Id.*)

–– The failure to maintain the lessee in the peaceful and adequate enjoyment of the property leased does not contemplate all acts of disturbance; lessees may suspend the payment of rent under Art. 1658 of the Civil Code only if their legal possession is disrupted; lessees who exercise their right under Art. 1658 of the Civil Code are not freed from the obligations imposed by law or contract. (*Id.*)

LEGISLATIVE DEPARTMENT

Powers –– The fixing of penalties for the violation of statutes is primarily a legislative function, and the courts hesitate to interfere, unless the fine provided for is so far excessive as to shock the sense of mankind. (Rep. of the Phils. *vs.* N. Dela Merced & Sons, Inc., G.R. No. 201501, Jan. 22, 2018) p. 87

LOAN

Contract of –– Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor and the other the debtor; the obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. (Sps. Ong *vs.* BPI Family Savings Bank, Inc., G.R. No. 208638, Jan. 24, 2018) p. 439

MOTION FOR RECONSIDERATION

Notice of hearing –– Every motion to be set for hearing by the applicant and to give notice of such hearing to the other party at least three days before the date of the hearing; the notice of hearing should be addressed to all parties concerned and should specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (The Mla. Banking Corp. *vs.* Bases Conversion and Dev't. Authority, G.R. No. 230144, Jan. 22, 2018) p. 193

—— Where a motion has no notice of hearing, it is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading; nevertheless, the Supreme Court has relaxed procedural rules when a rigid application of these rules only hinders substantial justice; relaxation of its rules is subject to certain conditions and for liberality to be applied, it must be assured that the adverse party has been afforded the opportunity to be heard through pleadings filed in opposition to the motion. (*Id.*)

MOTIONS

Motion to quash — Motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted, the purpose for which such provision was enacted must nevertheless be considered; failure to file a motion to suppress the evidence obtained against him cannot be considered as a sufficient indication that he clearly, categorically, knowingly, and intelligently made a waiver. (Dabon *vs.* People, G.R. No. 208775, Jan. 22, 2018) p. 108

MURDER

Commission of —– Elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide; There is no need to dwell on the first two (2) elements. (People *vs.* Kalipayan *y* Aniano, G.R. No. 229829, Jan. 22, 2018) p. 173

NOTARY PUBLIC

Acknowledgment — Refers to an act in which an individual on a single occasion appears in person before the notary public and presents an integrally complete instrument or document. (Apolinar-Petilo *vs.* Atty. Maramot, A.C. No. 9067, Jan. 31, 2018) p. 811

OBLIGATIONS

Payment –– Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (Arbilon *vs.* Manlangit, G.R. No. 197920, Jan. 22, 2018) p. 73

Reciprocal obligations –– A debtor cannot incur delay unless the creditor has fully performed its reciprocal obligation. (Sps. Ong *vs.* BPI Family Savings Bank, Inc., G.R. No. 208638, Jan. 24, 2018) p. 439

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Permanent total disability benefits –– Assessment of the company-designated physician prevails over that of the seafarer's own doctor; the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records. (Teekay Shipping Phils., Inc. *vs.* Ramoga, Jr., G.R. No. 209582, Jan. 19, 2018) p. 35

–– If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer; the third doctor's decision shall be final and binding on both parties. (Hernandez *vs.* Magsaysay Maritime Corp., G.R. No. 226103, Jan. 24, 2018) p. 552

–– Guidelines shall govern the seafarer's claims for permanent total disability benefits: 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. (Teekay Shipping Phils., Inc. *vs*. Ramoga, Jr., G.R. No. 209582, Jan. 19, 2018) p. 35

–– Reliance on the assessment of the company-designated physician was justified not only by the law governing the parties under the contract, but by the time and resources spent as well as the effort exerted by the company-designated doctor in the examination and treatment of petitioner while still on board and as soon as he was repatriated in the Philippines. (Hernandez *vs*. Magsaysay Maritime Corp., G.R. No. 226103, Jan. 24, 2018) p. 552

–– The company-designated physician has determined that respondent's condition needed further medical treatment and evaluation; it was premature for the respondent to file a case for permanent total disability benefits. (Teekay Shipping Phils., Inc. *vs*. Ramoga, Jr., G.R. No. 209582, Jan. 19, 2018) p. 35

PIRACY

Commission of –– Prosecution was able to establish that the victims' pump boat was in Philippine waters when appellant and his armed companions boarded the same and seized its cargo, equipment, and the personal belongings of the passengers. (People *vs*. Dela Peña, G.R. No. 219581, Jan. 31, 2018) p. 949

PRE-TRIAL

Purpose — All issues that the parties intend to raise during the trial must be raised during the pre-trial; pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case; the parties must disclose during pretrial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. (Arbilon *vs.* Manlangit, G.R. No. 197920, Jan. 22, 2018) p. 73

— Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. (*Id.*)

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Innocent purchaser for value — In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title; after the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void. (Gambito *vs.* Bacena, G.R. No. 225929, Jan. 24, 2018) p. 542

QUALIFYING CIRCUMSTANCES

Abuse of superior strength — When treachery is present, the circumstance of abuse of superior strength is absorbed therein necessarily follows; even without a definite finding as to whether it exists in this case or not, it is beyond cavil that treachery, as a qualifying circumstance, absorbs the aggravating circumstance of abuse of superior strength even though the latter was alleged in the information. (People *vs.* Kalipayan *y* Aniano, G.R. No. 229829, Jan. 22, 2018) p. 173

Evident premeditation –– Elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts. (People *vs*. Kalipayan *y* Aniano, G.R. No. 229829, Jan. 22, 2018) p. 173

Treachery –– Circumstance that must be proven as indubitably as the crime itself and constitutes two (2) elements: (1) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and (2) that said means of execution were deliberately or consciously adopted. (People *vs*. Kalipayan *y* Aniano, G.R. No. 229829, Jan. 22, 2018) p. 173

RAPE

Commission of –– Complete penetration is not required to consummate the crime of rape; full penile penetration is not a consummating ingredient in the crime of rape. (People *vs*. Bejim *y* Romero, G.R. No. 208835, Jan. 19, 2018) p. 10

–– If there is neither clear showing nor direct proof of penile penetration or that appellant's penis made contact with the *labias* of the victims, which is an essential element of the crime of rape, the court cannot sustain appellant's conviction for the crime of rape; however, appellant can be convicted of Acts of Lasciviousness under Art. 336 of the Revised Penal Code in relation to Sec. 5 of R.A. No. 7610, which was the offense proved though he was charged with rape through sexual intercourse in relation to R.A. No. 7610, applying the variance doctrine under Sec. 4 in relation to Sec. 5 of Rule 120 of the Revised Rules of Criminal Procedure. (*Id*.)

–– There is sufficient basis to conclude the existence of carnal knowledge when the testimony of a rape victim

is corroborated by the medical findings of the examining physician as lacerations, whether healed or fresh, are the best physical evidence of forcible defloration. (People *vs*. De Chavez, G.R. No. 218427, Jan. 31, 2018) p. 930

–– There must be proof that his penis touched the *labias* of the victims or slid into their female organs and not merely stroked the external surface thereof, to produce a conviction of rape by sexual intercourse. (People *vs*. Bejim *y* Romero, G.R. No. 208835, Jan. 19, 2018) p. 10

RES JUDICATA

Principle of — A former judgment constitutes a bar, as between the parties, not only as to matters expressly adjudged, but all matters that could have been adjudged at the time. (Rep. of the Phils. *vs*. Heirs of Cirilo Gotengco, G.R. No. 226355, Jan. 24, 2018) p. 568

ROBBERY WITH RAPE

Commission of — For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed by reason or on the occasion of a robbery and not the other way around; this special complex crime under Art. 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime. (People *vs*. Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

(People *vs*. Bringcula *y* Fernandez, G.R. No. 226400, Jan. 24, 2018) p. 585

–– Once conspiracy is established between two accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, unless any of them proves that he endeavored to prevent the other from committing the rape. (People *vs*. Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

–– To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape. (People *vs*. Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

(People *vs*. Bringcula *y* Fernandez, G.R. No. 226400, Jan. 24, 2018) p. 585

–– Whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape. (People *vs*. Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

SALES

Contract of –– Opportunity cost is defined as the cost of the foregone alternative; in a potential sale, the seller reserves the property for a potential buyer and foregoes the alternative of searching for other offers. (Racelis *vs*. Sps. Javier, G.R. No. 189609, Jan. 29, 2018) p. 684

Contract to sell –– In a contract of sale, title to the property passes to the buyer upon delivery of the thing sold; in contrast, in a contract to sell, ownership does not pass to the prospective buyer until full payment of the purchase price; the title of the property remains with the prospective seller; in a contract of sale, the non-payment of the purchase price is a resolutory condition that entitles the seller to rescind the sale; in a contract to sell, the payment of the purchase price is a positive suspensive condition that gives rise to the prospective seller's obligation to convey title; however, non-payment is not a breach of contract but an event that prevents the obligation of the vendor to convey title from becoming effective. (Racelis *vs*. Sps. Javier, G.R. No. 189609, Jan. 29, 2018) p. 684

–– Is a bilateral contract whereby the prospective seller, while expressly reserving the ownership over the thing

sold despite the delivery thereof to the prospective buyer, binds himself to sell the property exclusively to the prospective buyer upon full payment of the purchase price. (Arbilon *vs*. Manlangit, G.R. No. 197920, Jan. 22, 2018) p. 73

—— The seller explicitly reserves the transfer of title to the buyer until the fulfillment of a condition, that is, the full payment of the purchase price; title to the property is retained by the seller until the buyer fully paid the price of the thing sold. (*Id*.)

Earnest money — An earnest money given in a contract to sell as consideration for seller's promise to reserve the subject property for the buyer; the seller, in excluding all other prospective buyers from bidding for the subject property has given up what may have been more lucrative offers or better deals. (Racelis *vs*. Sps. Javier, G.R. No. 189609, Jan. 29, 2018) p. 684

—— Earnest money, under Art. 1482 of the Civil Code, is ordinarily given in a perfected contract of sale; however, earnest money may also be given in a contract to sell. (*Id*.)

—— It is paid for the seller's benefit; it is part of the purchase price while at the same time proof of commitment by the potential buyer; absent proof of a clear agreement to the contrary, it is intended to be forfeited if the sale does not happen without the seller's fault; the potential buyer bears the burden of proving that the earnest money was intended other than as part of the purchase price and to be forfeited if the sale does not occur without the fault of the seller. (*Id*.)

—— Whenever earnest money is given in a contract of sale, it shall be considered as proof of the perfection of the contract; however, this is a disputable presumption, which prevails in the absence of contrary evidence; the delivery of earnest money is not conclusive proof that a contract of sale exists. (*Id*.)

SANDIGANBAYAN

Jurisdiction — Has appellate jurisdiction over cases involving government employees with a salary grade lower than 27 and the duty to transmit the records of the case devolves upon the trial court. (Dizon *vs*. People, G.R. No. 227577, Jan. 24, 2018) p. 599

SEARCHES AND SEIZURE

Conduct of — State and its agents cannot conduct searches and seizures without the requisite warrant; otherwise, the constitutional right is violated. (Dabon *vs*. People, G.R. No. 208775, Jan. 22, 2018) p. 108

Search warrant –– Failure to comply with the safeguards provided by law in implementing the search warrant makes the search unreasonable; the exclusionary rule applies, *i.e.*, any evidence obtained in violation of this constitutional mandate is inadmissible in any proceeding for any purpose. (Dabon *vs*. People, G.R. No. 208775, Jan. 22, 2018) p. 108

Two-witness rule — Search should be witnessed by two witnesses of sufficient age and discretion residing in the same locality only in the absence of either the lawful occupant of the premises or any member of his family; although the lawful occupants were present during the search, the fact that they were not allowed to witness the search of the premises violates the mandatory requirement. (Dabon *vs*. People, G.R. No. 208775, Jan. 22, 2018) p. 108

SHERIFFS

Duties — Steps to be followed in the payment and disbursement of fees for the execution of a writ: (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the *ex-officio* sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his

expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit. (Roxas *vs*. Sicat, A.M. No. P-17-3639 [Formerly OCA IPI No. 14-4314-P], Jan. 23, 2018) p. 239

Liability of –– Respondent failed to give the judgment debtor a notice on the sale of the property; there was no proof of publication of the notice and of the raffle among the accredited publishing companies for the selection of the newspaper that would publish the notice of sale of property; based on the foregoing, respondent is guilty of gross neglect of duty and inefficiency in the performance of official duties and for misconduct for the irregularities in the conduct of the auction sale and his circumvention of the established rule on motions. (Roxas *vs*. Sicat, A.M. No. P-17-3639 [Formerly OCA IPI No. 14-4314-P], Jan. 23, 2018) p. 239

SOCIAL SECURITY CONDONATION LAW OF 2009 (R.A. NO. 9903)

Condonation of penalty — An employer who is delinquent or has not remitted all contributions due and payable to the SSS may avail of the condonation program provided that the delinquent employer will remit the full amount of the unpaid contributions or would submit a proposal to pay the delinquent contributions in installment within the six (6)-month period set by law. (H. Villarica Pawnshop, Inc. *vs*. Social Security Commission, G.R. No. 228087, Jan. 24, 2018) p. 613

–– State stands to lose its resources in the form of receivables whenever it condones or forgoes the collection of its receivables or unpaid penalties; since a loss of funds ultimately results in the Government being deprived of its means to pursue its objectives, all monetary claims based on condonation should be construed strictly against the applicants. (*Id.*)

Section 4 –– Once an employer pays all its delinquent contributions within the six month period, the accrued

penalties due thereon shall be deemed waived; in the last *proviso* thereof, those employers who have settled their delinquent contributions before the effectivity of the law but still have existing accrued penalties shall also benefit from the condonation program. (H. Villarica Pawnshop, Inc. *vs*. Social Security Commission, G.R. No. 228087, Jan. 24, 2018) p. 613

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Violation of –– Acts of lasciviousness, under Art. 336 of the RPC, in relation to Sec. 5 (b), Art. III of R.A. No. 7610, which defines and penalizes acts of lasciviousness committed against a child, the essential elements of this provision are: 1) the accused commits the act of sexual intercourse or lascivious conduct; 2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; 3) the child, whether male or female, is below 18 years of age. (People *vs*. Dagsa *y* Bantas, G.R. No. 219889, Jan. 29, 2018) p. 704

–– Lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. (*Id*.)

–– Par. (h), Sec. 2 of the Implementing Rules and Regulations of R.A. No. 7610 defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. (*Id*.)

–– The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse; the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who

engages in lascivious conduct through the coercion or intimidation by an adult. (*Id.*)

STATUTES

Plain meaning rule — When the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language; it is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent; the plain meaning rule or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. (H. Villarica Pawnshop, Inc. *vs*. Social Security Commission, G.R. No. 228087, Jan. 24, 2018) p. 613

Prospective application –– Statutes are generally applied prospectively unless they expressly allow a retroactive application; it is a basic principle that laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used; absent a clear contrary language in the text and, that in every case of doubt, the doubt will be resolved against the retroactive operation of laws. (H. Villarica Pawnshop, Inc. *vs*. Social Security Commission, G.R. No. 228087, Jan. 24, 2018) p. 613

TAX AMNESTY LAW (R.A. NO. 9480)

Availment of tax amnesty — R.A. No. 9480 governs the tax amnesty program for national internal revenue taxes for the taxable year 2005 and prior years; subject to certain exceptions, a taxpayer may avail of this program by complying with the documentary submissions to the Bureau of Internal Revenue (BIR) and thereafter, paying the applicable amnesty tax. (Commissioner of Internal Revenue *vs*. Covanta Energy Phil. Holdings, Inc., G.R. No. 203160, Jan. 24, 2018) p. 411

–– The required information that should be reflected in the taxpayer's SALN is enumerated in Sec. 3 of R.A.

No. 9480; the essential contents of the SALN are also itemized under the implementing rules and regulations; the immunities and privileges granted to taxpayers under R.A. No. 9480 are not absolute; it is subject to a resolutory condition insofar as the taxpayers' enjoyment of the immunities and privileges of the law is concerned; these immunities cease upon proof that they underdeclared their net worth by 30%. (*Id.*)

–– The taxpayer is immediately entitled to the enjoyment of the immunities and privileges of the tax amnesty program; but when: (a) the taxpayer fails to file a SALN and the Tax Amnesty Return; or (b) the net worth of the taxpayer in the SALN as of December 31, 2005 is proven to be understated to the extent of 30% or more, the taxpayer shall cease to enjoy these immunities and privileges. (*Id.*)

–– The underdeclaration of a taxpayer's net worth is proven through: (a) proceedings initiated by parties other than the BIR or its agents, within one (1) year from the filing of the SALN and the Tax Amnesty Return; or (b) findings or admissions in congressional hearings or proceedings in administrative agencies, and in courts; otherwise, the taxpayer's SALN is presumed true and correct; the tax amnesty law thus places the burden of overturning this presumption to the parties who claim that there was an underdeclaration of the taxpayer's net worth. (*Id.*)

WITNESSES

Credibility of–– Delay in reporting an incident of rape due to threats does not affect the credibility of the complainant, nor can it be taken against her. (People *vs.* Bongos, G.R. No. 227698, Jan. 31, 2018) p. 1004

–– Delay in revealing the commission of rape is not an indication of a fabricated charge and the same is rendered doubtful only if the delay was unreasonable and unexplained. (People *vs.* Bringcula *y* Fernandez, G.R. No. 226400, Jan. 24, 2018) p. 585

—— Discrepancies referring only to minor details and not to the central fact of the crime do not affect the veracity or detract from the credibility of a witness' declaration. (People *vs.* Bejim *y* Romero, G.R. No. 208835, Jan. 19, 2018) p. 10

—— In the absence of proof to the contrary, the presumption is that the witness was not moved by any ill-will and was untainted by bias, and worthy of belief and credence; under these circumstances, the rule that where the prosecution eyewitnesses were familiar with both the victim and the accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witnesses for testifying against the accused, then their version of the story deserves much weight. (People *vs.* Dagsa *y* Bantas, G.R. No. 219889, Jan. 29, 2018) p. 704

—— Inaccuracies and inconsistencies in the testimony of a rape victim is not unusual considering that the painful experience is oftentimes not remembered in detail as it causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget. (People *vs.* De Chavez, G.R. No. 218427, Jan. 31, 2018) p. 930

—— Inconsistencies of witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity or the weight of their testimonies. (People *vs.* Bringcula *y* Fernandez, G.R. No. 226400, Jan. 24, 2018) p. 585

—— Long silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation; rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained. (People *vs.* Bejim *y* Romero, G.R. No. 208835, Jan. 19, 2018) p. 10

—— 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. (People *vs*. Dagsa *y* Bantas, G.R. No. 219889, Jan. 29, 2018) p. 704

–– The determination of the credibility of a witness is best left to the trial court, which had the opportunity to observe the deportment and demeanor of the witness while testifying. (People *vs*. De Chavez, G.R. No. 218427, Jan. 31, 2018) p. 930

CITATION

Page

I. LOCAL CASES

ABAKADA Guro Party List (formerly AASJS)
Officers/Members, etc. *vs*. Purisima, etc., et al.,
584 Phil. 246, 270 (2008) 636
Abello, et al. *vs*. Commissioner of Internal
Revenue, et al., 492 Phil. 303, 313 (2005) 628
Abueva, et al. *vs*. Wood, et al.,
45 Phil. 612, 633 (1924) 628
Adrimisin *vs*. Atty. Javier,
532 Phil. 639, 645-646 (2006) 327
Agabon, et al. *vs*. National Labor Relations
Commission, et al., 485 Phil. 248, 306 (2004) 631
Agcolicol, Jr. *vs*. Casiño, G.R. No. 217732,
June 15, 2016... 540
Agrarian Reform Beneficiaries Association *vs*.
Fil-Estate Properties, Inc., 766 Phil. 382,
410-411 (2015) 680
Agulan, Jr. *vs*. Judge Fernandez,
408 Phil. 256, 265 (2001) 336
Alauya Jr. *vs*. Commission on Elections,
443 Phil. 893, 902 (2003) 365
Alilin, et al. *vs*. Petron Corporation,
G.R. No. 177592, June 9, 2014,
735 Phil. 509, 513 (2014) 476, 976
Allado *vs*. Judge Diokno,
302 Phil. 213, 238 (1994) 121
Amoroso *vs*. Alegre, Jr., 552 Phil. 22, 34 (2007).................... 461
Andrada *vs*. Judge Banzon,
592 Phil. 229, 233-234 (2008) 808
Ang *vs*. San Joaquin, Jr., et al.,
716 Phil. 115, 130 (2013) 540
Ang Tibay *vs*. Court of Industrial Relations,
69 Phil. 635 (1940).. 311
Anico *vs*. Pilipiña, 670 Phil. 460, 470 (2011)....... 261, 265, 267
Anonymous Complaint against Angelina
Casareno-Rillorta, Officer-in-Charge,
Office of the Clerk of Court, 536 Phil. 373 (2006) 784

Page

Anucension, et al. *vs*. National Labor
Union, et al., 170 Phil. 373, 392 (1977) 636
Apique *vs.* Fahnenstich,
765 Phil. 915, 922 (2015) 1066
Apo Fruits Corp., et al. *vs.* Land Bank
of the Phils., 543 Phil. 497, 507 (2007) 581
Land Bank of the Phils.,
622 Phil. 215, 231 (2009) 584
Land Bank of the Phils., 647 Phil. 251,
265, 267, 272 (2010) 372, 378-380, 493-494
Land Bank of the Phils.,
662 Phil. 572 (2011) 576, 579
Araullo *vs.* Aquino III, G.R. No. 209287,
Feb. 3, 2015, 749 SCRA 283 285
Araullo *vs.* Aquino III, G.R. No. 209287,
July 1, 2014, 728 SCRA 1, 86 289
Arboleda, Jr. *vs.* Centennial Transmarine,
Inc., et al., G.R. No. 221357, Jan. 25, 2016 562
Arganosa-Maniego *vs.* Salinas, A.M. No. P-07-2400,
June 23, 2009, 590 SCRA 531, 544-547 759
Ariola *vs.* Philex Mining Corporation,
503 Phil. 765, 783 (2005) 514
Association of Small Landowners in the
Philippines, Inc. *vs.* Secretary of Agrarian
Reform, 256 Phil. 777 (1989) 368
Association of Small Landowners *vs.* Secretary
of Agrarian Reform, 256 Phil. 777 (1989) 373
Ayala Life Assurance, Inc. *vs.* Ray Burton
Development Corp., 515 Phil. 431, 438 (2006) 700
Ayungo *vs.* Beamko Shipmanagement
Corp., et al., 728 Phil. 244 (2014) 563
Babas, et al. *vs*. Lorenzo Shipping Corp.,
653 Phil. 421, 432 (2010) 476
Bahia Shipping Services, Inc. *vs.* Hipe, Jr.,
746 Phil. 955 (2014) 563, 565
Bahia Shipping Services, Inc., et al. *vs.*
Constantino, 738 Phil. 564 (2014) 563
Balaba *vs*. People, 610 Phil. 623, 627 (2009) 609

Page

Bank of the Philippine Islands *vs.* Spouses
Genuino, G.R. No. 208792, July 22, 2015 665
Bankard Employees Union-Workers
Alliance Trade Unions *vs.* National
Labor Relations Commission, 467 Phil. 570 (2004) 437
Bartolome *vs.* Basilio, 771 Phil. 1 (2015) 834, 839
Bartolome *vs.* Social Security System, et al.,
746 Phil. 717, 730 (2014) 636
Bautista *vs.* Puyat, 416 Phil. 305, 308 (2001) 924
Bayaca *vs.* Ramos, 597 Phil. 86 (2009) 70
Bayonla *vs.* Reyes, A.C. No. 4808,
Nov. 22, 2011, 660 SCRA 490, 499 831
Belgica *vs.* Executive Secretary, G.R. 208566,
Nov. 19, 2013, 710 SCRA 1 290
Bello, et al. *vs.* CA, et al.,
155 Phil. 480, 491 (1974) 632
Benedicto *vs.* Villaflores,
646 Phil. 733, 742, (2010) 1002
Bernardo *vs.* Mejia, A.C. No. 2984,
Aug. 31, 2007, 531 SCRA 639, 643 237
BMG Records (Phils.), Inc. *vs.* Aparecio,
559 Phil. 80-97 (2007) 859
Boac *vs.* People, 591 Phil. 508 (2008) 893
Bondoc *vs.* Bulosan, 552 Phil. 526, 536-537 (2007) 71
Brent School, Inc. *vs.* Zamora, 260 Phil. 747 (1990) 875
Briones-Vasquez *vs.* CA, et al.,
491 Phil. 81, 92 (2005) 579
Bucal *vs.* Bucal, 760 Phil. 912, 921 (2015) 86
Buenaventura, et al. *vs.* CA,
290-A Phil. 628, 635 (1992) 582
Bulauitan *vs.* People, G.R. No. 218891,
Sept. 19, 2016, 803 SCRA 367, 374-375 .... 117, 119
Caballo *vs.* People, 710 Phil. 792, 805 (2013) 29
Cabarles *vs.* Maceda, 545 Phil. 210 (2007) 165
Cagatao *vs.* Almonte, et al.,
719 Phil. 241, 253 (2013) 63
Cagatin *vs.* Magsaysay Maritime Corp., et al.,
761 Phil. 64 (2015) 563

Page

Cainta Catholic School *vs.* Cainta Catholic School Employees Union, 523 Phil. 134, 149 (2006) 514
Calanasan *vs.* Spouses Dolorito, 722 Phil. 1, 7 (2013) 994
Candelaria *vs.* People, 749 Phil. 517, 530 (2014) 183
Cangungun *vs.* Planters Development Bank, 510 Phil. 51, 65 (2005) 453
Carcedo *vs.* Maine Marine Philippines, Inc., et al., 758 Phil. 166 (2015) 563
Cariaga *vs.* People, 640 Phil. 272, 279 (2010) 612
Cawad, et al. *vs.* Abad, etc., et al., 764 Phil. 705, 723 (2015) 633
C-E Construction Corporation *vs.* National Labor Relations Commission, G.R. No. 180188, 582 SCRA 449, 456 410
Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. *vs.* Bangko Sentral ng Pilipinas, et al., 487 Phil. 531, 597 (2004) 636
Cercado *vs.* Uniprom, Inc., 647 Phil. 603 (2010) 514
Cham *vs.* Paita-Moya, A.C. No. 7494, June 27, 2008, 556 SCRA 1, 9 235
Chan *vs.* CA, G.R. No. 159922, April 28, 2005 663
Cheng *vs.* Genato, 360 Phil. 891, 906 (1998) 700
Cheng *vs.* People, G.R. No. 174113, Jan. 13, 2016, 780 SCRA 374, 382 167
Chua *vs.* CA, 449 Phil. 25, 41-43 (2003) 699-700
Chua Tee Dee *vs.* CA, 473 Phil. 446, 467 (2004) 695, 697
CIR *vs.* Apo Cement Corporation, G.R. No. 193381, Feb. 8, 2017 421
City of Dagupan, represented by the City Mayor Benjamin S. Lim *vs.* Ester F. Maramba, represented by her Attorney-in-Fact Johnny Ferrer, G.R. No. 174411, July 2, 2014 210
Civil Service Commission *vs.* Maala, 504 Phil. 646, 654 (2005) 551
CJC Trading *vs.* National Labor Relations Commission, 316 Phil. 887 (1995) 862

Page

Clemente *vs.* Bautista, 710 Phil. 10, 15-16 (2013) 796
Co *vs.* Vargas, 676 Phil. 463, 471 (2011) 104, 535
Coca-Cola Bottlers Phils., Inc. *vs.* Agito, et al.,
G.R. No. 179546, Feb. 13, 2009 972-975
Commissioner of Customs, et al. *vs.* Hypermix
Feeds Corporation, 680 Phil. 681, 693 (2012) 636
Conference of Maritime Manning Agencies,
Inc., et al. *vs.* Philippine Overseas
Employment Administration, et al.,
313 Phil. 592, 606-607 (1995) 633
Coronel *vs.* CA, 331 Phil. 294, 308-309 (1996) 699
Corpuz *vs.* People, 734 Phil. 353, 416 (2014) 637
CS Garment, Inc. *vs.* CIR,
729 Phil. 253, 267 (2014) 424
Dacles *vs.* Millenium Erectors Corp., et al.,
763 Phil. 550, 558-559 (2015) 875
Dacles *vs.* People, 572 Phil. 412, 422 (2008) 23
Dagooc *vs.* Erlina, 493 Phil. 563, 567 (2005) 326
Dalmacio-Joaquin *vs.* Dela Cruz,
604 Phil. 256, 261 (2009) 779
Dantis *vs.* Maghinang, Jr., 708 Phil. 575, 587 (2013) 83
Daraug *vs.* KGJS Fleet Management Manila,
Inc., et al., 750 Phil. 949 (2015) 563-564
De Castro *vs.* CA, G.R. No. 204261,
Oct. 5, 2016, 805 SCRA 265 477
De Guzman *vs.* Delos Santos,
442 Phil. 428, 438 (2002) 551
De Guzman *vs.* NLRC, et al., 564 Phil. 600 (2007) 647
De los Santos *vs.* Metropolitan Bank and
Trust Company, G.R. No. 153852,
Oct. 24, 2012, 684 SCRA 410, 422-423 410
Deang *vs.* Sheriff Sicat, 487 Phil. 246 (2004) 261
Dela Cruz *vs.* People, G.R. No. 209387,
Jan. 11, 2016, 779 SCRA 34, 52 1057
Dela Cruz *vs.* Zapico, et al.,
587 Phil. 435, 445 (2008) 70
Department of Education *vs.* Casibang,
G.R. No. 192268, Jan. 27, 2016,
782 SCRA 326, 343 998

Page

Development Bank of the Philippines *vs.* Guariña Agricultural and Realty Development Corp., 724 Phil. 209 (2014) 451
Development Bank of the Philippines *vs.* Traders Royal Bank, 642 Phil. 547, 556-557 (2010) 104
Diego *vs.* Diego, 704 Phil. 373, 390-392 (2013) 700
Disciplinary Board, Land Transportation Office *vs.* Gutierrez, G.R. No. 224395, July 3, 2017 98
Dizon *vs.* People, 616 Phil. 498, 513 (2009) 21
Dizon, etc. *vs.* Court of Tax Appeals, et al., 576 Phil. 110, 133 (2008) 629
DOJ *vs.* Judge Mislang, A.M. No. RTJ-14-2369, A.M. No. RTJ-14-2372, July 26, 2016, 798 SCRA 225, 235 809
Dumadag *vs.* Atty. Lumaya, 390 Phil. 1, 7-8 (2008) 328
Eastern Shipping Lines, Inc. *vs.* CA, 304 Phil. 236, 253 (1994) 1001
Eastern Shipping Lines, Inc. *vs.* CA, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97 216
Eduarte *vs.* Ibay, 721 Phil. 1, 8 (2013) 335
Egger *vs.* Duran, A.C. No. 11323, Sept. 14, 2016, 802 SCRA 571, 579 326
Elburg Shipmanagement Phils., Inc., et al. *vs.* Quiogue, 765 Phil. 341 (2015) 42
Encarnacion *vs.* Amigo, 533 Phil. 466, 472 (2006) 460
Enriquez *vs.* Zamora, 230 Phil. 476 (1986) 514, 516
Erectors, Inc. *vs.* National Labor Relations Commission, et al., 326 Phil. 640, 646 (1996) 630
Escario *vs.* NLRC, 388 Phil. 929, 938-939 (2000) 479
Escasinas, et al. *vs.* Shangri-La's Mactan Island Resort, et al., 599 Phil. 746, 755 (2009) 483
Españo, Sr. *vs.* CA, et al., 335 Phil. 983, 986 (1997) 582
Evergreen Manufacturing Corporation *vs.* Republic of the Philippines, G.R. No. 218628, Sept. 6, 2017 .... 997, 1001
Export Processing Zone Authority *vs.* Dulay, 233 Phil. 313 (1987) 366

Page

F.F. Cruz & Co., Inc. *vs.* HR Construction
Corp., 684 Phil. 330, 351 (2012) 629
FGU Insurance Corporation (now BPI/MS
Insurance Corporation) *vs.* RTC, et al.,
659 Phil. 117, 123 (2011) 578
Firaza *vs.* People, 547 Phil. 573, 584-586 (2007) 170
Fontana Development Corporation *vs.*
Vukasinovic, G.R. No. 222424, Sept. 21, 2016,
804 SCRA 153, 162 681
Foronda *vs.* Alvarez, A.C. 9976, June 25, 2014,
727 SCRA 155 235-236
Francia *vs.* Esguerrra, 746 Phil. 423 (2014) 247, 263
Francisco *vs.* NLRC, 532 Phil. 399, 407 (2006) 480
Fuentes *vs.* CA, 335 Phil. 1163, 1168 (1997) 924
Fuji Television Network *vs.* Espiritu,
749 Phil. 388, 428-429 (2014) 861
Gabriel, Jr., et al. *vs.* Crisologo,
735 Phil. 673, 683 (2014) 81
Gadia *vs.* Sykes Asia, Inc.,
752 Phil. 413, 421-422 (2015) 876
Gallego *vs.* Bayer Philippines, Inc., et al.,
612 Phil. 250, 263 (2009) 477, 479
Gamboa *vs.* Chan, G.R. No. 193636,
July 24, 2012, 677 SCRA 385, 400 315
Gan *vs.* People, 550 Phil. 133, 157 (2007) 596, 1022
Garcia *vs.* Executive Secretary, 602 Phil. 64 (2009) 101
Garino *vs.* Southfield Agencies, Inc., et al.,
G.R. No. 227007, Jan. 9, 2017 562
General Milling Corp. *vs.* Viajar,
702 Phil. 532, 540 (2013) 874
Gerochi, et al. *vs.* Department of Energy, et al.,
554 Phil. 563, 584 (2007) 634
GMA Network, Inc. *vs.* Pabriga, et al.,
722 Phil. 161, 169 (2013) 875
Goh *vs.* Bayron, G.R. No. 212584,
Nov. 25, 2014, 742 SCRA 303 284
Goldstein *vs.* Roces, 34 Phil. 562 (1916) 695
Grandteq Industrial Steel Products, Inc., et al. *vs.*
Edna Margallo, 611 Phil. 612, 629 (2009) 647, 649

Page

Heirs of Pablo Feliciano *vs.* Land Bank,
G.R. No. 215290, Jan. 11, 2017 497
Heirs of Serapio Mabborang, et al. *vs.*
Mabborang, et al., 759 Phil. 82, 95 (2015) 1000
Heirs of Cesar Marasigan, et al. *vs.*
Marasigan, et al., 572 Phil. 190, 215 (2008) 994
Heirs of Margarita Pabaus *vs.* Heirs
of Amanda Yutiamco, 670 Phil. 151,
167-168 (2011) 549
Heirs of Pizarro, Sr. *vs.* Consolacion,
244 Phil. 187-194 (1988) 608
Heirs of Pacencia Racaza *vs.* Abay-Abay,
687 Phil. 584, 590 (2012) 534
Heirs of Manuel H. Ridad, et al. *vs.*
Gregorio Araneta Foundation,
703 Phil. 531, 538 (2013) 647
Heirs of Tantoco, Sr. *vs.* CA,
523 Phil. 257, 278 (2006) 495
Heirs of Lorenzo and Carmen Vidad *vs.*
Land Bank of the Philippines, 634 Phil. 9 (2010) 373
In re Bamberger, 49 Phil. 962, 964 (1924) 232
In Re: Edillion, AC-1928, Dec. 19, 1980,
101 SCRA 612 .... 235, 237
In Re: Improper Solicitation of Court
Employees — Rolando H. Hernandez,
EAI, Legal Office, OCAD,
604 Phil. 237, 245 (2009) 71
In the Matter of the Petition for the
Writ of Amparo and Habeas Data
in favor of Noriel Rodriguez,
G.R. No. 191805, 193160, April 16, 2013,
696 SCRA 390, 395-396 311
INC Navigation Co. Philippines, Inc., et al. *vs.*
Rosales, 744 Phil. 774, 789 (2014) 45, 564
Ingusan *vs.* Heirs of Aureliano I. Reyes,
558 Phil. 50 (2007) 550
Insular Life Assurance Co., Ltd. *vs.*
National Labor Relations Commission,
259 Phil. 65 (1989) 980

Page

Iran *vs.* NLRC, 352 Phil. 261 (1998) 646
Jacomille *vs.* Abaya, G.R. No. 212381,
April 22, 2015, 757 SCRA 273, 277-280 .... 271-272, 279
Jaculbe *vs.* Silliman University,
547 Phil. 352, 359 (2007) 861
Japson *vs.* Civil Service Commission,
663 Phil. 665 (2011) 779
Jebsens Maritime, Inc., Sea Chefs Ltd., et al. *vs.*
Florvin G. Rapiz, G.R. No. 218871,
Jan. 11, 2017 44
Jehan Shipping Corporation *vs.* National
Food Authority, G.R. No. 159750,
Dec. 14, 2005 210
Johnson and Johnson (Phils.), Inc. *vs.* CA,
G.R. No. 102692, Sept. 22, 1996,
262 SCRA 298, 311-312 410
Julie's Bakeshop, et al. *vs.* Arnaiz, et al.,
682 Phil. 95, 108 (2012) 437
Julie's Franchise Corporation *vs.* Hon. Ruiz,
G.R. No. 180988, Aug. 28, 2009 664
Kalipunan ng Damayang Mahihirap, Inc. *vs.*
Robredo, 739 Phil. 283 101
Kestrel Shipping Co., Inc., et al. *vs.* Munar,
702 Phil. 717, 737-738 (2013) 560
Kida, etc., et al. *vs.* Senate, etc., et al.,
675 Phil. 316, 361 (2011) 633
Ladaga *vs.* Mapagu, G.R. Nos. 189689, 189690,
189691, Nov. 13, 2012, 685 SCRA 322 317
Lagatic *vs.* NLRC, 349 Phil. 172, 185-186 (1998) 880
Lai *vs.* People, 762 Phil. 434, 443 (2015) 810
Land Bank of the Philippines *vs.* Avanceña,
G.R. No. 190520, May 30, 2016, 791 SCRA 319 495
Banal, 478 Phil. 701 (2004) 370
Celada, 515 Phil. 467-484 (2006) 345
Dalauta, G.R. No. 190004, Aug. 8, 2017 498
Heirs of Jesus Alsua, 753 Phil. 323 (2015) 496
Heirs of Jose Tapulado, G.R. No. 199141,
Mar. 8, 2017 497
Imperial, 544 Phil. 378 (2007) 379

Page

Kho, G.R. No. 214901, June 15, 2016, 793 SCRA 651 ... 497
Kumassie Plantation Co., Inc., 608 Phil. 523 (2009) ... 370, 372
Lajom, 741 Phil. 655 (2014) ... 376
Lim, 555 Phil. 831, 837 (2007) ... 370-372
Montalvan, 689 Phil. 641, 653-654 (2012) ... 367-368
Nable, 689 Phil. 524 (2012) ... 494
Obias, et al., 684 Phil. 296, 304 (2012) ... 372, 380, 496
Omengan, G.R. No. 196412, July 19, 2017 ... 498
Phil-Agro Industrial Corporation, G.R. No. 193987, Mar. 13, 2017 ... 496
Rivera, et al., 705 Phil. 139 (2013) ... 494
Santiago, Jr., 696 Phil. 142 (2012) ... 494
Santos, G.R. No. 213863, Jan. 2016, 782 SCRA 441 ... 497
Spouses Banal, 478 Phil. 701 (2004) ... 371
Spouses Orilla, 578 Phil. 663 (2008) ... 375, 377, 379
Wycoco, 464 Phil. 83, 96 (2004) ... 368, 378
Leave Division-O.A.S., Office of the Court Administrator *vs*. Sarceno, 754 Phil. 1, 3 (2015) ... 789, 795
Leca Realty Corporation *vs.* Republic, 534 Phil. 693, 707 (2006) ... 995, 998
Leon *vs*. Maunlad Trans, Inc., G.R. No. 215293, Feb. 8, 2017 ... 924
Leonis Navigation Co., Inc. *vs.* Obrero, G.R. No. 192754, Sept. 7, 2016, 802 SCRA 341, 355 ... 560-562, 565
Leynes *vs.* People, G.R. No. 224804, Sept. 21, 2016 ... 100
Li Kim Tho *vs.* Go Siv Kao, 82 Phil. 776 (1949) ... 410
LICOMCEN, Inc. *vs*. Engr. Abainza, 704 Phil. 166 (2013) ... 85
Lim *vs.* CA, 380 Phil. 60, 74-75 (2000) ... 1069
Lim Si *vs*. Lim, 98 Phil 868, 870 (1956) ... 695
lnterOrient Maritime Enterprises, Inc. *vs.* Creer III, 743 Phil. 164, 179 (2014) ... 926-927

Page

Locsin *vs*. Mekeni Food Corp.,
722 Phil. 886 (2013) 648-649
Locsin, et al. *vs*. Philippine Long Distance
Telephone Company, 617 Phil. 955, 964 (2009)................ 480
Lontoc *vs*. People, 74 Phil. 513, 519 (1943) 1057
Loon, et al. *vs*. Power Master, Inc., et al.,
723 Phil. 515, 531-532 (2013) 879
Lopez, etc., et al. *vs*. CA, et al.,
438 Phil. 351, 362 (2002) 637
Lozada *vs*. Zerrudo, A.M. No. P-13-3108,
708 Phil. 353, 358 (2013) 796
Macayan, Jr. *y* Malana *vs*. People,
756 Phil. 202, 213-241 (2015) 893
Madamba *vs*. Araneta, 106 Phil. 103, 106 (1959) 695
Maersk-Filipinas Crewing, Inc., et al. *vs*.
Jaleco, 770 Phil. 50 (2015) 562
Magdadaro *vs*. Philippine National Bank,
610 Phil. 608, 612 (2009) 514
Magellan Aerospace Corporation *vs*.
Philippine Air Force, G.R. No. 216566,
Feb. 24, 2016 210
Magsaysay Maritime Corp., et al. *vs*.
Panogalinog, 764 Phil. 212 (2015) 562
Magsaysay Maritime Corp., et al. *vs*. Simbajon,
738 Phil. 824, 843 (2014) 560, 563
Malicdem, et al. *vs*. Marulas Industrial
Corporation, et al., 728 Phil. 264 (2014) 877
Mallillin *vs*. People, 576 Phil. 576 (2008)............................... 896
Malonesio *vs*. Jizmundo, G.R. No. 199239,
Aug. 24, 2016, 801 SCRA 339, 347....................................... 63
Manalo *vs*. Ateneo de Naga University, et al.,
772 Phil. 366, 381 (2015) 535
Mandapat *vs*. Add Force Personnel Services,
Inc., et al., 638 Phil. 150, 156 (2010) 540
Mangaser *vs*. Ugay, 749 Phil. 372 (2014) 62
Maniago *vs*. De Dios, 631 Phil. 139 (2010) 837
Manila Water Co., Inc. *vs*. Dalumpines, et al.,
646 Phil. 383, 398-399 (2010) 484

Page

Manotok Realty, Inc. *vs.* CLT Realty
Development Corp., 512 Phil. 679, 706 (2005)................... 924
Marasigan *vs.* Buena, 348 Phil. 1(1998) 334
Marlow Navigation Philippines, Inc., et al.
vs. Osias, 773 Phil. 428, 446 (2015) 560
Marmo, et al. *vs.* Anacay,
621 Phil. 212, 222 (2009) 463
Martinez *vs.* B & B Fish Broker,
616 Phil. 661, 666-667 (2009) 540
Martinez *vs*. Villanueva, 669 Phil. 14, 30 (2011) 337
Melencion *vs*. Sandiganbayan,
577 Phil. 223, 231 (2008) 609
Mendoza *vs.* People, 675 Phil. 759,
765-767 (2011) 622, 627
Merck Sharp and Dohme (Phils.), et al. *vs.*
Robles, et al., 620 Phil. 505, 512 (2009) 534
Mercury Drug Co., Inc. *vs.* CIR,
155 Phil. 636 (1974) 861
Metro Transit Organization, Inc. *vs*. NLRC,
348 Phil. 334 (1998) 859
Metropolitan Bank *vs.* Wong,
412 Phil. 207 (2001) 452
Montierro *vs.* Rickmers Marine Agency
Phils., Inc., 750 Phil. 937 (2015) 563
Morales *vs.* Harbour Centre Port Terminal, Inc.,
680 Phil. 112, 120-121 (2012) 879
MST Marine Services (Philippines), Inc., et al. *vs.*
Asuncion, G.R. No. 211335, Mar. 27, 2017 562
MZR Industries, et al. *vs.* Colambot,
716 Phil. 617, 624 (2013) 486
Nacar *vs.* Gallery Frames and/or Felipe Bordey, Jr.,
G.R. No. 189871, Aug. 13, 2013 216
Nacar *vs.* Gallery Frames, et al., 716 Phil. 267,
280-281, 283 (2013) 328, 380, 497, 1001-1002
Natanauan *vs.* Tolentino, A.C. No. 4269,
Oct. 11, 2016, 805 SCRA 571, 584-585 328
National Power Corporation *vs.*
Spouses Chiong, 452 Phil. 649 (2003) 366
Spouses Ileto, 690 Phil. 453 (2012)....................................... 369

Page

Spouses Zabala, 702 Phil. 491,
499-501 (2013) 366, 380
Suarez, et al., 589 Phil. 219, 225 (2008) 995
National Steel Corporation *vs.* CA,
362 Phil. 150, 151 (1999) 994
Nationwide Security and Allied Services, Inc. *vs.*
Valderama, 659 Phil. 362, 371 (2011) 859
Navarrete *vs.* People, 542 Phil. 496, 511 (2007) 29
Navarro *vs.* Atty. Solidum, Jr.,
725 Phil. 358, 368 (2014) 327
Navarro *vs.* Metropolitan Bank & Trust Company,
G.R. Nos. 165697, 166481, Aug. 4, 2009,
595 SCRA 149, 159 410
Neri *vs.* NLRC, 296 Phil. 610 (1993) 479
Neri, et al. *vs.* NLRC, et al., G.R. Nos. 97008-09,
July 23, 1993 976
Ng Meng Tam *vs.* China Banking Corporation,
G.R. No. 214054, Aug. 5, 2015 664
Ochagabia, et al. *vs.* CA, et al.,
364 Phil. 233, 240 (1999) 583
Office of the Court Administrator *vs.*
Baltazar, 771 Phil. 516, 534 (2015) 784-785
Bernardino, 490 Phil. 500, 526 (2005) 782
Gesultura, 707 Phil. 318 (2013) 337
Indar, 685 Phil. 272, 286 (2012) 778, 780
Lopez, 654 Phil. 602, 608 (2011) 779
Macusi, Jr., 717 Phil. 562, 573 (2013) 250, 258
Nacuray, 521 Phil. 32, 39 (2006) 783
Pacheco, 641 Phil. 1, 9, 14 (2010) 784
Recio, 665 Phil. 13, 33, 35 (2011) 785
Viesca, 758 Phil. 16, 27 (2015) 779
Office of the Ombudsman *vs.* De Zosa,
751 Phil. 293, 300 (2015) 810
Ogayon *vs.* People, 768 Phil. 272 (2015) 120
Olivarez *vs.* CA, 503 Phil. 421 (2005) 722
Omni Hauling Services, Inc., et al. *vs.*
Bon, et al., 742 Phil. 335, 343-344 (2014) 875-876
Ong *vs.* Delos Santos, A.C. 10179, Mar. 4, 2014,
717 SCRA 663 235-236

Page

Ople *vs.* Torres, et al., 354 Phil. 948, 966 (1998) 628
Oriental Shipmanagement Co., Inc., et al. *vs.*
Ocangas, G.R. No. 226766, Sept. 27, 2017 564
Padlan *vs.* Spouses Dinglasan,
707 Phil. 83, 91 (2013) 993
PAL, Inc. *vs.* Acting Secretary of Labor,
345 Phil. 756, 759 (1997) 512
Pamintuan *vs.* People, 635 Phil. 514, 522 (2010) 167-168
Pangasinan, et al. *vs.* Disonglo-Almazora,
et al., 762 Phil. 492, 502-503 (2015) 548
Pantranco North Express, Inc. *vs.*
National Labor Relations Commission,
328 Phil. 470 (1996) 517
Pantranco North Express, Inc. *vs.* NLRC,
328 Phil. 470, 482 (1996) 514
Peñaflor *vs.* Outdoor Clothing Manufacturing
Corporation, 624 Phil. 490 (2010) 858
People *vs.* Abedin, 685 Phil. 552, 569 (2012) 503
Abello, 601 Phil. 373, 393 (2009) 721-722
Abulon, 557 Phil. 428, 455 (2007) 713
Alivio, 664 Phil. 565, 576-580 (2011) 736, 1035
Almorfe, 631 Phil. 51 (2010) 739, 1038, 1053
Ameril, G.R. No. 203293, Nov. 14, 2016 53
Aminnudin, 246 Phil. 424,
434-435 (1988) 741, 756, 1041, 1060
Aquino, 396 Phil. 303, 307 (2000) 186
Aquino, 724 Phil. 739, 749 (2014) 719
Balacano, 391 Phil. 509, 525-526 (2000) 183
Bali-Balita, 394 Phil. 790, 809 (2000) 26
Banig, 693 Phil. 303, 317 (2012) 23
Barberos, 623 Phil. 1008, 1025 (2009) 33
Barte, G.R. No. 179749, Mar. 1, 2017 155
Bautista, 474 Phil. 531, 555 (2004) 594
Baway, 402 Phil. 872, 892 (2001) 595
Belmonte *y* Sumagit, G.R. No. 220889,
July 5, 2017 .... 591, 1023
Belo, 360 Phil. 36, 50 (1998) 192
Belocura, 693 Phil. 476 (2012) 896
Bensig, 437 Phil. 748, 763 (2002) 183

Page

Bio, 753 Phil. 730, 736 (2015) 736, 1035, 1050
Bodoso, 446 Phil. 838 (2003) 121
Bon, 444 Phil. 571, 579 (2003) 23
Bongalon, 425 Phil. 96 (2002) 596
Bragat, 416 Phil. 829, 843 (2001) 598
Brioso, 600 Phil. 530, 541 (2009) 24, 27
Butiong, 675 Phil. 621, 630-631 (2011) 26
CA, G.R. No. 144332, June 10, 2004,
431 SCRA 610 664
Caboquin, 420 Phil. 744, 750 (2001) 186
Campuhan, 385 Phil. 912, 921-922 (2000) 26
Caoili, G.R. Nos. 196342, 196848,
Aug. 8, 2017 .... 27, 29, 723
Castro, et al., 346 Phil. 894, 912 (1997) 191
Catubig, 416 Phil. 102 (2001) 1024
Ceralde, G.R. No. 228894,
Aug. 7, 2017 .... 738, 750, 753, 1038, 1053
Chua, 695 Phil. 16 (2012) 945
Cogaed, 740 Phil. 212, 241 (2014) 120
Comboy, G.R. No. 218399, Mar. 2, 2016,
785 SCRA 512, 521 .... 166, 735, 750, 1035, 1050
Crespo, 586 Phil. 542, 566 (2008) 22
Dahil, 750 Phil. 212, 225 (2015) 166, 735, 1034, 1050
Darisan, et al., 597 Phil. 479, 485 (2009) 893
De Guzman, 630 Phil. 637 (2010) 739, 1038, 1053
De la Cruz, 92 Phil. 906, 908 (1953) 102
Del Castillo, 482 Phil. 828 (2004) 119
Denoman, 612 Phil. 1165, 1175 (2009) 131, 736, 1035
Dionisio, 131 Phil. 408, 411(1968) 102
Domingo, 579 Phil. 254, 264 (2008) 22
Dumadag, G.R. No. 176740, June 22, 2011,
652 SCRA 535, 538-539,
667 Phil. 664, 669 (2011) 15, 931
Egan, 432 Phil. 74, 90 (2002) 31
Entrampas, G.R. No. 212161, Mar. 29, 2017 719
Esugon, 761 Phil. 300, 311 (2015) 718
Evangelio, et al.,
672 Phil. 229, 243 (2011) 592, 1020-1021

Page

First Division of the Sandiganbayan,
G.R. No. 190963, Feb. 6, 2012 663
Garcia, 599 Phil. 416 (2009) 910
Garingarao, 669 Phil. 512, 523 (2011) 721
Gatlabayan, 669 Phil. 240 (2011) 1057
Gaufo, 469 Phil. 66 (2004) 1020
Gayoso, G.R. No. 206590, Mar. 27, 2017 151
Geronimo, G.R. No. 225500, Sept. 11, 2017 1039
Gesmundo, 292-A Phil. 20, 29 (1993) 118
Go, 457 Phil. 885, 925 (2003) 119, 741, 756, 1041, 1060
Goco, G.R. No. 219584,
Oct. 17, 2016 .... 739, 753, 1038, 1053
Gonzales, 708 Phil. 121, 130-131 (2013) 152
Hementiza, G.R. No. 227398, Mar. 22, 2017 .... 152, 155
Holgado, 741 Phil. 78, 81 (2014) 123
Ismael, G.R. No. 208093, Feb. 20, 2017 .... 151, 153
Jalbonian, 713 Phil. 93, 104 (2013) 720
Jugueta, G.R. No. 202124, April 5, 2016,
788 SCRA 331, 383, 390-391 .... 172, 192, 598, 938
Kamad, 624 Phil. 289-312 (2010) 899, 895
Lamsen, 721 Phil. 256, 259 (2013) 169
Laxa, 414 Phil. 156, 170 (2001) 895
Leonardo, 638 Phil. 161, 198 (2010) 28
Lorenzo, 633 Phil. 393, 401 (2010) 898
Macapundag, G.R. No. 225965,
Mar. 13, 2017 .... 155, 741, 1040, 1059
Madsali, 625 Phil. 431, 461 (2010) 1023
Magat, 588 Phil. 395-407 (2008) 901
Manchu, et al., 593 Phil. 398, 411 (2008) 1022
Marmol, G.R. No. 217379, Nov. 23, 2016,
810 SCRA 379, 392-393 938
Mendoza, 683 Phil. 339, 351 (2012) 1055
Mendoza, 736 Phil. 749,
764 (2014) 737, 751, 1036, 1051
Mendoza *y* Estrada, 736 Phil. 749-771 (2014) 911
Monteron, 428 Phil. 401, 409 (2002) 947
Morales, 630 Phil. 215-236, 228 (2010) 893, 895
Morate, 725 Phil. 556, 571 (2014) 503
Muñoz, G.R. Nos. L-38969-70, Feb. 9, 1989 103

Page

Nandi, 639 Phil. 134-147 (2010) 895, 907, 909
Navarrete, 665 Phil. 738-749 (2011) 900
Nelmida, 694 Phil. 529, 564 (2012) 947
Ohayas, G.R. No. 207516, June 19, 2017 1022
Olfindo, 47 Phil. 1 (1924) 1057
Orteza, G.R. No. 173051, July 31, 2007,
528 SCRA 750, 758 896
Ortiz, 614 Phil. 625 (2009) 598
Ortoa, 599 Phil. 232, 245 (2009) 22
Pabol, 618 Phil. 533 (2009) 1021
Pamintuan, 710 Phil. 414, 422 (2013) 33, 1023
Paragas, 434 Phil. 124, 143 (2002) 184
Paraiso, 377 Phil. 445, 464 (1999) 598
Pareja, 724 Phil. 759, 784 (2014) 71
Partoza, 605 Phil. 883, 890 (2009) 893
Perez, 404 Phil. 380, 388 (2001) 186
Perondo, 754 Phil. 205, 217 (2015) 54
Pulgo, G.R. No. 218205, July 5, 2017 184
Ramos, 715 Phil. 193, 207 (2013) 958
Ramos, G.R. No. 104497, Jan. 18, 1995,
240 SCRA 191, 199 314
Rellota, G.R. No. 168103, Aug. 3, 2010,
626 SCRA 422, 448 .... 713, 722
Saludo, 662 Phil. 738, 755 (2011) 937
Sanchez, 590 Phil. 214, 234 (2008) 737, 751, 1036, 1052
Santillana, 367 Phil. 373, 389 (1999) 186
Santos, 753 Phil. 637 (2015) 723
Sarcia, 615 Phil. 97, 117 (2009) 1023
Sebastian, 428 Phil. 622, 626-627 (2002) 184
Sernadilla, 403 Phil. 125, 140 (2001) 595
Simon, 304 Phil. 725 (1994) 723
Solayao, 330 Phil. 811, 819 (1996) 893
Sonido, G.R. No. 208646, June 15, 2016,
793 SCRA 568, 578 937
Soriano, Sr., 570 Phil. 115, 120 (2008) 21
Sta. Maria, 545 Phil. 520 (2007) 1055
Sumili, 753 Phil. 342,
348 (2015) 736, 1035-1036, 1040, 1050
Suyu, 530 Phil. 569, 596 (2006) 592, 595, 1012

Page

Taboga, 426 Phil. 908, 928-929 (2002) 192, 598
Tamayo, 434 Phil. 642, 654 (2002) 591-592, 1012
Tayag, 385 Phil. 1150 (2000) 31
Togahan, 551 Phil. 997, 1014 (2007) 596
Tolentino, 762 Phil. 592, 613 (2015) 947
Tormis, 595 Phil. 589, 602 (2008) 23
Trayco, 612 Phil. 1140, 1158-1159 (2009) 26
Ulat, 674 Phil. 484-501 (2011) 900
Umipang, 686 Phil. 1024,
1038 (2012) 741, 756, 1040, 1059
Uy, 384 Phil. 70 (2000) 1056
Verceles, et al., 437 Phil. 323, 333 (2002) 1022
Viterbo, 739 Phil. 593, 601 (2014) 736, 750, 1035, 1051
Petron Corporation *vs.* Caberte, et al.,
G.R. No. 182255, June 15, 2015 973-974
PEZA *vs.* Pearl City Manufacturing Corp.,
623 Phil. 191, 201 (2009) 98
Phil. Hammonia Ship Agency, Inc., et al. *vs.*
Dumadag, 712 Phil. 507 (2013) 558, 560
Philippine Airlines, Inc. *vs.* Airline Pilots
Association of the Philippines,
424 Phil. 356, 363 (2002) 518
Heirs of Bernardin J. Zamora, G.R. No. 164267,
G.R. No. 166996, Mar. 31, 2009,
582 SCRA 670 409
NLRC, 392 Phil. 50, 56 (2000) 437
Philippine Association of Service Exporters, Inc.
vs. Hon. Drilon, 246 Phil. 393, 405 (1988) 861
Philippine Banking Corp. *vs.* CIR,
597 Phil. 363, 388 (2009) 425
Philippine National Bank *vs.* CA,
330 Phil. 1048, 1072-1073 (1996) 699, 700, 702
Philippine Ports Authority *vs.* Rosales-Bondoc,
557 Phil. 737 (2007) 379
Philippine Transmarine Carriers, Inc., et al. *vs.*
Joselito A. Cristino, G.R. No. 188638,
Dec. 9, 2015, 777 SCRA 114, 127 534
Philippine Transmarine Carriers, Inc., et al.
vs. Pelagio, 766 Phil. 504, 518 (2015) 567

Page

PNCC *vs.* Apac Marketing Corp.,
710 Phil. 389, 395 (2013) 1002
Protective Maximum Security Agency, Inc. *vs.*
Fuentes, 753 Phil. 482, 505 (2015) 41
Prubankers Association *vs.* Prudential Bank
and Trust Company, 361 Phil. 744, 757 (1999) 436
Punla *vs.* Maravilla-Ona, A.C. No. 11149,
Aug. 15, 2017 326
Que *vs.* Revilla, Jr., A.C. No. 7054,
Dec. 4, 2009, 607 SCRA 1 233
Que *vs.* Revilla, Jr., A.C. No. 7054,
Nov. 11, 2014, 739 SCRA 459, 464 236
Quebral *vs.* Angelina C. Rillorta,
Officer-in-Charge/Clerk of Court,
and Minerva B. Alvarez, Clerk IV,
both of RTC, Branch 21, Santiago City,
Isabela, 459 Phil. 306 (2003) 784
Quileste *vs.* People, 599 Phil. 117 (2009) 607
Quimvel *vs.* People, G.R. No. 214497,
April 18, 2017 .... 28, 723
Rafols, Jr. *vs.* Barrios, Jr., A.C. 4973,
Mar. 15, 2010, 615 SCRA 206, 220 234
Razon, Jr. *vs.* Tagitis, G.R. No. 182498,
Dec. 3, 2009, 606 SCRA 598 .... 308, 310, 313
Re: Administrative Charge of Misconduct
Relative to the Alleged Use of Prohibited
Drug of Castor, 719 Phil. 96, 100 (2013) 778-779
Re: AWOL of Ms. Bantog, 411 Phil. 523 (2001) 794
Re: AWOL of Ms. Fernandita B. Borja,
549 Phil. 533, 536 (2007) 845
Re: Dropping from the Rolls of Rowie A. Quimno,
A.M. No. 17-03-33-MCTC, April 17, 2017 845
Re: Habitual Absenteeism of Marcos,
650 Phil. 251 (2010) 794
Re: Illegal and Unauthorized Digging and
Excavation Activities Inside the Supreme Court
Compound, Baguio City, A.M. No. 2016-03-SC,
Feb. 21, 2017 72

Page

Re: (1) Lost checks Issued to the Late Melliza, Former Clerk II, MCTC, Zaragga, Iloilo; and (2) Dropping from the Rolls of Andres, 537 Phil. 634 (2006) 335
Re: Release by Judge Manuel T. Muro, RTC, Branch 54 Manila, of an Accused in a Non-Bailable Offense, 419 Phil. 567, 592 (2001) 810
Re: Report of the Financial Audit Conducted on the Accounts of Clerk of Court Zenaida Garcia, MTC, Barotac Nuevo, Iloilo, 362 Phil. 480 (1999) 783
Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan, 753 Phil. 31, 37 (2015) 779
Republic *vs.* Asia Pacific Integrated Steel Corporation, 729 Phil. 402, 415, (2014) 995, 998
- C.C. Unson Company, Inc., G.R. No. 215107, Feb. 24, 2016 214
- CA, 433 Phil. 106, 122-123 (2002) 379, 576, 995
- CA, et al., 612 Phil. 965, 977-978 (2009) 998-999
- Heirs of Spouses Pedro Bautista and Valentina Malabanan, 702 Phil. 284, 297 (2013) 1000
- Limbonhai and Sons, G.R. No. 217956, Nov. 16, 2016 583
- Rural Bank of Kabacan, Inc., et al., 680 Phil. 247, 257 (2012) 995
- Sandiganbayan, 461 Phil. 598, 613 (2003) 366

Republic, et al. *vs.* Judge Mupas, et al., G.R. No. 181892, April 19, 2016, 790 SCRA 217, 769 Phil. 21, 194-195 (2015) 494, 1001
Republic, etc. *vs.* Lacap, etc., 546 Phil. 87, 99 (2007) 628
Republic, represented by the Department of Public Works and Highways (DPWH) *vs.* Spouses Llamas, G.R. No. 194190, Jan. 25, 2017 63
Republic, represented by the DPWH *vs.* Spouses Tan Song Bok, et al., G.R. No. 191448, Nov. 16, 2011 208

Page

Resins, Incorporated *vs.* Auditor General, et al.,
134 Phil. 697, 700 (1968) 628
Reyes *vs.* Glaucoma Research Foundation,
Inc., et al., G.R. No. 189255, June 17, 2015 972
Valentin, G.R. No. 194488, Feb. 11, 2015 700
Vitan, A.C. No. 5835, April 15, 2005,
456 SCRA 87, 90 232
Reyes-Domingo *vs.* Morales,
396 Phil. 150, 161 (2000) 338
Rivera *vs.* Corral, A.C. No. 3548,
July 4, 2002, 384 SCRA 1, 9 234
Rivera *vs.* People's Bank and Trust Co.,
73 Phil. 546 (1942) 1067
Rivero *vs.* Spouses Chua, 750 Phil. 663 (2015) 651
Rodriguez *vs.* Philippine Airlines, Inc.,
G.R. No. 178501, 11 Jan. 2016, 778 SCRA 334 513
Rojas, Jr. *vs.* Mina, 688 Phil. 241, 249 (2012) 779
Roxas *vs.* Arroyo, G.R. No. 189155,
Sept. 7, 2010, 630 SCRA 211 319
RTC Makati Movement Against Anti-Graft
and Corruption *vs.* Dumlao, A.M. No. P-93-820,
Aug. 9, 1995, 247 SCRA 108, 117 334
S.C. Megaworld Construction and
Development Corporation *vs.*
Engr. Parada, 717 Phil. 752, 760 (2013) 994
Saber *vs.* CA, 480 Phil. 723, 747 (2004) 1002-1003
Sabijon, et al. *vs.* De Juan,
752 Phil. 110, 122 (2015) 338
Saez *vs.* Macapagal-Arroyo, G.R. No. 183533,
Sept. 25, 2012, 681 SCRA 678, 690 314
Saguisag *vs.* Ochoa, G.R. Nos. 212426, 212444,
Jan. 12, 2016, 779 SCRA 241 101
Salas *vs.* Sta. Mesa Market Corporation,
G.R. No. 157766, July 12, 2007 670
Sanchez *vs.* Torres, A.C. No. 10240,
Nov. 25, 2014, 741 SCRA 620, 627 233
Santiago *vs.* Deputy Executive Secretary,
270 Phil. 288 (1990) 390, 393

Page

Santos Ventura Hocorma Foundation, Inc.
vs. Funk, A.C. No. 9094, Jan. 13, 2014 841
Sasan, Sr., et al. *vs.* NLRC 4th Division, et al.,
590 Phil. 685, 707 (2008) 477, 479
Scanmar Maritime Services, Inc. *vs.* Conag,
G.R. No. 212382, April 6, 2016,
789 SCRA 1, 13 .... 560, 562
Scanmar Maritime Services, Inc. *vs.*
De Leon, G.R. No. 199977, Jan. 25, 2017 926
Seaoil Petroleum Corp. *vs.* Autocorp Group,
et al., 590 Phil. 410, 419 (2008) 82
SEC *vs.* Universal Rightfield Property
Holdings, Inc., 764 Phil. 267 (2015) 99
Secretary of Justice, et al. *vs.* Koruga,
604 Phil. 405, 416 (2009) 632
Secretary of Public Works and Highways, et al. *vs.*
Spouses Tecson, G.R. No. 179334, April 21, 2015,
713 Phil. 55, 70 (2013) 208, 216, 993, 998
Secretary of the Department of Public Works
and Highways, et al. *vs.* Spouses Tecson,
758 Phil. 604, 635 (2015) 496, 1002
Security Bank and Trust Company *vs.*
Regional Trial Court, etc., et al.,
331 Phil. 787, 793 (1996) 628
Serdoncillo *vs.* Spouses Benolirao,
358 Phil. 83, 96 (1998) 461
Serrano *vs.* NLRC, 387 Phil. 345 (2000) 102
Sindac *vs.* People, G.R. No. 220732,
Sept. 6, 2016, 802 SCRA 270, 278 1057
Social Security System *vs.* Commission
on Audit, 433 Phil. 946, 952 (2002) 631
Solidon *vs.* Macalalad, A.C. No. 8158,
Feb. 24, 2010, 613 SCRA 472, 476 232
Somosot *vs.* Lara, A.C. No. 7024,
Jan. 30, 2009, 577 SCRA 158, 174 235
Special People, Inc. Foundation *vs.*
Canda, 701 Phil. 365 (2013) 99
Splash Philippines, Inc., et al. *vs.* Ruizo,
730 Phil. 162 (2014) 557, 563

Page

Spouses Bergonia and Castillo *vs.* CA. et al.,
680 Phil. 334, 344-345 (2012) 584
Spouses Curata *vs.* Philippine Ports Authority,
608 Phil. 9 (2009) 379
Spouses Palada *vs.* Solidbank Corporation,
et al., 668 Phil. 172 (2011) 445
Spouses Pan *vs.* Salamat, 525 Phil. 540, 547 (2006) 71
Spouses Stilgrove *vs.* Sabas,
538 Phil. 232, 244 (2006) 462-463
Spouses Tumibay, et al. *vs.* Spouses Lopez,
710 Phil. 19, 31 (2013) 83
Spouses Valdez, Jr. *vs.* CA,
523 Phil. 39, 45-46 (2006) 460
Suarez *vs.* Spouses Emboy, Jr.,
729 Phil. 315, 329-330 (2014) 460
Subic Bay Metropolitan Authority *vs.*
CA, et al., 690 Phil. 336, 344 (2012) 446
Sumbilla *vs.* Matrix Finance Corporation,
G.R. No. 197582, June 29, 2015 210
Tagalog *vs.* Crossworld Marine Services,
Inc., et al., 761 Phil. 270, 279 (2015) 44, 562-563
Talaroc *vs.* Arpaphil Shipping Corporation, et al.,
G.R. No. 223731, Aug. 30, 2017 .... 560, 562
Tan *vs.* Benolirao, 619 Phil. 35, 48-49 (2009) 700
National Labor Relations Commission,
359 Phil. 499, 511 (1998) 535
OMC Carriers, Inc., 654 Phil. 443, 454 (2011) 959
Ramirez, 640 Phil. 370, 383 (2010) 6
Tawang Multi-Purpose Cooperative *vs.* La Trinidad
Water District, 661 Phil. 390, 400 (2011) 628
The Philippine Judges Association, etc., et al. *vs.*
Prado, etc., et al., 298 Phil. 502, 512-513 (1993) 636
Tongko *vs.* The Manufacturers Life Insurance
Co. (Phils.), Inc., et al., 655 Phil. 384, 407 (2011) 484
Torres *y* Salera *vs.* People, G.R. No. 206627,
Jan. 18, 2017 924
Toyota Pasig, Inc. *vs.* De Peralta, G.R. No. 213488,
Nov. 7, 2016 646-647

Page

Traders Royal Bank *vs.* Cuison Lumber Co., Inc., et al., 606 Phil. 700, 713 (2009) 445
TSM Shipping Phils., Inc., et al. *vs.* Patiño, G.R. No. 210289, Mar. 20, 2017 566
Ty *vs.* Banco Filipino Savings and Mortgage Bank, G.R. No. 188302, June 27, 2012, 675 SCRA 339, 349-350 281
U.S. *vs.* Abijan, 1 Phil. 83 (1902) 1057
U.S. *vs.* Borromeo, 23 Phil. 279, 289 (1912) 103
Ulep *vs.* People, 597 Phil. 580 (2009) 608
Universal Robina Sugar Milling Corporation (URSUMCO) *vs.* Caballeda, G.R. No. 156644, July 28, 2008, 560 SCRA 115, 132 514
Urtula, et al. *vs.* Republic, 130 Phil. 449, 454 (1968) 583
Valencia *vs.* Antiniw, A.C. Nos. 1302, 1391, 1543, June 30, 2008, 556 SCRA 503, 515 238
Valencia *vs.* Classic Vinyl Products Corporation, et al., G.R. No. 206390, Jan. 30, 2017 .... 976, 979
Valera *vs.* Inserto, 233 Phil. 552, 561 (1987) 1069
Verdadero *vs.* Barney Autolines Group of Companies Transport, Inc., et al., 693 Phil. 646, 656 (2012) 878-879
Vergara *vs.* Hammonia Maritime Services, Inc., et al., 588 Phil. 895 (2008) 563
Veritas Maritime Corp., et al. *vs.* Gepanaga, Jr., 753 Phil. 308 (2015) 563-564
Victoriano *vs.* Elizalde Rope Workers' Union, et al., 158 Phil. 60, 87 (1974)... 103, 636
Victorias Milling Co., Inc. *vs.* Central Bank of the Philippines, 121 Phil. 451, 455 (1965) 629
Viernes *vs.* NLRC, 448 Phil. 690, 702-703 (2003) 870
Villanueva *vs.* CA, 471 Phil. 394 (2004) 85
Villareal *vs.* People, 84 Phil. 264 (1949) 1057
Vinoya *vs.* NLRC, 393 Phil. 441, 445 (2000) 476, 481
Vivares *vs.* St. Theresa's College, G.R. No. 202666, Sept. 29, 2014, 737 SCRA 92, 106 315
Vivas *vs.* Monetary Board of the Bangko Sentral ng Pilipinas, 716 Phil. 132 (2013) 101

Page

Vivo *vs.* PAGCOR, 723 Phil. 34 (2013) 98
Wallem Maritime Services, Inc. *vs.* Tanawan,
693 Phil. 416, 429 (2012) 927
William Uy Construction Corp. and/or Uy, et al. *vs.*
Trinidad, 629 Phil. 185, 189 (2010) 877
Wise and Co., Inc. *vs.* Wise and
Co. Inc. Employees Union-NATU,
258-A Phil. 321-322 (1989) 438
Wooden *vs.* Civil Service Commission,
508 Phil. 500, 516 (2005) 551
Woodridge School, Inc. *vs.* ARB Construction
Co., Inc., 545 Phil. 83 (2007) 62
Yao *vs.* CA, 398 Phil. 86 (2000) 6
Yinlu Bicol Mining Corporation *vs.*
Trans-Asia Oil and Energy Development
Corporation, 750 Phil. 148 (2015) 394
Young *vs.* Batuegas, A.C. No. 5379,
May 9, 2003, 403 SCRA 123 821
Ysidoro *vs.* Leonardo-De Castro,
Hon. Diosdado M. Peralta and
Hon. Efren N. De La Cruz, in their
official capacities as Presiding Justice
and Associate Justices, respectively of the
First Division of the Sandiganbayan,
G.R. No. 171513, Feb. 6, 2012 663
Yuhico *vs.* Gutierrez, A.C. No. 8391,
Nov. 23, 2010, 635 SCRA 684, 689 233
Yun Kwan Byung *vs.* Philippine Amusement and
Gaming Corporation, 623 Phil. 23, 43 (2009) 630
Yusingco *vs.* Ong Hing Lian,
149 Phil. 688, 710 (1971) 582

II. FOREIGN CASES

City of Cleburne, Texas, et al. *vs.* Cleburne
Living Center, Inc., et al., 473 U.S. 432 (1985) 636
McMahon *vs.* State, 70 Neb., 722 103
Molloy, et al. *vs.* Meier, etc., et al.,
679 N.W.2d 711 (2004) 630

Page

United States *vs.* Wurts, 303 U.S. 414 (1938) 630

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. II, Sec. 3 (2) 120
Sec. 9 632
Art. III, Sec.1 893
Sec. 9 1001
Sec. 14 (2) 893
Sec. 19(1) 102
Art. VI, Sec. 25 (5) 284
Sec. 27(2) 289
Sec. 29 277
Art. VIII, Sec. 14 .... 6, 9
Art. XIII, Sec. 3 632

B. STATUTES

Administrative Code
Book V, Secs. 46(1), 47 276
A.M. No. 04-2-04-SC (Revised Upgrading
Schedule of the Legal Fees in the Supreme
Court and the Lower courts)
Sec. 10 247
Batas Pambansa
B.P. Blg. 22 826
Civil Code, New
Art. 22 649
Art. 485 1066
Art. 487 462-463
Art. 1170 446
Art. 1236 85
Art. 1482 .... 699, 701

Page

Art. 1654 (3) 695, 698
Art. 1657 698
Art. 1657 (1) 698
Art. 1658 .... 687, 692, 694-695, 697
Art. 1700 861
Art. 1934 445
Arts. 2154, 2163 629
Art. 2212 1001
Arts. 2221, 2224 960
Code of Conduct for Court Personnel
Canon III, Sec. 1 255
Code of Judicial Conduct
Canon 3, Sec. 2 809
Code of Professional Responsibility
Canons 1 225
Rule 1.01 .... 231, 781, 787, 813, 819
Rule 1.02 .... 813, 819, 824
Canons 2, 13, 15-16 225
Canon 7 .... 781, 787
Canon 8 233
Canon 10, Rules 10.01 .... 233, 813, 819, 824
Rule 10.03 233
Canon 12, Rules 12.02, 12.04 233
Canon 15 225
Rules 15.06-15.07 233
Canon 16, Rules 16.01 .... 326-328, 828, 831
Rule 16.02 .... 828, 831
Rule 16.03 326-328
Canon 17 831-832
Canon 18 232
Rule 18.03 231
Canon 19, Rule 19.01 233
Commonwealth Act
CA No. 137 385
Executive Order
E.O. No. 292, Sec. 2 282
Government Auditing Code
Secs. 85(1), 86 276

Page

Labor Code
Art. 106 .... 475, 477, 479, 972
Art. 111 881
Art. 124 436
Art. 198 (c)(1) 42
Art. 229 410
Art. 279 485
Art. 282 512
Art. 294 875
National Internal Revenue Code (Tax Code)
Sec. 249 (C) 417
Penal Code, Revised
Art. 1 171
Art. 5 727-728
Art. 29 116
Art. 63, par. 1 698
Art. 89 (1) 1032
Art. 151 331
Art. 171 (4) 813
Art. 172 (2) 813
Arts. 183-184 815
Art. 248 .... 176, 183
Art. 266-A, par. 1 (d) 708
Art. 266-B 34
Art. 266-B, par. 1(d) 708
Art. 294 .... 591, 597, 1012
Art. 315 941
Art. 315 (1)(b) 159, 164, 167, 323
Art. 336 .... 27-28, 33-34, 720
Arts. 347, 359 815
Presidential Decree
P.D. No. 463 385
P.D. No. 532 .... 951, 956, 960
Sec. 2 (a) 957
Sec. 2 (d) 955
Sec. 3 959
P.D. No. 1151 99
P.D. No. 1385 393
Sec. 15 391

Page

P.D. No. 1586 93
Sec. 5 100
P.D. No. 1677 393
Sec. 5 392
P.D. No. 1866, as amended 799
P.D. No. 1902 393
Sec. 2 392
P.D. Nos. 1920, 2018 941
Proclamation
Proc. No. 2146 99
Republic Act
R.A. No. 1161, Sec. 2 631
Sec. 3 633
Sec. 30 633
R.A. No. 3844 344
R.A. No. 4136 282
R.A. No. 6657 .... 364, 369, 489
Sec. 16 (f) 349, 367
Sec. 17 .... 345, 365, 370-371, 491
Sec. 49 344
Sec. 57 367
Sec. 58 350
R.A. No. 6713 330
Sec. 7 (d) 337
R.A. No. 6727 436
R.A. No. 7227, Sec. 4 196
Sec. 4 (a) 197
R.A. No. 7610 .... 708, 721
Sec. 5 .... 27, 29
Sec. 5 (b) 28-29, 33-34, 720
R.A. No. 7659 597
Sec. 9 591
R.A. No. 7942 385
Sec. 19 398
R.A. No. 8042 941
Sec. 7 945
R.A. No. 8249, Sec. 4 (c) 605-606
R.A. No. 8282 .... 618, 631
Sec. 4 (c) 635

Page

Sec. 30 634
R.A. No. 8353 708
R.A. No. 8749 91
R.A. No. 8974, Sec. 5 .... 206, 211
R.A. No. 9165, Sec. 1 (b) 750
Sec. 5 .... 48, 52, 123, 148, 504
Sec. 11 .... 111, 113, 115, 124, 148
Sec. 11 (3) 731, 734
Sec. 12 .... 111, 113-115
Secs. 13-14 1032-1033
Sec. 21 .... 123, 149-150, 736, 741
Sec. 21, par. 1 .... 131, 737, 895, 1036
Sec. 21, par. 2 .... 737, 895, 1036
Sec. 21, par. 3 895
Sec. 21 (a) 131, 1038
Sec. 23 805
Sec. 24 (a) 738
R.A. No. 9275 .... 93, 97
Sec. 4 (m) 92
Sec. 27 (i) 91
Sec. 28 .... 91, 96, 100-102
R.A. No. 9346 .... 192, 598, 959
R.A. No. 9480 .... 414-415, 419, 424-425
Sec. 3 423
Sec. 4 .... 421, 424
Sec. 6 421
R.A. No. 9516 800
R.A. No. 9903 .... 618, 620-622, 625, 628
Sec. 2 625
Sec. 4 .... 619, 623, 625, 627
Sec. 5 633-634
R.A. No. 10633 271
R.A. No. 10640 .... 752, 755, 894, 1037
Sec. 1 905-906
Sec. 21 903
Sec. 21 (1) 905, 913
R.A. No. 10951 172
Sec. 85 171

Page

Rule on the Writ of Amparo
Sec. 9 .... 316, 320
Sec. 17 316
Rule on the Writ of Habeas Data, A.M. No. 08-1-16-SC
Sec. 1 315
Rules on Notarial Practice
Rule II, Sec. 1 824
Rules of Court, Revised
Rule 9, Sec. 1 994
Rule 10, Sec. 6 663
Rule 30, Sec. 9 801
Rule 36, Sec. 1 6
Rule 39, Sec. 2 (a) 358
Sec. 9 (a) 248-249
Sec. 10 268
Sec. 14 .... 250, 264
Sec. 15 .... 251, 266
Sec. 17 253
Rule 43 .... 94, 388
Rule 45 .... 2, 37, 40, 58, 77
Sec. 1 .... 9, 533
Rule 50, Sec. 2 609
Rule 65 .... 531, 644, 660, 871, 922
Rule 67, Sec. 3 583
Sec. 7 355
Sec. 8 366
Sec. 10 575
Rule 132, Sec. 7 .... 661, 668
Secs. 19, 34 669
Sec. 35 670
Rule 133, Sec. 2 891-892
Sec. 4 314
Sec. 5 311
Rule 138, Secs. 20 (d), 21, 27 233
Sec. 27 328
Rule 141, Sec. 10 262
Rules on Criminal Procedure (2000)
Rule 119, Sec. 24 165

Page

Rule 120, Sec. 4 in relation to Sec. 5 .... 27, 713
Rule 126, Sec. 8 117

C. OTHERS

Amended Rules on Employees' Compensation
Rule X, Sec. 2 42
Implementing Rules and Regulations of R.A. 7610
Sec. 2, par. (h) 721
NLRC Rules of Procedure
Rule XI, Sec. 14 567
Omnibus Civil Service Rules and Regulations
Rule XVI, Sec. 63 846
Revised Rules on Administrative Cases in the Civil Service
Rule 10, Sec. 46 .... 261, 268
Sec. 46A (1) 783
Sec. 46D (2) 71
SSC Circular No. 2010-004 (IRR of R.A. No. 9903)
Secs. 1-2 625-626
Sec. 2 (f) 619

D. BOOKS
(Local)

Black's Law Dictionary, 6th Ed., 1990, p. 693 551
Francisco, Vicente J., 1 The Revised Rules of Court,
Vol. 1, Part II, 1997 Ed., 405 1056
Tolentino, Commentaries and Jurisprudence
on Civil Code of the Philipines, Vol. IV,
1991 Ed., p. 353 629
IV Tolentino, The Civil Code of the Philippines,
p. 175 (1999) 446