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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 10441. February 14, 2018]

SUSAN T. DE LEON, *complainant, vs.* **ATTY. ANTONIO A. GERONIMO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); LAWYER-CLIENT RELATIONSHIP; LAWYERS ARE EXPECTED TO EXERCISE THE NECESSARY DILIGENCE AND COMPETENCE IN MANAGING CASES ENTRUSTED TO THEM, VIOLATION OF WHICH SUBJECTS THEM TO DISCIPLINARY ACTION.—The relationship between a lawyer and a client is imbued with utmost trust and confidence. Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without the need to be reminded by either the client or the court. x x x Clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. Verily, a lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. A lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care

or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so. Therefore, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action.

2. ID.; ID.; ID.; BETWEEN THE LAWYER AND THE CLIENT, IT IS THE LAWYER THAT SHOULD BEAR THE FULL COST OF INDIFFERENCE OR NEGLIGENCE; CASE AT BAR.—Atty. Geronimo's negligence cost De Leon her entire case and left her with no appellate remedies. Her legal cause was orphaned, not because a court of law ruled on the merits of her case, but because a person privileged to act as her counsel failed to discharge his duties with the requisite diligence. Atty. Geronimo failed to exhaust all possible means to protect his client's interest, which is contrary to what he had sworn to do as a member of the legal profession. x x x Lawyers are expected, not only to be familiar with the minute facts of their cases, but also to see their relevance in relation to their causes of action or their defenses. It is the lawyer that receives the notices and must decide the mode of appeal to protect the interest of his or her client. Thus, the relationship between a lawyer and her client is regarded as highly fiduciary. Between the lawyer and the client, it is the lawyer that has the better knowledge of facts, events, and remedies. While it is true that the client chooses which lawyer to engage, he or she usually does so mostly on the basis of reputation. It is only upon actual engagement that the client discovers the level of diligence, competence, and accountability of the counsel that he or she chooses. In some cases, such as this one, the discovery comes too late. Between the lawyer and the client, therefore, it is the lawyer that should bear the full cost of indifference or negligence.

3. ID.; ID.; ID.; SIX MONTHS SUSPENSION FROM THE PRACTICE OF LAW AS THE APPROPRIATE PENALTY FOR LAWYERS WHO HAVE BEEN HELD LIABLE FOR GROSS NEGLIGENCE FOR INFRACTIONS, SUSTAINED. —As regards the appropriate penalty, several cases show that lawyers who have been held liable for gross negligence for infractions similar to those of Atty. Geronimo's were suspended

for a period of six (6) months. In *Spouses Aranda v. Atty. Elayda*, the lawyer who failed to appear at the scheduled hearing despite due notice which resulted in the submission of the case for decision was found guilty of gross negligence and hence, suspended for six (6) months. In the case of *The Heirs of Tiburcio F. Ballesteros, Sr. v. Atty. Apiag*, the lawyer who did not file a pre-trial brief and was absent during the pre-trial conference was likewise suspended for six (6) months. In *Abiero v. Atty. Juanino*, the lawyer who neglected a legal matter entrusted to him by his client, in violation of Canons 17 and 18 of the CPR, was also suspended for six (6) months. Thus, consistent with existing jurisprudence, the Court finds it proper to impose the same penalty against respondent and accordingly suspends him for a period of six (6) months.

D E C I S I O N

PERALTA, *J.*:

This case is pursuant to a disbarment complaint which Susan T. De Leon filed against Atty. Antonio A. Geronimo, for purportedly committing acts in violation of the Lawyer's Oath and the Code of Professional Responsibility (*CPR*).

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

Complainant Susan T. De Leon engaged the services of Atty. Antonio A. Geronimo on March 28, 2003 to represent her in a labor case, where De Leon's employees filed complaints for illegal dismissal and violations of labor standards against her. On November 26, 2003, the Labor Arbiter (*LA*) rendered a Decision[1] dismissing said complaints for illegal dismissal against De Leon, but ordering her to pay each of the employees ₱5,000.00 as financial assistance. Without being informed by Atty. Geronimo, the employees filed an appeal before the National Labor Relations Commission (*NLRC*). On November 30, 2004, the NLRC reversed the LA decision, ordering De Leon and her

[1] *Rollo,* pp. 11-16.

co-respondents to reinstate the employees and pay them more than ₱7 Million.[2] When De Leon received a copy of the Motion for Reconsideration which Atty. Geronimo prepared, she was disappointed since the motion was composed of only three (3) pages and the arguments did not address all the issues in the assailed decision. Thus, De Leon later filed a Supplemental Motion for Reconsideration before the NLRC.[3] On January 28, 2005, Atty. Geronimo provided her with copies of some of the records of her case, particularly the LA and NLRC decisions, after which, De Leon never heard from him again.

After several months of not hearing from her lawyer, De Leon finally decided to call Atty. Geronimo on March 1, 2006 to follow up on the status of both the Motion for Reconsideration and the Supplemental Motion for Reconsideration. Much to her surprise, Atty. Geronimo informed her that said motions had already been denied by the NLRC in a Resolution[4] dated August 26, 2005, which he had received sometime in September 2005. When De Leon asked him if he elevated the case to the Court of Appeals (*CA*), Atty. Geronimo said that he did not. When she asked why, Atty. Geronimo replied that it did not matter anyway since she did not have any money, further telling her, "*'Di ba wala ka naman properties?*" De Leon likewise asked him why he did not inform her that he had already received a copy of the Resolution denying the motions, to which he replied, "*Wala ka naman pera!*" At that point, De Leon told him that she's terminating his services as her counsel. Thereafter, Atty. Geronimo filed a withdrawal of appearance as counsel.

On the other hand, Atty. Geronimo claims that De Leon filed the complaint against him for his perceived negligence even when he exerted his best defending her before the LA by filing the mandatory pleadings and supporting documents. After explaining that the LA ruling was already favorable to her, De

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[2] *Id.* at 448-470.

[3] *Id.* at 414-421.

[4] *Id.* at 424-425.

Leon decided not to appeal the LA's award of financial assistance and merely wait for the employees to file an appeal. Atty. Geronimo also explained to her remedies if the NLRC reversed the LA ruling; that she might be forced to bring the case to the CA and the Supreme Court. De Leon said that she had no more money to defray the expenses of the suit. On November 30, 2004, the NLRC promulgated its decision. On January 28, 2005, or six (6) days before February 3, 2005, the deadline for the filing of the Motion for Reconsideration of the NLRC Decision, De Leon called Atty. Geronimo and told him to give her the decisions of the LA and NLRC, and to surrender to her the entire case records because she would ask another lawyer to prepare her motion for reconsideration. Although Atty. Geronimo believed that, with the surrender of the case records and De Leon's statement that she would get another lawyer, he had already been relieved of his duties, he still prepared a motion for reconsideration on February 2, 2005. When he asked De Leon if she was ready to file the Motion for Reconsideration, the latter said no. So she signed the one he had prepared, verified it under oath, and filed it with the NLRC. For this, Atty. Geronimo did not collect any pleading fee. On February 16, 2005, however, De Leon filed a Supplemental Motion for Reconsideration which had been prepared by a lawyer who did not enter an appearance in the case. On September 6, 2005, Atty. Geronimo received a copy of the NLRC Resolution denying De Leon's motions. When he informed her of said Resolution and the requirements needed in filing a petition before the CA, De Leon said that she had no more money since her garment factory was already closed and she was unemployed. Atty. Geronimo told her that without money in the bank (De Leon construed this as "*Wala ka naman pera*"), the sheriff could not get anything from her. He also asked about her house and lot. De Leon said that they were living in the house owned by her husband's parents and they did not own any real property (De Leon construed this as "*'Di ba wala ka naman properties?*") He reiterated that without any money or property, the sheriff could not get anything from her. De Leon then remarked that she would no longer file a petition before the CA or if she would, another lawyer would have to prepare it for her. Thus, and since he was no longer

in possession of the records of De Leon's case, Atty. Geronimo could not prepare the petition for *certiorari* before the CA.

On January 31, 2011, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended Atty. Geronimo's suspension from the practice of law, to wit:[5]

> In view of the foregoing, it is respectfully recommended that the respondent be meted the penalty of suspension from [the] practice of law for a period of six (6) months.
>
> Respectfully submitted, Pasig City, 31 January 2011.

On December 29, 2012, the IBP Board of Governors passed Resolution No. XX-2012-650,[6] which adopted the abovementioned recommendation, with modification, thus:

> *RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED,* ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that Respondent was remiss in his duty as counsel for complainant, Atty. Antonio A. Geronimo is hereby* ***SUSPENDED from the practice of law for three (3) months****.*

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendation of the IBP that Atty. Geronimo must be sanctioned for his acts.

The relationship between a lawyer and a client is imbued with utmost trust and confidence. Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the

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[5] Report and Recommendation submitted by Commissioner Edmund T. Espina dated January 31, 2011; *id.* at 502-512.

[6] *Rollo*, p. 501. (Emphasis in the original)

best of their ability without the need to be reminded by either the client or the court.[7]

Canon 17 and Canon 18, Rules 18.03 and 18.04 of the CPR provide:

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.

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
>
> Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

Here, when De Leon received a copy of the Motion for Reconsideration which Atty. Geronimo prepared, she was disappointed since the motion was composed of only three (3) pages and the arguments did not address all the issues in the assailed decision. After Atty. Geronimo had provided her with copies of the LA and NLRC decisions, De Leon never heard from him again. When she called him on March 1, 2006 to follow up on the status of the motions, she was so furious to learn that, not only had the motions been denied by the NLRC, but worse, Atty. Geronimo no longer appealed the case to the CA. Atty. Geronimo's failure to inform his client about the adverse ruling of the NLRC, thereby precluding her from further pursuing an appeal, is a clear breach of Canons 17 and 18 of the CPR.

Clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. Verily, a lawyer is expected to maintain at all times a high standard of legal proficiency,

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[7] *Ramirez v. Atty. Buhayang-Margallo*, 752 Phil. 473, 480-481 (2015).

and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. A lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so. Therefore, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action.[8]

Atty. Geronimo was unjustifiably remiss in his bounden duties as De Leon's counsel. The lack of proper communication and coordination between De Leon and Atty. Geronimo is palpable but cannot possibly be attributed to the client's lack of diligence. It is rather incredible that while De Leon was supposedly no longer interested in filing an opposition to the appeal filed by the employees before the NLRC, she even took the entire records of the case from Atty. Geronimo in January 2005. Atty. Geronimo also argued that an opposition or a comment to said appeal is not a mandatory pleading but only a directory one. But prudence dictates that filing an opposition or comment to an appeal is always preferable rather than merely waiting and hoping that the NLRC would affirm the favorable LA ruling. Atty. Geronimo likewise explained that De Leon remarked that she would no longer file a petition before the CA. It is inconceivable that De Leon would simply refuse to oppose the NLRC's ruling considering that it ordered her and her co-respondents to reinstate the employees and pay them more than ₱7 Million. The fact is that she had been consistently kept in the dark as to the true status of her case, preventing her from pursuing an appeal. She would not have learned about it had she not called her lawyer herself to finally follow up.

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[8] *Id*. at 482.

Also, Atty. Geronimo believed that, with the surrender of the case records and De Leon's statement that she would get another lawyer, he had already been relieved of his duties as her counsel. This is, however, contrary to his subsequent actions. If this were true, he would have formally withdrawn from De Leon's case as her registered counsel long before March 2006. But he even prepared a motion for reconsideration on February 2, 2005, which De Leon signed, verified under oath, and filed with the NLRC. Atty. Geronimo simply argues that he did not collect any pleading fee for the same.

Atty. Geronimo's negligence cost De Leon her entire case and left her with no appellate remedies. Her legal cause was orphaned, not because a court of law ruled on the merits of her case, but because a person privileged to act as her counsel failed to discharge his duties with the requisite diligence. Atty. Geronimo failed to exhaust all possible means to protect his client's interest, which is contrary to what he had sworn to do as a member of the legal profession.[9]

A problem arises whenever agents, entrusted to manage the interests of another, use their authority or power for their benefit or fail to discharge their duties. In many agencies, there is information asymmetry between the principal and the entrusted agent. That is, there are facts and events that the agent must attend to that may not be known by the principal. This information asymmetry is even more pronounced in an attorney-client relationship. Lawyers are expected, not only to be familiar with the minute facts of their cases, but also to see their relevance in relation to their causes of action or their defenses. It is the lawyer that receives the notices and must decide the mode of appeal to protect the interest of his or her client.[10]

Thus, the relationship between a lawyer and her client is regarded as highly fiduciary. Between the lawyer and the client, it is the lawyer that has the better knowledge of facts, events, and remedies. While it is true that the client chooses which

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[9] *Id*.

[10] *Id*. at 483.

lawyer to engage, he or she usually does so mostly on the basis of reputation. It is only upon actual engagement that the client discovers the level of diligence, competence, and accountability of the counsel that he or she chooses. In some cases, such as this one, the discovery comes too late. Between the lawyer and the client, therefore, it is the lawyer that should bear the full cost of indifference or negligence.[11]

As regards the appropriate penalty, several cases show that lawyers who have been held liable for gross negligence for infractions similar to those of Atty. Geronimo's were suspended for a period of six (6) months. In *Spouses Aranda v. Atty. Elayda*,[12] the lawyer who failed to appear at the scheduled hearing despite due notice which resulted in the submission of the case for decision was found guilty of gross negligence and hence, suspended for six (6) months. In the case of *The Heirs of Tiburcio F. Ballesteros, Sr. v. Atty. Apiag*,[13] the lawyer who did not file a pre-trial brief and was absent during the pre-trial conference was likewise suspended for six (6) months. In *Abiero v. Atty. Juanino*,[14] the lawyer who neglected a legal matter entrusted to him by his client, in violation of Canons 17 and 18 of the CPR, was also suspended for six (6) months. Thus, consistent with existing jurisprudence, the Court finds it proper to impose the same penalty against respondent and accordingly suspends him for a period of six (6) months.

WHEREFORE, **IN VIEW OF THE FOREGOING**, the Court **SUSPENDS** Atty. Antonio A. Geronimo from the practice of law for a period of six (6) months and **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be included in the personal records of Atty. Antonio A. Geronimo and entered in his file in the Office of the Bar Confidant.

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[11] *Id*.

[12] 653 Phil. 1 (2010).

[13] 508 Phil. 113 (2005).

[14] 492 Phil. 149 (2005).

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

SO ORDERED.

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

Caguioa, J., on official business.

SECOND DIVISION

[G.R. No. 205693. February 14, 2018]

MANUEL M. VENEZUELA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED; ISSUES RAISED IN THE PRESENT CASE RELATIVE TO THE FINDING OF GUILT BY THE SANDIGANBAYAN ARE BEYOND THE PROVINCE OF THIS PETITION.— It must be noted at the outset that the appellate jurisdiction of the Court over the decisions and final orders of the Sandiganbayan is limited to questions of law. As a general rule, the Court does not review the factual findings of the Sandiganbayan, which are conclusive upon the Court. Parenthetically, "a question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other hand, a question of fact exists when the doubt or controversy arises as to the truth or falsity of the alleged facts." The resolution of the issues raised in the instant case, which

pertains to the finding of guilt rendered by the Sandiganbayan, involves a calibration of the evidence, the credibility of the witnesses, and the existence and the relevance of surrounding circumstances, which are beyond the province of a petition for review on *certiorari*.

2. CRIMINAL LAW; REVISED PENAL CODE (RPC); MALVERSATION OF PUBLIC FUNDS; ELEMENTS, PROVEN IN CASE AT BAR; PROOF THAT THE ACCOUNTABLE OFFICER HAD RECEIVED THE PUBLIC FUNDS AND THAT HE FAILED TO ACCOUNT FOR THE SAID FUNDS UPON DEMAND WITHOUT OFFERING JUSTIFICATION FOR THE SHORTAGE IS NECESSARY.— [T]he elements of malversation are (i) that the offender is a public officer, (ii) that he had custody or control of funds or property by reason of the duties of his office, (iii) that those funds or property were public funds or property for which he was accountable, and (iv) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. Verily, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that he failed to account for the said funds upon demand without offering a justifiable explanation for the shortage. In the case at bar, all elements for the crime were sufficiently proven by the prosecution beyond reasonable doubt.

3. ID.; ID.; ID.; PAYMENT OR REIMBURSEMENT IS NOT A DEFENSE IN MALVERSATION; IT MAY ONLY AFFECT OFFENDER'S CIVIL LIABILITY AND MAY BE CONSIDERED AS MITIGATING CIRCUMSTANCE.— [I]t bears stressing that payment or reimbursement is not a defense in malversation. The payment, indemnification, or reimbursement of, or compromise on the amounts or funds malversed or misappropriated, after the commission of the crime, does not extinguish the accused's criminal liability or relieve the accused from the penalty prescribed by the law. At best, such acts of reimbursement may only affect the offender's civil liability, and may be credited in his favor as a mitigating circumstance analogous to voluntary surrender.

4. ID.; ID.; ID.; ID.; PETITIONER DID NOT FULLY PROVE HIS DEFENSE OF PAYMENT; ONLY PAYMENT DULY

PROVEN SHALL BE CREDITED TO REDUCE THE FINE THAT SHALL BE IMPOSED.— [T]he Court observed that Venezuela did not fully prove his defense of payment. Although Venezuela presented official receipts, which purportedly prove his payment of the cash advances, the x x x circumstances easily cast serious doubt on the validity of the same receipts[.] x x x The only payment proven to have been made was the amount of Php 300,000.00. This shall be credited in Venezuela's favor in reducing the fine that shall be imposed against him.

5. **ID.; ID.; ID.; DEMAND IS NOT AN ELEMENT AND IS NOT INDISPENSABLE TO CONSTITUTE MALVERSATION.—** [D]emand is not necessary in malversation. Demand merely raises a *prima facie* presumption that the missing funds have been put to personal use. The demand itself, however, is not an element of, and is not indispensable to constitute malversation. Malversation is committed from the very moment the accountable officer misappropriates public funds and fails to satisfactorily explain his inability to produce the public finds he received. Thus, even assuming for the sake of argument that Venezuela received the demand after his term of office, this does not in any way affect his criminal liability. The fact remains that he misappropriated the funds under his control and custody while he was the municipal mayor. To claim that the demand should have been received during the incumbency of the public officer, is to add an element that is not required in any of the laws or jurisprudence.

6. **ID.; ID.; ID.; THAT THE CO-CONSPIRATOR IS AT LARGE DOES NOT IN ANY WAY AFFECT THE ACCUSED'S CRIMINAL LIABILITY.—** The Court likewise finds no basis in Venezuela's argument that the case against him should have been dismissed considering that Costes, his alleged co-conspirator is at large. x x x [I]n *People v. Dumlao, et al*., the Court emphasized that the death, acquittal or failure to charge the co-conspirators does not in any way affect the accused's criminal liability[.] x x x [I]t is not necessary to join all the alleged co-conspirators in an indictment for a crime committed through conspiracy. If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. "This means that everything said, written or done by any of the conspirators in

execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial."

7. ID.; ID.; ID.; PROPER PENALTY OF IMPRISONMENT IS COUPLED WITH PERPETUAL DISQUALIFICATION AND A FINE EQUAL TO THE AMOUNT MALVERSED.— Venezuela shall be sentenced to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. Finally, under the second paragraph of Article 217, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification, and a fine equal to the amount of funds malversed, which in this case is Php 2,572,808.00.

APPEARANCES OF COUNSEL

Castro Castro & Associates for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

REYES, JR., *J.*:

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 May 10, 2012, and Resolution[3] dated February 4, 2013, rendered by the Sandiganbayan Third Division in Criminal Case No. 25963, which convicted petitioner Manuel M. Venezuela (Venezuela) of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC), as amended.

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[1] *Rollo,* pp. 7-18.

[2] Penned by Associate Justice Samuel R. Martires (now a Member of this Court), with Associate Justices Francisco H. Villaruz, Jr. and Alex L. Quiroz, concurring; *id.* at 53-71.

[3] *Id.* at 83-88.

The Antecedents

Venezuela was the Municipal Mayor of Pozorrubio, Pangasinan from 1986 to June 30, 1998.[4]

On June 10, 1998, a team of auditors composed of State Auditors II Ramon Ruiz (Ruiz), Rosario Llarenas, and Pedro Austria conducted an investigation on the cash and accounts of Pacita Costes (Costes), then Municipal Treasurer of Pozorrubio, Pangasinan, for the period covering December 4, 1997 to June 10, 1998.[5]

In the course of the investigation, the Audit Team discovered a shortage of Php 2,872,808.00 on the joint accounts of Costes and Venezuela. Likewise, it noticed that the 17 cash advances made by Venezuela were illegal, due to the absence of the following essential requirements: (i) a public or official purpose indicated in the disbursement vouchers; (ii) required supporting documents; (iii) request for obligation of allotment; (iv) accomplishment or purchase request; (v) order or delivery made; (vi) charge invoice; (vii) approved *Sangguniang Bayan* resolution; and (viii) Certification issued by the Municipal Accountant.[6] Moreover, the Audit Team found out that Venezuela was neither bonded nor authorized to receive cash advances.[7] Finally, the Audit Team noted that most of the vouchers were paid in cash, notwithstanding the fact that the amounts covered by such vouchers were in excess of Php 1,000.00, in violation of the rules of the Commission on Audit (COA) which mandate payment in checks for amounts over Php1,000.00.[8]

Consequently, team member Ruiz issued three demand letters to Venezuela, ordering him to liquidate his cash advances. In response, Venezuela sent an explanation letter acknowledging

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[4] *Id*. at 63.

[5] *Id*. at 95.

[6] *Id*. at 56.

[7] *Id*.

[8] *Id*. at 96.

his accountability for the cash advances amounting to Php 943,200.00, while denying the remainder of the cash advances.[9]

An audit report was thereafter submitted by the Team. Venezuela denied the truth of the contents thereof.[10]

Meanwhile, on March 20, 2000, an Information[11] was filed by the Office of the Deputy Ombudsman for Luzon, accusing Venezuela of the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the RPC, and committed as follows:

> That for the period from December 4, 1997 to June 10, 1998, or sometime prior or subsequent thereto, in the municipality of Pozorrubio, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, [**VENEZUELA**], a public officer being then the Municipal Mayor of Pozorrubio, Pangasinan, and as such is accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, conniving and confederating with **[COSTES],** also a public officer being then the Municipal Treasurer of Pozorrubio, Pangasinan, did then and there, wilfully, unlawfully and feloniously take, misappropriate, and convert to his personal use and benefit the amount of TWO MILLION EIGHT HUNDRED SEVENTY[-]TWO THOUSAND EIGHT HUNDRED EIGHT PESOS (₱2,872,808.00) from such public funds received by him as unauthorized cash advances to the damage of the government in the aforestated amount.
>
> **CONTRARY TO LAW**.[12]

On May 3, 2000, the Sandiganbayan issued a warrant of arrest for the immediate apprehension of Venezuela.[13]

On May 11, 2000, Venezuela voluntarily surrendered, and posted bail. However, Costes remained at large.[14]

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[9] *Id*. at 56.

[10] *Id*. at 95.

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

[12] *Id*. at 19.

[13] *Id*. at 54.

[14] *Id*.

Venezuela moved for reconsideration and reinvestigation of the case, which was denied by the Office of the Special Prosecutor in a Memorandum dated January 14, 2001.[15]

Thereafter, the trial of the case proceeded, but only with respect to Venezuela.

In the course of the trial, the prosecution presented witnesses, in the persons of Ruiz, State Auditor II of the COA and Unit Head of the Municipal Audit Team of Binalonan, Pangasinan;[16] and Marita Laquerta (Laquerta), Municipal Accountant of Pozorrubio, Pangasinan.[17]

Ruiz affirmed that on June 10, 1998, he, together with other state auditors, conducted an investigation on the cash and accounts of Costes, for the period of December 4, 1997 until June 10, 1998.[18] The investigation unraveled a shortage of Php 2,872,808.00, in the same account of Costes and Venezuela, as well as illegal cash advances. They likewise discovered that Venezuela was not bonded or authorized to receive cash advances.[19] Ruiz further confirmed that they issued demand letters to Venezuela, who admitted accountability for the cash advances amounting to Php 943,200.00.[20]

On the other hand, Laquerta confirmed that the signatures appearing on 16 of the 17 illegal disbursement vouchers belonged to Venezuela, who was the claimant under the said vouchers.[21]

Upon cross-examination, Laquerta related that Venezuela remitted the amount of Php 300,000.00 on November 6, 1998.[22]

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[15] *Id*. at 95.

[16] *Id*. at 55.

[17] *Id*. at 57.

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

[19] *Id*. at 56.

[20] *Id*.

[21] *Id*. at 57.

[22] The witness likewise testified that Venezuela remitted other amounts, such as: (i) Php 420,000.00 on June 1997; and (ii) Php 43,000.00 on September

This reduced the total amount of Venezuela's unliquidated cash advances to Php 2,572,808.00, as reflected in the Final Demand Letter sent by the COA Auditors to Venezuela.[23]

On the other hand, Venezuela vehemently denied the charge leveled against him. To corroborate his claim of innocence, he testified, alongside his other witnesses, namely, Arthur C. Caparas (Caparas), Venezuela's Executive Assistant I; and Manuel D. Ferrer (Ferrer), Senior Bookkeeper of Pozorrubio from 1994 to 2004, among others.

Venezuela declared that he submitted to then Municipal Treasurer Costes all the supporting documents to liquidate his cash advances before the end of his term in June 1998. Further, he asserted that he remitted the amount of Php 2,572,808.00, in installments to Costes. In fact, he asserted that his payment was evidenced by official receipts bearing the following serial numbers and dates, to wit: (i) 5063309J dated November 8, 1999; (ii) 5063313J dated November 18, 1999; (iii) 5063321J dated November 26, 1999; (iv) 5063324J dated December 8, 1999; and (v) 5063330J dated December 15, 1999.[24]

Supporting the claim of liquidation, Caparas affirmed that Venezuela liquidated his cash advances through his private secretary who submitted the same to the Municipal Treasurer.[25]

Likewise, Ferrer related that he saw Venezuela going to the Office of the Municipal Treasurer to submit the liquidation of his cash advances. However, on cross-examination, Ferrer admitted that he did not actually see Venezuela liquidating his cash advances.[26]

1997. Although these amounts were mentioned in the Sandiganbayan decision,it must be noted that these amounts do not pertain to the accounting period of December 1997 to June 1998, which is the period pertinent to the instant charge of malversation.

[23] *Rollo*, p. 57.

[24] *Id*. at 60.

[25] *Id*. at 59-60.

[26] *Id*. at 59.

On rebuttal by the prosecution, Zoraida Costales (Costales), Officer in Charge in the Municipal Treasurer's Office of Pozorrubio, testified that as per records of the Municipal Treasurer's Office, the receipts presented by Venezuela, which purportedly evidence his payment of the unliquidated cash advances, did not actually reflect the payments so claimed by Venezuela. Rather, the receipts were issued to different persons, in different amounts and for different purposes. Moreover, during the period shown in the official receipts presented by Venezuela, Costes, the alleged issuer of the receipts, was no longer holding office at the Municipal Treasurer's Office.[27]

Similarly, Laquerta attested that she never encountered the receipts presented by Venezuela, and that as per records, the last cash liquidation made by Venezuela was in November 1998, in the amount of Php 300,000.00.[28]

Ruling of the Sandiganbayan

On May 10, 2012, the Sandiganbayan promulgated the assailed Decision[29] convicting Venezuela of the crime of Malversation of Public Funds. The Sandiganbayan held that the prosecution proved all the elements of the crime beyond reasonable doubt.

The Sandiganbayan observed that during the period material to the case, Venezuela was a public officer, being the Municipal Mayor of Pozorrubio from 1986 to 1998.[30] While Municipal Mayor, Venezuela received public funds, by reason of the duties of his office. Venezuela, along with then Municipal Treasurer Costes had a joint shortage of Php 2,872,808.00, which he could not account for upon demand by the COA Audit Team.[31] His failure to have duly forthcoming the public funds with which

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[27] *Id*. at 61.

[28] *Id*. at 62.

[29] *Id*. at 53-71.

[30] *Id*. at 62.

[31] *Id*. at 64.

he was chargeable, served as *prima facie* evidence that he has put such missing funds to his personal use.[32]

Furthermore, the Sandiganbayan opined that Venezuela's defense of payment was unsubstantiated.[33] The serial numbers in the receipts he presented as proof of his purported payment revealed that they were issued to other payees and for different purposes. Moreover, Costes, to whom Venezuela allegedly remitted his payments, was no longer the Municipal Treasurer of Pozorrubio during the dates when the supposed payments were made.[34] There are no documents in the official records of the Municipality of Pozorrubio that would corroborate Venezuela's claim of payment.[35] Furthermore, the Sandiganbayan emphasized that even assuming that Venezuela had indeed reimbursed his cash advances, payment is not a defense in malversation.[36]

However, the Sandiganbayan acknowledged that Venezuela made a partial refund of his liabilities, thereby reducing his unliquidated cash advances to Php 2,572,808.00. The Sandiganbayan considered such refund as a mitigating circumstance akin to voluntary surrender. Thus, Venezuela was sentenced as follows:

WHEREFORE, premises considered, [**VENEZUELA**] is hereby found **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds defined and penalized under Article 217 of the [RPC] and is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from TEN (10) YEARS and ONE (1) DAY of *prision mayor* as minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE DAY of *reclusion temporal,* as maximum; to pay a fine of Two Million Five Hundred Seventy Two Thousand Eight Hundred Eight Pesos (Php 2,572,808.00); and to suffer the

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[32] *Id*.

[33] *Id*.

[34] *Id*. at 66.

[35] *Id*.

[36] *Id*. at 67.

penalty of perpetual special disqualification from holding any public office.

Considering that the other accused, [COSTES], is still at large, let the herein case against her be archived.

SO ORDERED.[37]

Aggrieved, Venezuela filed a Motion for Reconsideration,[38] which was denied in the Sandiganbayan Resolution[39] dated February 4, 2013.

Undeterred, Venezuela filed the instant Petition for Review on *Certiorari*[40] under Rule 45 of the Revised Rules of Court, praying for the reversal of the assailed Sandiganbayan decision and resolution.

The Issue

Essentially, the main issue presented for the Court's resolution is whether or not the prosecution failed to establish Venezuela's guilt beyond reasonable doubt.

Venezuela maintains that the Sandiganbayan erred in convicting him of the crime of malversation of public funds. Venezuela avers that he had fully liquidated his cash advances to Costes.[41] In fact, he presented receipts proving his payments. In this regard, Venezuela bewails that the Sandiganbayan erroneously discredited his receipts, adopting the prosecution's version.[42] He points out that his receipts were issued in 1999, whereas those presented by the prosecution were issued in the year 2007.[43] Moreover, Venezuela alleges that the charge of

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

[38] *Id*. at 72-82.

[39] *Id*. at 83-88.

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

[41] *Id*. at 13.

[42] *Id*. at 15.

[43] *Id*.

conspiracy with Costes was not sufficiently proven. In particular, Venezuela assails that the amount of Php 2,872,808.00, as charged in the Information was alleged to be his joint accountability with Costes. As such, pending the arrest of the latter, the case should have first been provisionally dismissed.[44] It was unfair for him to solely bear the charge, while Costes was "absolved" from liability.[45] Finally, Venezuela points out that the COA auditors sent the demand letters ordering the liquidation of his cash advances at a time when he was no longer the Mayor of Pozorrubio. He ceased to hold office on June 30, 1998. Consequently, if he should be charged of any offense under the RPC, it should have been Article 218 thereof, or Failure of Accountable Officer to Render Accounts.[46]

On the other hand, the People, through the Office of the Ombudsman, counter that the prosecution proved all the elements for the crime of Malversation beyond reasonable doubt.[47] The evidence showed that Venezuela indeed received the amount subject of the case by way of cash advances. Venezuela's purported claim of payment was a mere afterthought. The fact of payment was not proven, and even if established, would not exonerate him from the crime.[48] The receipts Venezuela presented were sufficiently overthrown by the prosecution witness who proved that the serial numbers in the receipts show that they were issued in 2007, and not in 1999, as claimed by the former. Likewise, it was established during the trial that Costes was no longer holding office as the Municipal Treasurer, notwithstanding the fact that her name appeared on the purported receipts. Worse, the Municipal Accountant confirmed the absence of such purported payment in the books of the municipality.[49] Neither

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[44] *Id*. at 12.

[45] *Id*.

[46] *Id*. at 15.

[47] *Id*. at 117.

[48] *Id*. at 118.

[49] *Id*. at 119.

did the COA, the complainant in the instant case, encounter such payments. Moreover, anent the issue of conspiracy, the People emphasize that the subject matter of the instant case are the cash advances granted to Venezuela, not those pertaining to Costes. Finally, the People maintain that Venezuela was properly charged and convicted of Malversation of Public Funds. Demand is not necessary for the charge of malversation to arise.[50] The crime is committed from the moment the accountable officer is unable to satisfactorily explain his failure to produce the public funds he received.[51]

Ruling of the Court

The instant petition is bereft of merit.

It must be noted at the outset that the appellate jurisdiction of the Court over the decisions and final orders of the Sandiganbayan is limited to questions of law. As a general rule, the Court does not review the factual findings of the Sandiganbayan, which are conclusive upon the Court.[52] Parenthetically, "a question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other hand, a question of fact exists when the doubt or controversy arises as to the truth or falsity of the alleged facts."[53]

The resolution of the issues raised in the instant case, which pertains to the finding of guilt rendered by the Sandiganbayan, involves a calibration of the evidence, the credibility of the witnesses, and the existence and the relevance of surrounding circumstances,[54] which are beyond the province of a petition for review on *certiorari.*

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[50] *Id*. at 120.

[51] *Id*.

[52] *Zoleta v. Sandiganbayan (Fourth Division) and People,* 765 Phil. 39, 52 (2015), citing *Cabaron, et al. v. People, et al.,* 618 Phil. 1, 6 (2009).

[53] *Zoleta v. Sandiganbayan (Fourth Division) and People, id*., citing *Cabaron v. People, id.* at 6-7.

[54] *Felipe v. MGM Motor Trading Corporation and Ayala General Insurance Corporation,* G.R. No. 191849.

At any rate, the Sandiganbayan did not commit any reversible error in convicting Venezuela of Malversation of Public Funds.

Venezuela is Guilty Beyond Reasonable Doubt for the Crime of Malversation of Public Funds

Malversation is defined and penalized under Article 217 of the RPC, as amended by Republic Act (R.A.) No. 10951,[55] as follows:

Art. 217. ***Malversation of public funds or property.* —** Presumption of malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

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4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

x x x x x x x x x

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.

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[55] 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.

Parenthetically, the elements of malversation are (i) that the offender is a public officer, (ii) that he had custody or control of funds or property by reason of the duties of his office, (iii) that those funds or property were public funds or property for which he was accountable, and (iv) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[56]

Verily, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that he failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.[57]

In the case at bar, all the elements for the crime were sufficiently proven by the prosecution beyond reasonable doubt.

Venezuela was a public officer, being then the Municipal Mayor of Pozorrubio, Pangasinan from 1997 to 1998, the period relevant to the time of the crime charged. Notably, he falls within the definition of a public officer, stated in the RPC as "any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class."[58]

Likewise, during Venezuela's tenure as the municipal mayor, he incurred unliquidated cash advances amounting to Php 2,872,808.00.[59] These unliquidated cash advances constituted

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[56] *Major Cantos v. People,* 713 Phil. 344, 353-354 (2013), citing *Ocampo III v. People,* G.R. Nos. 156547-51, February 4, 2008.

[57] *Cantos v. People, id.* at 352-353, citing *Davalos, Sr. v. People,* 522 Phil. 63, 71 (2006).

[58] REVISED PENAL CODE, Article 203.

[59] The total amount without considering the Php 300,000.00 partial payment made by Venezuela.

funds belonging to the Municipality of Pozorrubio, and earmarked for use by the said municipality.

Incidentally, in *People v. Pantaleon, Jr., et al.*,[60] the Court held that a municipal mayor, being the chief executive of his respective municipality, is deemed an accountable officer, and is thus responsible for all the government funds within his jurisdiction.[61] The Court explained that:

> Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government [Code,] which reads:
>
> Section 340. *Persons Accountable for Local Government Funds.* — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.
>
> In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:
>
> Section 102. *Primary and secondary responsibility.* — (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.[62]

Undoubtedly, as the municipal mayor, Venezuela had control of the subject funds, and was accountable therefor.

Finally, anent the last element for the crime of malversation of public funds, Venezuela failed to return the amount of Php 2,572,808.00, upon demand. His failure or inability to return

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[60] 600 Phil. 186 (2009).

[61] *Id.* at 210.

[62] *Id.*

the shortage upon demand created a *prima facie* evidence that the funds were put to his personal use, which Venezuela failed to overturn.

Seeking to be exonerated from the crime charged, Venezuela claims that he had fully paid the amount of the unliquidated cash advances.

This contention does not hold water.

To begin with, it bears stressing that payment or reimbursement is not a defense in malversation.[63] The payment, indemnification, or reimbursement of, or compromise on the amounts or funds malversed or misappropriated, after the commission of the crime, does not extinguish the accused's criminal liability or relieve the accused from the penalty prescribed by the law. At best, such acts of reimbursement may only affect the offender's civil liability, and may be credited in his favor as a mitigating circumstance analogous to voluntary surrender.[64]

Moreover, the Court observed that Venezuela did not fully prove his defense of payment. Although Venezuela presented official receipts, which purportedly prove his payment of the cash advances, the following circumstances easily cast serious doubt on the validity of the same receipts: (i) the receipts bore serial numbers pertaining to slips issued in 2007, and were actually issued to different payees and for different purposes; (ii) Costes, who supposedly received the payments and issued the receipts was no longer working as the municipal treasurer on the dates indicated in the receipts; (iii) there are no records in the Municipality of Pozorrubio that confirm the fact of payment; (iv) the defense of payment was never raised during the start of the COA investigation; and (v) the COA has no record or information regarding the supposed payments. All these circumstances easily belie the fact of payment. The only payment proven to have been made was the amount of Php 300,000.00. This shall be credited in Venezuela's favor in reducing the fine that shall be imposed against him.

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[63] *Perez v. People,* 568 Phil. 491, 520 (2008).

[64] *Id.* at 522-523.

As for his other defenses, Venezuela claims that he was incorrectly charged for Malversation of Public Funds under Article 217. He points out that he had ceased to hold office as municipal mayor on June 30, 1998, when the COA auditors sent the demand letter ordering him to liquidate his cash advances. Thus, the offense that must be charged against him should fall under Article 218 of the RPC or Failure of Accountable Officer to Render Accounts, which punishes an officer (incumbent or retired) who fails to render an account of his funds.[65]

Suffice it to say, demand is not necessary in malversation. Demand merely raises a *prima facie* presumption that the missing funds have been put to personal use. The demand itself, however, is not an element of, and is not indispensable to constitute malversation.[66] Malversation is committed from the very moment the accountable officer misappropriates public funds and fails to satisfactorily explain his inability to produce the public finds he received. Thus, even assuming for the sake of argument that Venezuela received the demand after his term of office, this does not in any way affect his criminal liability. The fact remains that he misappropriated the funds under his control and custody while he was the municipal mayor. To claim that the demand should have been received during the incumbency of the public officer, is to add an element that is not required in any of the laws or jurisprudence.

The Court likewise finds no basis in Venezuela's argument that the case against him should have been dismissed considering that Costes, his alleged co-conspirator is at large. Neither is there any truth to Venezuela's allegation that the Sandiganbayan allowed Costes to go scot-free, while letting him take the blame for the offense.

A perusal of the Sandiganbayan decision shows that the said tribunal did not in any way absolve Costes. The Sandiganbayan ordered the case to be archived pending the apprehension of

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[65] *Rollo*, p. 15.

[66] *Nizurtado v. Sandiganbayan,* 309 Phil. 30, 40 (1994).

Costes.[67] Moreover, the funds subject matter of the case for malversation were those for which Venezuela was responsible for.

Needless to say, in *People v. Dumlao, et al.*,[68] the Court emphasized that the death, acquittal or failure to charge the co-conspirators does not in any way affect the accused's criminal liability, to wit:

> His [accused-respondent's] assumption that he can no longer be charged because he was left alone — since the co-conspirators have either died, have been acquitted or were not charged — is wrong. A conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more person[s]. Yet, it does not follow that one person cannot be convicted of conspiracy. As long as the acquittal or death of a co-conspirator does not remove the basis of a charge of conspiracy, one defendant may be found guilty of the offense.[69]

Thus, it is not necessary to join all the alleged co-conspirators in an indictment for a crime committed through conspiracy. If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor.[70] "This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial."[71]

Thus, based on all the foregoing facts and circumstances, it becomes all too apparent that the Sandiganbayan did not commit any reversible error in convicting Venezuela of the crime charged.

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[67] *Rollo*, p. 70.

[68] 599 Phil. 565 (2009).

[69] *Id.* at 586, citing Aquino, *THE REVISED PENAL CODE* (1997 Edition), Vol. 1, p. 125.

[70] *People v. Go,* 730 Phil. 362, 370-371 (2014).

[71] *People v. Go, id.* at 371.

The Proper Penalty for the Crime of Malversation

On August 29, 2017, Congress passed R.A. No. 10951, amending Article 217 of the RPC, increasing the thresholds of the amounts malversed, and amending the penalties or fines corresponding thereto.

Thus, as currently worded, Article 217 of the RPC, now provides that the penalties for malversation shall be as follows:

> Art. 217. *Malversation of public funds or property.— Presumption of malversation.*— x x x
>
> 1. The penalty of *prisión correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).
>
> 2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).
>
> 3. The penalty of *prisión mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).
>
> **4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).**
>
> 5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (₱4,400,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.
>
> In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the toal value of the property embezzled.[72]

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[72] *Republic Act No. 10951.*

Although the law adjusting the penalties for malversation was not yet in force at the time of the commission of the offense, the Court shall give the new law a retroactive effect, insofar as it favors the accused by reducing the penalty that shall be imposed against him. Essentially, "penal laws shall have, a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal."[73]

Under the old law, the proper penalty for the amount Venezuela malversed is *reclusion temporal* in its maximum period to *reclusion perpetua.* However, with the amendment introduced under R.A. No. 10951, the proper imposable penalty corresponding to the amount Venezuela malversed, is the lighter sentence of *reclusion temporal* in its medium and maximum periods.

Additionally, Venezuela enjoys the mitigating circumstance of voluntary surrender, due to his partial restitution of the amount malversed. Following the rule in Article 64 of the RPC, if a mitigating circumstance is present in the commission of the act, the Court shall impose the penalty in the minimum period.[74]

Furthermore, applying the Indeterminate Sentence Law, an indeterminate sentence shall be imposed, consisting of a maximum term, which is the penalty under the RPC properly imposed after considering any attending circumstance; while the minimum term is within the range of the penalty next lower than that prescribed by the RPC for the offense committed.[75] Accordingly, Venezuela shall be sentenced to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal,* as maximum.

Finally, under the second paragraph of Article 217, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification, and a fine equal to the amount of funds malversed, which in this case is Php 2,572,808.00.

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[73] REVISED PENAL CODE, Article 22.

[74] REVISED PENAL CODE, Article 64.

[75] *Act No. 4103*, Section 1.

WHEREFORE, premises considered, the instant appeal is **DENIED for lack of merit.** Consequently, the Decision dated May 10, 2012, and Resolution dated February 4, 2013, of the Sandiganbayan in Criminal Case No. 25963, are **AFFIRMED with MODIFICATION** in that the penalty imposed shall be the indeterminate penalty of imprisonment ranging from **ten (10) years and one (1) day of *prision mayor,* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal,* as maximum.** In addition, petitioner Manuel M. Venezuela is hereby ordered to pay a fine of Php 2,572,808.00, with legal interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full satisfaction. He shall also suffer the penalty of perpetual special disqualification from holding any public office.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Perlas-Bernabe, JJ.,* concur.

Caguioa, J., on official business.

FIRST DIVISION

[G.R. No. 206632. February 14, 2018]

EDEN ETINO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STAGES OF A FELONY; CRUCIAL POINTS TO CONSIDER IN DETERMINING WHETHER THE CRIME COMMITTED IS ATTEMPTED OR FRUSTRATED MURDER OR HOMICIDE OR ONLY PHYSICAL INJURIES.— [I]n order

to determine whether the crime committed is attempted or frustrated parricide, murder or homicide, or only *lesiones* (physical injuries), the crucial points to consider are: a) *whether the injury sustained by the victim was fatal*, and b) *whether there was intent to kill on the part of the accused.*

2. ID.; ID.; FRUSTRATED HOMICIDE, NOT A CASE OF; WHERE THERE WAS NO PROOF OF THE EXTENT OF INJURY SUSTAINED BY THE VICTIM AND THE INTENT TO KILL WAS NOT SUFFICIENTLY ESTABLISHED, THE CRIME COMMITTED IS PHYSICAL INJURIES ONLY.— It is settled that "where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, **the character of the wound is doubtful,**" and **such doubt should be resolved in favor of the accused**. In this case, we find that the prosecution failed to present evidence to prove that the victim would have died from his wound without timely medical assistance, as his Medical Certificate alone, **absent the testimony of the physician who diagnosed and treated him, or any physician for that matter**, is *insufficient* proof of the nature and extent of his injury. This is especially true, given that said Medical Certificate merely stated the victim's period of confinement at the hospital, the location of the gunshot wounds, the treatments he received, and his period of healing. Without such proof, the character of the gunshot wounds that the victim sustained enters the realm of doubt, which the Court must necessarily resolve in favor of petitioner. x x x Although it was sufficiently shown that petitioner fired a 12 gauge shotgun at the victim, there was simply no other evidence on record that tended to prove that petitioner had *animus interficendi* or intent to kill the victim. On the contrary, none of the prosecution's witnesses testified that petitioner had indeed aimed and fired the shotgun *to kill* the victim. It is to be noted, likewise, that petitioner only fired a *single* shot at *close-range*, but did *not* hit any vital part of the victim's body — the victim's wounds, based on his Medical Certificate, were located at the right deltoid (through and through) and the left shoulder — and he immediately *fled* the scene right after the shooting. These acts certainly do not suggest that petitioner had intended to kill the victim; for if he did, he could have fired multiple shots to ensure the latter's demise. x x x This is not to say that petitioner is without any criminal liability. When the intent to kill is lacking, but wounds are

shown to have been inflicted upon the victim, as in this case, **the crime is not frustrated or attempted homicide but physical injuries only**.

3. **REMEDIAL LAW; EVIDENCE; POSITIVE IDENTIFICATION OF THE ACCUSED, ADEQUATELY PROVEN.—** We also consider the following pieces of evidence which amply support petitioner's positive identification as the assailant in this case: ***first***, the manner of attack was done at close-range, and the victim was able to turn around right after the shot was fired; ***second***, the shooting incident happened in broad daylight (at around 4:30 in the afternoon) in an open field, so the assailant could clearly be seen; and ***third***, the victim could readily identify petitioner as his assailant because they had known each other since childhood.

4. **ID.; ID.; DEFENSES OF DENIAL AND ALIBI FAIL IN VIEW OF THE POSITIVE AND CONCLUSIVE IDENTIFICATION OF THE PETITIONER AS VICTIM'S ASSAILANT.—** [W]e find petitioner's identification as the victim's assailant to be positive and conclusive. As a result, the defenses of denial and alibi raised by petitioner must necessarily fail. After all, "[a]libi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And it is only axiomatic that positive testimony prevails over negative testimony."

5. **ID.; ID.; CREDIBILITY OF WITNESSES; DELAY IN FILING THE COMPLAINT DOES NOT IMPAIR CREDIBILITY OF THE COMPLAINANT.—** We likewise reject petitioner's claim that the delay in the filing of the complaint against him generates doubt as to his guilt. It is settled that the failure to file a complaint to the proper authorities would *not* impair the credibility of the complainant *if* such delay was satisfactorily explained. x x x The victim's initial reluctance to file the complaint is not uncommon, considering "the natural reticence of most people to get involved in a criminal case." Fear of reprisal, too, is deemed as a valid excuse for the temporary silence of a prosecution witness (or in this case, the victim) and has been judicially declared to not have any effect on his credibility.

6. **ID.; ID.; ID.; VICTIM'S ILL MOTIVE TO FALSELY INSTITUTE THE COMPLAINT, NOT PROVEN.—** [W]e find no sufficient evidence on record to support petitioner's

claim that the victim had ill motives to falsely institute the complaint and testify against him. Even assuming *arguendo* that the victim held a grudge against petitioner for having testified against him in another case, the existence of such grudge would *not* automatically render his testimony in this case false and unreliable. "In the absence of any showing that a witness was actuated by malice or other improper motives, his *positive and categorical declarations* on the witness stand under a solemn oath deserve full faith and credence."

7. CRIMINAL LAW; REVISED PENAL CODE; SERIOUS PHYSICAL INJURIES; PROPER PENALTY.— Under Article 263, par. 4, of the Revised Penal Code, "[a]ny person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer" "[t]he penalty of ***arresto mayor*** **in its maximum period to** ***prision correccional*** **in its minimum period** [which ranges from four (4) months and one (1) day to two (2) years and four (4) months], if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person **for more than thirty days**." "Under the Indeterminate Sentence law, the *maximum term* of the indeterminate sentence shall be taken, in view of the attending circumstances that could be properly imposed under the rules of the Revised Penal Code, and the *minimum term* shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code."

8. ID.; ID.; ID.; CIVIL LIABILITY.— Article 2219 of the Civil Code provides that moral damages may be awarded in criminal cases resulting in physical injuries, as in this case. Although the victim did not testify on the moral damages that he suffered, his Medical Certificate constitutes sufficient basis to award moral damages, since "ordinary human experience and common sense dictate that such wounds inflicted on [him] would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury." Thus, we affirm the CA's award of moral damages in the amount of ₱25,000.00 in the victim's favor. We also agree with the CA that the victim is entitled to temperate damages in the amount of ₱10,000.00, as it is clear from the records that the victim received medical treatment at the WVSUMC and was, in fact, confined at the hospital for twenty days, although no documentary evidence was presented to prove the cost thereof.

APPEARANCES OF COUNSEL

Edgar Claudio O. Sumido for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

We resolve this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the August 29, 2012 Decision[1] and the March 11, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 00896. The CA affirmed with modification the January 14, 2008 Decision[3] of the Regional Trial Court (RTC), Branch 29, Iloilo City, which found petitioner Eden Etino guilty beyond reasonable doubt of the crime of frustrated homicide, in that the CA ordered petitioner to pay the victim ₱25,000.00 as moral damages and ₱10,000.00 as temperate damages.

The Antecedent Facts

Petitioner was charged with the crime of frustrated homicide in an Information[4] dated June 19, 2003 which reads:

That on or about the 5th day of November 2001, in the Municipality of Maasin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm of unknown caliber, with deliberate intent and decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot JESSIEREL LEYBLE with said unlicensed firearm he was then provided at the time, hitting and

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[1] *Rollo*, pp. 27-37; penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles.

[2] *Id*. at 23-24; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy.

[3] *Id*. at 38-44; penned by Judge Gloria G. Madero.

[4] Records, p. 1.

inflicting upon the victim gunshot wounds on the different parts of his body, thus performing all the acts of execution which would produce the crime of homicide as a consequence but which nevertheless did not produce it by reason of some cause or causes independent of the will of the accused, that is, by the timely medical attendance rendered to the said Jessierel Leyble which prevented his death.

Upon arraignment, petitioner entered a plea of not guilty.[5] Trial thereafter ensued.

The Evidence for the Prosecution

The prosecution's evidence consists mainly of the testimonies of complainant Jessierel Leyble (Leyble), Isidro Maldecir (Maldecir), and Nida Villarete Sonza (Sonza), the Administrative and Medical Officer of the West Visayas State University Medical Center (WVSUMC).

During the trial, Leyble testified that, "at about 4:30 o'clock in the afternoon of November 5, 2001, while he and his companions[,] Isidro Maldecir and Richard Magno[,] were walking on their way home to Bgy. [sic] Pispis, Maasin, Iloilo, he was shot with a 12 gauge shotgun by the [petitioner,] Eden Etino[,] hitting the back portion of his right shoulder and other parts of his body."[6]

Leyble's testimony was corroborated by Maldecir who categorically stated that Leyble was shot by petitioner from behind, and was thereafter brought to the Don Benito Lopez Memorial Hospital (now known as the WVSUMC) for treatment.[7]

To prove the injuries suffered by Leyble, the prosecution presented Sonza "in her capacity as [the officer] in-charge of the security of all the medical records of the patients [in the WVSUMC] for the reason that Dr. Rodney Jun Garcia, then Chief Resident, Surgery Department, [WVSUMC], who treated

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[5] See Order dated August 14, 2003*, id*. at 55; penned by Judge Rene B. Honrado.

[6] *Rollo*, p. 39. See also TSN, July 22, 2004, pp. 4-6.

[7] *Rollo*, p. 40. See also TSN, December 16, 2004, pp. 5-9.

[Leyble was] unable to testify as he is now based in General Santos City."[8]

In compliance with the Subpoena Duces Tecum[9] issued by the RTC on February 22, 2005, Sonza brought the medical records of Leyble to court which included: a) Medical Certificate[10] dated December 20, 2001, b) Trauma Sheet[11] dated November 5, 2001, c) Admission and [Discharge] Record[12] and d) Operative Records[13] dated November 16, 2001, and certified the same to be true and faithful reproductions of the original documents.[14]

The Evidence for the Defense

The defense presented the testimonies of Bautista Etino, Wenifredo Besares, Joeseryl Masiado and of petitioner himself to prove his alibi.[15]

The witnesses testified that, "at about 4:30 in the afternoon of November 5, 2001, [petitioner] was with Bgy. [sic] Captain Manuel Bornejan, Wenifredo Besares and [Bautista Etino at] the house of the latter which was situated about one kilometer away from where they heard shots that afternoon."[16] They also alleged that the filing of the criminal complaint was precipitated by a pending Comelec[17] gun-ban case before the RTC filed against Leyble, wherein petitioner was the witness.[18]

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[8] *Rollo*, p. 39.

[9] Records, p. 124.

[10] *Id*. at 126.

[11] *Id*. at 127.

[12] *Id*. at 128.

[13] *Id*. at 129.

[14] TSN, April 21, 2005, pp. 4-6.

[15] *Rollo,* p. 40.

[16] *Id*.

[17] Commission on Elections

[18] *Rollo*, pp. 40-41.

The Regional Trial Court Ruling

In its January 14, 2008 Decision,[19] the RTC found petitioner guilty beyond reasonable doubt of the crime of frustrated homicide. It ruled that petitioner was positively identified as the perpetrator of the crime charged against him, especially so, when the complainant, Leyble, was alive to tell what actually happened.[20]

Accordingly, the RTC sentenced petitioner to suffer the penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Notably, it did not award any damages in favor of Leyble, as it found that the prosecution had failed to discharge its burden of presenting evidence on the civil aspect of the case.[21]

The Court of Appeals Ruling

On appellate review, the CA affirmed with modification the RTC Decision in that, it ordered petitioner to pay Leyble the amounts of ₱25,000.00 as moral damages and ₱10,000.00 as temperate damages.[22]

The CA ruled that "the trial court did not err in giving full weight and credence to the testimonies of the prosecution witnesses. Evaluation of the testimonies of the prosecution witnesses amply [showed] that Jessierel Leyble succinctly but clearly narrated how he was shot and he also categorically identified [petitioner] as his assailant."[23]

In addition, the CA held that the mere delay in the filing of the complaint did not necessarily undermine the credibility of witnesses; and in this case, the fear of reprisal explained why

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[19] *Id*. at 38-44.

[20] *Id*. at 43.

[21] *Id*. at 43-44.

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

[23] *Id*. at 31-32.

it took some time for Leyble to file the complaint and to finally reveal the identity of his assailant.[24]

The CA also rejected petitioner's claim that Leyble filed the case against him because he testified against the latter in the Comelec gun-ban case. It explained that "[e]ven assuming that there was a grudge between Leyble and [petitioner], that [did] not automatically render the testimony of Leyble unbelievable. Moreover, considering that Leyble had positively identified [petitioner], whom he [knew] from childhood, as his assailant, motive [was] no longer essential or relevant."[25]

Finally, the CA held that Leyble was entitled to moral damages, as it was clear from his testimony that he sustained gunshot wounds on his shoulder; and to temperate damages for the medical treatment he received but for which no documentary evidence was presented to prove the actual costs thereof.[26]

Petitioner moved for reconsideration, but the CA denied the motion in its Resolution[27] dated March 11, 2013. As a consequence, petitioner filed the present Petition for Review on *Certiorari* before the Court, assailing the CA's August 29, 2012 Decision[28] and the March 11, 2013 Resolution.

The Issues

Petitioner raises the following issues for the Court's consideration:

First, whether the CA erred in holding that his guilt for the charged crime of frustrated homicide was proven beyond reasonable doubt, since the physician who examined the victim was not presented in court;

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[24] *Id.* at 34.

[25] *Id.*

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

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

[28] *Id.* at 27-37.

Second, whether the CA erred when it found the testimonies of petitioner and his witnesses to be incredible and unbelievable; and,

Third, whether the CA erred when it disregarded petitioner's defenses, *i.e.,* the lapse of unreasonable time for Leyble to file the complaint against him, the failure of Leyble to positively identify him as the assailant, and Leyble's motive in filing the case against him.

The Court's Ruling

At the outset, we clarify that questions of fact, as a rule, *cannot* be entertained in a Rule 45 petition, where the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the lower courts.[29] Nevertheless, when it appears that the assailed judgment is based on a *misapprehension of facts*, and the findings of the lower courts are *conclusions without citation of specific evidence* on which they are based,[30] as in this case, the Court may probe questions of fact in a Rule 45 proceeding.

Article 6 of the Revised Penal Code defines the stages of a felony as follows:

> ART. 6. Consummated, frustrated, and attempted felonies. — Consummated felonies, as well as those which are frustrated and attempted, are punishable.
>
> A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is **frustrated** when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.
>
> There is an **attempt** when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some

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[29] See *Far Eastern Surety and Insurance Company, Inc. v. People*, 721 Phil. 760, 770 (2013) citing *Remalante v. Tibe*, 241 Phil. 930 (1988).

[30] See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

cause or accident other than his own spontaneous desistance. (Emphasis supplied)

In *Palaganas v. People*,[31] the Court outlined the distinctions between a frustrated and an attempted felony:

1.) In frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.

2.) In frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.

In addition to these distinctions, we have ruled in several cases that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wound/s but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. However, if the wound/s sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. **If there was no intent to kill on the part of the accused and the wound/s sustained by the victim were not fatal, the crime committed may be serious, less serious or slight physical injury**.[32] (Emphasis supplied)

Thus, in order to determine whether the crime committed is attempted or frustrated parricide, murder or homicide, or only *lesiones* (physical injuries), the crucial points to consider are: a) *whether the injury sustained by the victim was fatal*, and b) *whether there was intent to kill on the part of the accused.*[33]

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[31] 533 Phil. 169 (2006).

[32] *Id*. at 193.

[33] See also Aquino, Ramon C., *THE REVISED PENAL CODE*, Volume II, 1997 Edition, p. 626.

No proof of the extent of injury sustained by the victim

It is settled that "where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, **the character of the wound is doubtful**," and **such doubt should be resolved in favor of the accused.**[34]

In this case, we find that the prosecution failed to present evidence to prove that the victim would have died from his wound without timely medical assistance, as his Medical Certificate[35] alone, **absent the testimony of the physician who diagnosed and treated him, or any physician for that matter**,[36] is *insufficient* proof of the nature and extent of his injury. This is especially true, given that said Medical Certificate merely stated the victim's period of confinement at the hospital, the location of the gunshot wounds, the treatments he received, and his period of healing.[37]

Without such proof, the character of the gunshot wounds that the victim sustained enters the realm of doubt, which the Court must necessarily resolve in favor of petitioner.[38]

The intent to kill was not sufficiently established

"The assailant's intent to kill is the main element that distinguishes the crime of physical injuries from the crime of homicide. The crime can only be homicide *if* the intent to kill is proven."[39] The intent to kill must be proven "in a clear and

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[34] *Epifanio v. People*, 552 Phil. 620, 631 (2007). Emphasis supplied.

[35] Records, p. 126.

[36] See *People v. Bernaldez*, 355 Phil. 740, 757 (1998), where the Court held that "[h]owever, since [the Medical Certificate] involved an opinion of one who must first be established as an expert witness, it could not be given weight or credit unless the doctor who issued it be presented in court to show his qualifications. Here, a distinction must be made between admissibility of evidence and probative value thereof."

[37] Records, p. 126.

[38] See *Serrano v. People*, 637 Phil. 319, 336 (2010).

[39] *Id.* at 333. Italics supplied.

evident manner [so as] to exclude every possible doubt as to the homicidal intent of the aggressor."[40]

In *Rivera v. People*,[41] the Court ruled that "[i]ntent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence"[42] which may consist of:

[a)] the *means* used by the malefactors;
[b)] the *nature, location and number of wounds* sustained by the victim;
[c)] the *conduct of the malefactors* before, at the time, or immediately after the killing of the victim;
[d)] the *circumstances* under which the crime was committed; and,
[e)] the *motives* of the accused.[43]

Moreover, the Court held in *Rivera* that intent to kill is only presumed *if* the victim dies as a result of a deliberate act of the malefactors.[44]

Although it was sufficiently shown that petitioner fired a 12 gauge shotgun at the victim, there was simply no other evidence on record that tended to prove that petitioner had *animus interficendi* or intent to kill the victim. On the contrary, none of the prosecution's witnesses testified that petitioner had indeed aimed and fired the shotgun *to kill* the victim.

It is to be noted, likewise, that petitioner only fired a *single* shot[45] at *close-range,*[46] but did *not* hit any vital part of the victim's

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[40] *Engr. Pentecostes, Jr. v. People*, 631 Phil. 500, 512 (2010).

[41] 515 Phil. 824 (2006).

[42] *Id*. at 832.

[43] *Id*.

[44] *Id*.

[45] Both Leyble and Maldecir testified that petitioner fired a single shot. See TSN, July 22, 2004, p. 7, and also TSN, December 16, 2004, p. 12.

[46] By Maldecir's testimony, petitioner was close to the victim when he fired the shot, at "around three (3) arm's length" away. See TSN, December 16, 2004, p. 7.

body — the victim's wounds, based on his Medical Certificate, were located at the right deltoid (through and through) and the left shoulder[47] — and he immediately *fled* the scene right after the shooting.[48] These acts certainly do not suggest that petitioner had intended to kill the victim; for if he did, he could have fired multiple shots to ensure the latter's demise.

Besides, by the victim's own narration of events, it appears that he did not sustain any fatal injury as a result of the shooting, considering that he and his companions even went in pursuit of petitioner after the incident, *viz.*:

> [ASST. PROV. PROS. GUALBERTO BALLA]
> Q: After Eden Etino shot you, what happened afterwards?
> A: I shouted to my companion to help me because I have injuries.
>
> Q: Did they help you at that particular instance?
> A: Yes sir.
>
> Q: How about Eden Etino, what did he do Mr. Witness?
> A: **When we ran to the hilly portion**, they were no longer there.[49] (Emphasis supplied)

Under these circumstances, we cannot reasonably conclude that petitioner's use of a firearm was sufficient proof that he had intended to kill the victim. After all, it is settled that "[i]ntent to kill *cannot* be automatically drawn from the mere fact that the use of firearms is dangerous to life."[50] Rather, "[*a*]*nimus interficendi* must be established with the same degree of certainty as is required of the other elements of the crime. The inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt."[51]

This is not to say that petitioner is without any criminal liability. When the intent to kill is lacking, but wounds are

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[47] Records, p. 126.

[48] See TSN, July 22, 2004, p. 7, and also TSN, December 16, 2004, p. 9.

[49] TSN, July 22, 2004, pp. 19-20.

[50] *Dado v. People*, 440 Phil. 521, 538 (2002); citing *People v. Villanueva*, 51 Phil. 488, 491 (1928). Italics supplied.

[51] *Id*.

shown to have been inflicted upon the victim, as in this case, **the crime is not frustrated or attempted homicide but physical injuries only**.[52] Since the victim's period of incapacity and healing of his injuries was more than 30 days — he was confined at the hospital from November 5 to 25, 2001, or for 20 days, and his period of healing was "two (2) to four (4) weeks barring complications"[53] — the crime committed is **serious physical injuries** under Article 263, par. 4 of the Revised Penal Code.[54]

Petitioner's Defenses

We reject petitioner's contention that the prosecution failed to identify him as the victim's assailant, given that he "was not identified and never mentioned [in the police blotter] as the one who shot the victim" even though it was the victim himself who personally reported the incident to the authorities.[55]

Based on the Police Blotter dated January 18, 2002, the victim had identified petitioner and his companions as his assailants during the November 5, 2001 shooting incident, *viz.*:

> 9:20 A.M — (Shooting Incident) Jessirel Leyble y Subade, 25 years old, single, and a resident of Brgy[.] Pispis, Maasin, Iloilo reported personally to this Office alleging that last November 5, 2001 at around 4:30 P.M. while he was on their [sic] way home at Brgy[.] Pispis, this Municipality[,] was waylaid and shot with a firearms [*sic*] **by the group of Eden Etino, Bautista Etino, Joeserel Masiado, Alfredo Jabadan, Wiliam Besares and Wenefredo Besares**, all resident [sic] of the same place. As a result, he sustained gunshot wounds on the back portion of his body and was confined at West Visayas State University Hospital, Jaro, Iloilo City.[56]

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[52] See *Engr. Pentecostes, Jr. v. People*, *supra* note 40 at 512-513.

[53] Records, p. 126.

[54] See *People v. Oraza*, 83 Phil. 633, 635-636 (1949), where the Court held that "it is sufficient that the [present case] came under the provisions of [A]rticle 263, paragraph 4, of the [C]ode inasmuch as **the period of incapacity and healing of the injuries was more than thirty days** but not more than ninety days." Emphasis supplied.

[55] *Rollo*, pp. 16-17.

[56] See Certification dated January 19, 2002, records, p. 9.

In addition, the prosecution's witnesses never wavered in their positive identification of petitioner as the victim's assailant. The pertinent portion of the victim's testimony is quoted below:

> [ASST. PROV. PROS. GUALBERTO BALLA]
> Q: Do you know the accused Eden Etino?
> A: Yes, sir.
>
> Q: If he is inside the courtroom[,] can you point to him?
> A: There.
>
> Court Interpreter:
> Witness is pointing to a person inside the courtroom who, when asked[,] answered to the name Eden Etino.
>
> PROS. BALLA
> Q: For how long have you known the accused in this case?
> A: Since childhood.
>
> x x x x x x x x x
>
> Q: **Who shot you Mr. Witness?**
> A: **Eden Etino**[.][57] (Emphasis supplied)

We also consider the following pieces of evidence which amply support petitioner's positive identification as the assailant in this case: ***first,*** the manner of attack was done at close-range,[58] and the victim was able to turn around right after the shot was fired;[59] ***second,*** the shooting incident happened in broad daylight (at around 4:30 in the afternoon)[60] in an open field,[61] so the assailant could clearly be seen; and ***third,*** the victim could readily identify petitioner as his assailant because they had known each other since childhood.[62]

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[57] TSN, July 22, 2004, pp. 3-5.

[58] By Maldecir's testimony, petitioner was close to the victim when he fired the shot, at "around three (3) arm's length" away. See TSN, December 16, 2004, p. 7.

[59] TSN, July 22, 2004, p. 6.

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

[61] TSN, December 16, 2004, p. 6.

[62] TSN, July 22, 2004, p. 4.

Given these circumstances, we find petitioner's identification as the victim's assailant to be positive and conclusive. As a result, the defenses of denial and alibi raised by petitioner must necessarily fail. After all, "[a]libi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And it is only axiomatic that positive testimony prevails over negative testimony."[63]

We likewise reject petitioner's claim that the delay in the filing of the complaint against him generates doubt as to his guilt. It is settled that the failure to file a complaint to the proper authorities would *not* impair the credibility of the complainant *if* such delay was satisfactorily explained.[64] In this case, the victim testified that he filed the case after noticing that petitioner was still after him:

[ATTY. EDGAR SUMIDO]

Q: This incident happened on November 5, 2001 and it was only filed March 6, 2003?

A: **At first, I did not intend to file a case against him because I thought they will settle the case, but later I noticed that he was after me.**

Q: What do you mean by the word that the accused is after you, Mr. Witness?

A: Because when I met him, he waylaid me.

x x x x x x x x x

Q: But you stated before that the reason you filed this case [was] because the accused is after you?

The reason that you filed this case [was] because you thought that the accused [was] after you?

A: Because last month, he even intended to do something against me.[65] (Emphasis supplied)

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[63] *Vidar v. People*, 625 Phil. 57, 73 (2010).

[64] *People v. Ramirez, Jr.*, 454 Phil. 693, 702 (2003).

[65] TSN, July 22, 2004, pp. 13-15.

The victim's initial reluctance to file the complaint is not uncommon, considering "the natural reticence of most people to get involved in a criminal case."[66] Fear of reprisal, too, is deemed as a valid excuse for the temporary silence of a prosecution witness (or in this case, the victim) and has been judicially declared to not have any effect on his credibility.[67]

Finally, we find no sufficient evidence on record to support petitioner's claim that the victim had ill motives to falsely institute the complaint and testify against him. Even assuming *arguendo* that the victim held a grudge against petitioner for having testified against him in another case,[68] the existence of such grudge would *not* automatically render his testimony in this case false and unreliable.[69] "In the absence of any showing that a witness was actuated by malice or other improper motives, his *positive and categorical declarations* on the witness stand under a solemn oath deserve full faith and credence."[70]

The Proper Penalty

Under Article 263, par. 4, of the Revised Penal Code, "[a]ny person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer" "[t]he penalty of ***arresto mayor*** **in its maximum period to** ***prision correccional*** **in its minimum period** [which ranges from four (4) months and one (1) day to two (2) years and four (4) months], if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person **for more than thirty days**."[71]

"Under the Indeterminate Sentence law, the *maximum term* of the indeterminate sentence shall be taken, in view of the

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[66] *People v. PO3 Pelopero*, 459 Phil. 811, 827 (2003).

[67] *People v. Dorio*, 437 Phil. 201, 209-210 (2002).

[68] *Rollo*, pp. 17-18.

[69] *People v. Medina*, 479 Phil. 530, 541 (2004).

[70] *People v. Dorio*, *supra* note 67 at 210.

[71] Emphasis supplied.

attending circumstances that could be properly imposed under the rules of the Revised Penal Code, and the *minimum term* shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code."[72]

In the absence of any modifying circumstance, the maximum term of the indeterminate sentence in this case shall be taken within the *medium period*[73] of the penalty prescribed under Article 263, par. 4, or one (1) year and one (1) day to one (1) year and eight (8) months of *prision correcional*. The minimum term shall be taken within the range of *arresto mayor* in its minimum and medium periods[74] or from one (1) month and one (1) day to four (4) months.

The Civil Liabilities

Article 2219 of the Civil Code provides that moral damages may be awarded in criminal cases resulting in physical injuries,[75] as in this case. Although the victim did not testify on the moral damages that he suffered, his Medical Certificate[76] constitutes sufficient basis to award moral damages, since "ordinary human experience and common sense dictate that such wounds inflicted on [him] would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury."[77] Thus, we affirm the CA's award of moral damages in the amount of ₱25,000.00 in the victim's favor.

We also agree with the CA that the victim is entitled to temperate damages in the amount of ₱10,000.00, as it is clear from the records that the victim received medical treatment at the WVSUMC and was, in fact, confined at the hospital for

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[72] See *Serrano v. People*, *supra* note 38 at 337.

[73] See REVISED PENAL CODE, Article 64(1).

[74] See Reyes, Luis B., *THE REVISED PENAL CODE*, Book 2, 17th Edition, 2008, pp. 1072-1073.

[75] CIVIL CODE, Article 2219(1).

[76] Records, p. 126.

[77] See *People v. Ibañez*, 455 Phil. 133, 167-168 (2003).

twenty days,[78] although no documentary evidence was presented to prove the cost thereof.[79]

WHEREFORE, we **DENY** the Petition for Review on *Certiorari*. The August 29, 2012 Decision and the March 11, 2013 Resolution of the Court of Appeals in CA-G.R. CR No. 00896 are **AFFIRMED** with **MODIFICATION** in that, petitioner Eden Etino is found guilty beyond reasonable doubt of the crime of **SERIOUS PHYSICAL INJURIES** and is sentenced to suffer the indeterminate penalty of imprisonment of four (4) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 206788. February 14, 2018]

CHAILESE DEVELOPMENT COMPANY, INC., represented by MA. TERESA M. CHUNG, *petitioner, vs.* **MONICO DIZON, JIMMY V. CRUZ, JESUS A. CRUZ, RONALD V. DE GUZMAN, JARDO M. ENRIQUEZ, NENITA B. LUSUNG, EDGAR F. NICDAO, RAFAEL L. DIZON, SOTERO J. SANCHEZ, FERNANDO N. LEONARDO, MARILYN L. VALENZUELA, JOE F. VALENZUELA,**

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[78] Records, p. 126.

[79] See *Santos v. Court of Appeals*, 461 Phil. 36, 56 (2003). See also CIVIL CODE, Article 2224.

[*] Designated as additional member per September 25, 2017 raffle vice *J*. Jardeleza who recused due to prior action as Solicitor General.

RAMON L. MANALASTAS, NESTOR D. REYES, BRIGIDO S. CALMA, ANABELLA C. VALLEJO, FERNANDO M. DIZON, JUANITO D. SERRANO, LOURDES V. LAPID, FERDINAND L. UNCIANO, ALFREDO L. DIZON, MARIO A. TONGOL, ROSSANA D. LEONES, RUFINO L. DIZON, ADELMO V. GARCIA, NORMAN G. SUNDIAM, ORLANDO D. CRUZ, JERRY C. ESPINO, ESTRELLITA S. CRUZ, ORLANDO B. CRUZ, SUSANA C. AZARCON, FERNANDO MANDAP, RUBEN I. SUSI, MARIO M. PAULE, ANGELITO G. PECO, LAURO R. MAQUESIAS, MAYLINDA A. DAGAL, ABELARDO I. SUSI, MARIA C. MAQUESIAS, ISAGANI A. TONGOL, JOSEFA L. UNCIANO, ORLANDO A. SERRANO, SR., GONZALO C. MAQUESIAS, CONSOLACION M. VALENZUELA, REYNALDO A. CRUZ, RESTITUTO D. DABU, LEONARDO A. CRUZ, PABLO M. DIZON, DOMINADOR V. CRUZ, RENATO DONATO , SR., EDUARDO L. BUNAG, SR., CARMELITA C. LAQUINDANUM, JUAN O. MACABULOS, LIGAYA L. ECLARINAL, ANGEL D. VALENZUELA, JR., HERNANDO D. CRUZ, ROSALINDA D. CRUZ, BERNARD B. MENDOZA, RODALINO M. MEDINA, FERNANDO L. MANANSALA, CORAZON C. SANTOS, JOSELITO C. NICDAO, ROSARIO R. LOPEZ, MARY GRACE D. SAMONTE and TERESITA R. MAQUESIAS, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657), AS AMENDED BY RA 9700; THE DEPARTMENT OF AGRARIAN REFORM (DAR) HAS EXCLUSIVE JURISDICTION OVER AGRARIAN CASES; THE AMENDMENT INTRODUCED BY RA 9700 IS APPLICABLE IN THIS CASE.— The jurisdiction of the DAR is laid down in Section 50 of R.A. No. 6657, otherwise known as the CARL[.] x x x By virtue of Executive Order No. 129-

A, the DAR Adjudication Board (DARAB) was designated to assume the powers and functions of the DAR with respect to the adjudication of agrarian reform cases, and matters relating to the implementation of the CARP and other agrarian laws. The exclusive jurisdiction of the DAR over agrarian cases was further amplified by the amendment introduced by Section 19 of R.A. 9700 to Section 50. x x x [T]here is no merit in the contention of petitioner that the amendment introduced by R.A. No. 9700 cannot be applied retroactively in the case at bar. Primarily, a cursory reading of the provision readily reveals that Section 19 of R.A. No. 9700 merely highlighted the exclusive jurisdiction of the DAR to rule on agrarian cases by adding a clause which mandates the automatic referral of cases upon the existence of the requisites therein stated. Simply, R.A. No. 9700 does not deviate but merely reinforced the jurisdiction of the DAR set forth under Section 50 of R.A. No. 6657. Moreover, in the absence of any stipulation to the contrary, as the amendment is essentially procedural in nature it is deemed to apply to all actions pending and undetermined at the time of its passage.

2. ID.; ID.; ID.; REQUISITES BEFORE THE JUDGE OR PROSECUTOR IS OBLIGATED TO AUTOMATICALLY REFER THE CASE PENDING BEFORE IT TO THE DAR.— [T]he judge or prosecutor is obligated to automatically refer the cases pending before it to the DAR when the following requisites are present: a. There is an allegation from any one or both of the parties that the case is agrarian in nature; and b. One of the parties is a farmer, farmworker, or tenant.

3. ID.; ID.; ID.; ID.; UNLIKE THE FIRST REQUISITE, MERE ALLEGATION THAT ONE OF THE PARTIES IS A FARMER, FARMWORKER, OR TENANT WOULD NOT SUFFICE; TENANCY RELATIONSHIP MUST BE SHOWN BY ADEQUATE PROOF.— Contrary to the CA's conclusion and as opposed to the first requisite, mere allegation would not suffice to establish the existence of the second requirement. Proof must be adduced by the person making the allegation as to his or her status as a farmer, farmworker, or tenant. The pertinent portion of Section 19 of R.A. No. 9700 reads: If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR x x x. The use of the word "an" prior to "allegation" indicate that the latter qualifies

only the immediately subsequent statement, *i.e.*, that the case is agrarian in nature. Otherwise stated, an allegation would suffice only insofar as the characterization of the nature of the action. Had it been the intention that compliance with the second element would likewise be sufficient by a mere allegation from one of the parties that he or she is a farmer, farm worker, or tenant, the legislature should have used the plural form when referring to "allegation" as the concurrence of both requisites is mandatory for the automatic referral clause to operate. Further instructive is this Court's ruling in the previously cited case of *Chico*. Therein, the Court held that for the purpose of divesting regular courts of its jurisdiction in the proceedings lawfully began before it and in order for the DARAB to acquire jurisdiction, the elements of a tenancy relationship must be shown by adequate proof. It is not enough that the elements are alleged. Likewise, self-serving statements in the pleadings are inadequate.

4. ID.; ID.; ID.; ID.; ID.; RESPONDENTS' FAILURE TO PROVE THE DETAILS OF THE TENANCY AGREEMENT AND THE PECULIARITIES OF THE SUBJECT LANDHOLDING'S PREVIOUS OWNERSHIP PRECLUDES THE AUTOMATIC REFERRAL CLAUSE TO OPERATE. — [R]espondents merely alleged in their Answer with Counterclaim that they are previous tenants in the subject landholdings implying that a tenancy relationship exists between them and petitioner's predecessor-in-interest x x x[.] Apart from these statements however, respondents failed to elaborate much less prove the details of such tenancy agreement and the peculiarities of the subject landholding's previous ownership. There was no evidence adduced of the existence of any tenancy agreement between respondents and the petitioner's predecessor-in-interest. This, as discussed, precludes the application of Section 50-A of R.A. No. 6657, as amended by R.A. No. 9700, for failure to satisfy the second requisite.

APPEARANCES OF COUNSEL

Yabut Yabut & Associates Law Firm for petitioner.
Viray Rongcal Beltran Yumul Viray Law Office for respondents.

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 annul and set aside the Decision[2] dated October 29, 2012, and Resolution[3] dated March 15, 2013 issued by the Court of Appeals (CA) in CA-G.R. SP No. 122519.

Petitioner Chailese Development Company, Inc. (hereinafter referred to as petitioner) filed a complaint[4] for recovery of possession and damages before the Regional Trial Court (RTC) of Guagua, Pampanga, against fifty-one (51) defendants, eight (8) of whom are respondents herein.

In its Complaint, petitioner alleged that it is a corporation duly organized under Philippine laws and is the registered owner of parcels of lot covered by Transfer Certificates of Title (TCT) Nos. 365770, 365771, 365772, 365773, 365774, 365775, 365776, 365777, 365778, and 365351, all situated at Barangay Malabo, Floridablanca, Pampanga with an aggregate area of 148 hectares more or less (hereinafter referred to as subject landholdings). The subject landholdings are then allegedly being illegally occupied by the defendants.[5]

On January 7, 2001, then Department of Agrarian Reform (DAR) Secretary Horacio Morales, Jr. issued a Resolution ordering that the subject landholdings be converted for commercial and light industrial uses. Petitioner averred that it is, however, unable to introduce developments into the properties as a portion of the lots were being illegally occupied by

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[1] *Rollo*, pp. 9-27.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Normandie B. Pizarro and Manuel M. Barrios, concurring; *id*. at 29-46.

[3] *Id*. at 48-50.

[4] *Id*. at 51-55.

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

respondents Monico Dizon, Jimmy Cruz, Jesus Cruz, Ronald De Guzman, Jardo Enriquez, *et al.* (hereinafter referred to as respondents), who refused to vacate the premises despite repeated demands.[6]

In their Answer with Counterclaim,[7] respondents submitted in the main that the lower court has no jurisdiction over the case as the allegations of the complaint involve the application of the Agrarian Reform Law.[8] According to the respondents, prior to being transferred in the name of the petitioner, they are tenants of the subject landholdings which are then a hacienda devoted to agricultural production. That without their knowledge and consent, the property was transferred to the petitioner, who in order to avoid the compulsory distribution of the subject landholdings under the Comprehensive Agrarian Reform Law (CARL), filed a "bogus" petition for conversion. The petition was initially denied in 1998, but granted on reconsideration.[9]

After hearing the respondents' affirmative defenses, the lower court issued an Order[10] on November 15, 2006, dismissing the Complaint for lack of jurisdiction, in this wise:

> WHEREFORE, this court hereby dismisses the case without prejudice.
>
> SO ORDERED.[11]

The lower court in its Order ratiocinated that the issue of possession involved in the case is intertwined with the propriety of conversion and compliance with the agreement on disturbance compensation, issues that are yet to be resolved with finality by the DAR. Thus, affirming the primacy of DAR's jurisdiction

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[6] *Id.* at 52-53.

[7] *Id.* at 56-60.

[8] *Id.* at 56.

[9] *Id.* at 57.

[10] *Id.* at 65.

[11] *Id.* at 76.

over agrarian disputes, the lower court resolved to dismiss the case pending resolution of the said issues.[12]

Petitioner filed a Motion for Reconsideration of the Order, which was initially granted by the lower court on March 6, 2007;[13] but eventually reversed on motion[14] by the respondents by the lower court *via* its Order[15] dated September 18, 2007.

Petitioner filed a Motion for Reconsideration anew on October 10, 2007. Despite respondents' opposition, the lower court issued an Order[16] on December 20, 2007 granting petitioner's motion and setting the case for pre-trial. Thereafter, the trial proceeded with the presentation of petitioner's evidence.

Meanwhile, on July 1, 2009, Republic Act (R.A.) No. 9700 took effect. The Act aimed to strengthen the CARL of 1988 through the institution of necessary reforms. Among the amendments introduced by R.A. 9700 is the addition of Section 50-A which vests upon the DAR the exclusive jurisdiction to take cognizance upon cases involving the implementation of the Comprehensive Agrarian Reform Program (CARP) and mandates the automatic referral of cases to the DAR by the judge or prosecutor upon allegation of any of the parties that the controversy is an agrarian dispute.[17]

On June 6, 2011, the respondents filed a motion[18] seeking the referral of the case to the DAR pursuant to Section 19 of R.A. No. 9700.

The lower court issued on July 19, 2011 an Order[19] denying the motion for lack of merit.

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[12] *Id*. at 71.

[13] *Id*. at 77.

[14] *Id*. at 81-88.

[15] *Id*. at 81-98.

[16] *Id*. at 89-98.

[17] *R.A. No. 9700,* Section 19.

[18] *Rollo*, pp. 99-102.

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

Therein, the lower court noted that it took cognizance of the case prior to the effectivity of R.A. No. 9700 and that the referral of the case to the DAR would cause further delay in the disposition of the case. Respondents filed a motion for reconsideration,[20] but the same was denied by the lower court in its Order[21] dated October 24, 2011, the dispositive portion of which reads:

> Wherefore, finding no cogent reason to disturb the earlier Order of the Court dated July 19, 2011, the instant motion for reconsideration is hereby denied.
>
> The presentation of defendants' evidence set on October 25, 2011 at 9:00 in the morning is maintained.
>
> SO ORDERED.[22]

Aggrieved, respondents elevated the matter to the CA *via* petition for *certiorari* and prohibition under Rule 65 of the Rules of Court.[23]

On October 29, 2012, the CA rendered its Decision[24] finding merit in the petition thus ordering the referral of the case to the DAR. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. The [RTC] of Branch 53, Guagua, Pampanga is hereby DIRECTED to refer Civil Case No. G-4297 to the [DAR] for the necessary determination and certification pursuant to Section 50-A of [R.A.] No. 6657, as amended by [R.A.] No. 9700. No costs.
>
> SO ORDERED.[25]

In its decision, the CA ruled that with the addition of R.A. No. 9700 of Section 50-A, "the only condition for automatic

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[20] *Id*. at 105.

[21] *Id*. at 107-108.

[22] *Id*. at 108.

[23] *Id*. at 109-130.

[24] *Id*. at 29-46.

[25] *Id*. at 46.

referral by the court to the DAR is when there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant."[26] In this controversy, the CA held that "there are more than sufficient allegations in the pleadings of the parties that the case is agrarian in nature and that the petitioners are bona fide tillers and occupants of the subject property."[27]

Moreover, the CA found the existence of agrarian dispute, finding that the issue of petitioner's possession is intertwined with the issue of whether the respondents are *bona fide* tillers and occupants entitled to disturbance compensation.[28]

Petitioner filed a motion[29] seeking reconsideration of the Decision dated October 29, 2012, the same was however denied by the CA in its Resolution dated March 15, 2013, whereby it found:

> Thus, finding no new matter of substance which would warrant the modification much less the reversal of this Court's October 29, 2012 Decision, the Motion for Reconsideration filed by private respondent Chailese is hereby DENIED for lack of merit.
>
> SO ORDERED.[30]

Hence, this petition for review on *certiorari*, whereby petitioner calls us to resolve two issues:

ISSUES

I. WHETHER OR NOT THE CA GRAVELY ERRED IN CONCLUDING THAT THE RESPONDENTS WERE *BONA FIDE* TILLERS AND OCCUPANTS OF THE SUBJECT LOT; and

II. WHETHER OR NOT THE CA COMMITTED A GRAVE REVERSIBLE ERROR IN CONCLUDING THAT THE CIVIL

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[26] *Id*. at 41.

[27] *Id*.

[28] *Id*. at 43-44.

[29] *Id*. at 131-135.

[30] *Id*. at 49-50.

> CASE NO. G-4297 BE REFERRED TO THE DAR FOR THE NECESSARY DETERMINATION AND CLASSIFICATION AS TO WHETHER AN AGRARIAN DISPUTE EXISTS BETWEEN THE PETITIONER AND THE RESPONDENT PURSUANT TO SECTION 19 OF R.A. NO. 9700 AND OCA CIRCULAR 62-2010.[31]

Petitioner submits that the regular courts has jurisdiction over the case considering that the nature of the controversy is one for recovery of possession.[32] Further, petitioner noted that it filed its complaint on July 30, 2004, while R.A. No. 9700 took effect in 2009, therefore, it argues that the matter of jurisdiction should be determined not by R.A. No. 9700 but by R.A. No. 7691 which vests upon the RTC the exclusive original jurisdiction over "all civil actions which involve title to, or possession of, real property, or any interest therein" the assessed value of which exceeds ₱20,000.[33]

In their Comment, respondents allege that the errors raised by the petitioners involve the determination of questions of fact that are beyond the province of this Court in a petition for review under Rule 45.[34]

Ruling of the Court

The petition is meritorious.

It is a basic rule in procedure that the jurisdiction of the Court over the subject matter as well as the concomitant nature of an action is determined by law and the allegations of the complaint, and is unaffected by the pleas or theories raised by the defendant in his answer or motion to dismiss.[35]

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[31] *Id*. at 15-16.

[32] *Id*. at 80, 118-119.

[33] *Id*. at 79.

[34] *Id*. at 111.

[35] *Sindico v. Hon. Diaz*, 483 Phil. 50, 54 (2004); *Arzaga v. Copias*, 448 Phil. 171, 180 (2003); *Chico v. CA*, 348 Phil. 37, 40-41 (1998).

The jurisdiction of the DAR is laid down in Section 50 of R.A. No. 6657, otherwise known as the CARL, which provides:

Section 50. ***Quasi-Judicial Powers of the DAR.*** — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). x x x.

By virtue of Executive Order No. 129-A, the DAR Adjudication Board (DARAB) was designated to assume the powers and functions of the DAR with respect to the adjudication of agrarian reform cases, and matters relating to the implementation of the CARP and other agrarian laws.[36]

The exclusive jurisdiction of the DAR over agrarian cases was further amplified by the amendment introduced by Section 19 of R.A. 9700 to Section 50. The provision reads:

Section 19. Section 50 of Republic Act No. 6657, as amended, is hereby further amended by adding Section 50-A to read as follows:

SEC. 50-A. *Exclusive Jurisdiction on Agrarian Dispute*. - No court or prosecutor's office shall take cognizance of cases pertaining to the implementation of the CARP except those provided under Section 57 of Republic Act No. 6657, as amended. If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR which shall determine and certify within fifteen (15) days from referral whether an agrarian dispute exists: Provided, that from the determination of the DAR, an aggrieved party shall have judicial recourse. In cases referred by the municipal trial court and the prosecutor's office, the appeal shall be with the proper regional trial court, and in cases referred by the regional trial court, the appeal shall be to the Court of Appeals.

In cases where regular courts or quasi-judicial bodies have competent jurisdiction, agrarian reform beneficiaries or identified

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[36] DARAB New Rules of Procedure, Rule II, Sections 1 to 2.

beneficiaries and/or their associations shall have legal standing and interest to intervene concerning their individual or collective rights and/or interests under the CARP.

The fact of non-registration of such associations with the Securities and Exchange Commission, or Cooperative Development Authority, or any concerned government agency shall not be used against them to deny the existence of their legal standing and interest in a case filed before such courts and quasi-judicial bodies.

In this regard, it must be said that there is no merit in the contention of petitioner that the amendment introduced by R.A. No. 9700 cannot be applied retroactively in the case at bar. Primarily, a cursory reading of the provision readily reveals that Section 19 of R.A. No. 9700 merely highlighted the exclusive jurisdiction of the DAR to rule on agrarian cases by adding a clause which mandates the automatic referral of cases upon the existence of the requisites therein stated. Simply, R.A. No. 9700 does not deviate but merely reinforced the jurisdiction of the DAR set forth under Section 50 of R.A. No. 6657. Moreover, in the absence of any stipulation to the contrary, as the amendment is essentially procedural in nature it is deemed to apply to all actions pending and undetermined at the time of its passage.[37]

Thence, having settled that Section 19 of R.A. No. 9700 is applicable in this controversy, the Court now proceeds with the examination of such amendment. Based on the said provision, the judge or prosecutor is obligated to automatically refer the cases pending before it to the DAR when the following requisites are present:

a. There is an allegation from any one or both of the parties that the case is agrarian in nature; and
b. One of the parties is a farmer, farmworker, or tenant.

In this case, the presence of the first requisite is satisfied by the allegations made by the respondents in their Answer with Counterclaim.[38]

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[37] *Villasenor, et al. v. Ombudsman, et al.*, 735 Phil. 409, 417 (2014).

[38] *Rollo*, pp. 56-60.

The allegations in petitioner's complaint make a case for recovery of possession, over which the regular courts have jurisdiction. However, in response thereto, the respondents filed their Answer with Counterclaim, assailing the jurisdiction of the regular court to rule on the matter on the ground that it is agrarian in nature, which thus complies with the first requisite, *viz.*:

> BY WAY OF SPECIAL/AFFIRMATIVE DEFENSES, defendants further state that:
>
> 5. The Court has no jurisdiction over the subject matter and the nature of the action. Verily, the allegations of the complaint would show that this involves the implementation of Agrarian Reform law hence beyond the pale of jurisdiction of this Court.[39]

Anent the second requisite, the Court finds that the respondents failed to prove that they are farmers, farmworkers, or are agricultural tenants.

Section 3 of R.A. No. 6657 defines farmers and farmworkers as follows:

> (f) Farmer refers to a natural person whose primary livelihood is cultivation of land or the production of agricultural crops, either by himself, or primarily with the assistance of his immediate farm household, whether the land is owned by him, or by another person under a leasehold or share tenancy agreement or arrangement with the owner thereof.
>
> (g) Farmworker is a natural person who renders service for value as an employee or laborer in an agricultural enterprise or farm regardless of whether his compensation is paid on a daily, weekly, monthly or "*pakyaw*" basis. The term includes an individual whose work has ceased as a consequence of, or in connection with, a pending agrarian dispute and who has not obtained a substantially equivalent and regular farm employment.

An agricultural tenancy relation, on the other hand, is established by the concurrence of the following elements enunciated by this Court in the case of *Chico v. CA,*[40]

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[39] *Id.* at 56.

[40] 348 Phil. 37 (1998).

(1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[41]

Contrary to the CA's conclusion and as opposed to the first requisite, mere allegation would not suffice to establish the existence of the second requirement. Proof must be adduced by the person making the allegation as to his or her status as a farmer, farmworker, or tenant.

The pertinent portion of Section 19 of R.A. No. 9700 reads:

If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR x x x.

The use of the word "an" prior to "allegation" indicate that the latter qualifies only the immediately subsequent statement, *i.e.,* that the case is agrarian in nature. Otherwise stated, an allegation would suffice only insofar as the characterization of the nature of the action.

Had it been the intention that compliance with the second element would likewise be sufficient by a mere allegation from one of the parties that he or she is a farmer, farm worker, or tenant, the legislature should have used the plural form when referring to "allegation" as the concurrence of both requisites is mandatory for the automatic referral clause to operate.

Further instructive is this Court's ruling in the previously cited case of *Chico.* Therein, the Court held that for the purpose of divesting regular courts of its jurisdiction in the proceedings lawfully began before it and in order for the DARAB to acquire jurisdiction, the elements of a tenancy relationship must be shown

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[41] *Id.* at 42.

by adequate proof. It is not enough that the elements are alleged. Likewise, self-serving statements in the pleadings are inadequate.[42]

Hence, in light of the absence of evidence to show any tenancy agreement that would establish the relationship of the parties therein, the Court in *Chico* granted the petition and reinstated the proceedings before the RTC of Malolos, Bulacan.

Applying these principles in the matter on hand, in here, respondents merely alleged in their Answer with Counterclaim that they are previous tenants in the subject landholdings implying that a tenancy relationship exists between them and petitioner's predecessor-in-interest, in this wise:

> 9. That defendants are actually tenants of the land long before the same was illegally transferred in the name of the plaintiff;
>
> 10. That the lot subject matter of this case is formerly a hacienda devoted to agricultural production;
>
> 11. That since the land is within the coverage of the [CARL], the defendants, are by law, the qualified farm-beneficiaries who should be entitled to the compulsory acquisition and distribution of the same;
>
> 12. That without the knowledge of the said defendants, the property was transferred to herein plaintiff who in order to avoid the compulsory acquisition and distribution of the said land, filed a "bogus" petition for conversion. x x x.[43]

Apart from these statements however, respondents failed to elaborate much less prove the details of such tenancy agreement and the peculiarities of the subject landholding's previous ownership. There was no evidence adduced of the existence of any tenancy agreement between respondents and the petitioner's predecessor-in-interest. This, as discussed, precludes the application of Section 50-A of R.A. No. 6657, as amended by R.A. No. 9700, for failure to satisfy the second requisite.

WHEREFORE, in view of the foregoing disquisitions, the petition for review on *certiorari* is hereby **GRANTED.** The

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[42] *Rollo*, p. 43.

[43] *Id.* at 57.

Decision dated October 29, 2012 and Resolution dated March 15, 2013 issued by the Court of Appeals in CA-G.R. SP No. 122519 are hereby **REVERSED AND SET ASIDE.** Accordingly, the Complaint dated July 28, 2004 is hereby ordered reinstated and the case remanded for further proceedings. The Regional Trial Court of Guagua, Pampanga, Branch 52 is ordered to resolve the case with utmost dispatch. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Perlas-Bernabe, JJ.,* concur.

Caguioa, J., on official business.

SPECIAL FIRST DIVISION

[G.R. No. 207843. February 14, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COURT OF TAX APPEALS and PETRON CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF TAX APPEALS; HAS EXCLUSIVE JURISDICTION TO RESOLVE ALL TAX PROBLEMS.— The apparent conflicting jurisprudence on the matter involving the Court's 2008 *En Banc* ruling in *British American Tobacco* and the Court's Third Division Ruling in *Philamlife* has been seemingly settled in the 2016 *En Banc* case of *Banco De Oro v. Republic of the Philippines* (*Banco De Oro*) wherein it was opined that: "Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals,

Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals. In other words, **within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should thus be filed before the Court of Tax Appeals." x x x The *En Banc* ruling in *Banco De Oro* has since not been overturned and thus, stands as the prevailing jurisprudence on the matter. Accordingly, the Court is prompted to reconsider its ruling in this case with respect to the issue of jurisdiction.

2. ID.; ID.; ID.; THE CUSTOMS COLLECTOR'S COMPUTATION OR ASSESSMENT IS NOT A PROPER SUBJECT OF APPEAL BEFORE THE COURT OF TAX APPEALS.— [T]he Court had also dismissed Petron's petition for review before the CTA on the ground of prematurity. x x x Petron in this case directly elevated for review to the CTA *the customs collector's computation or assessment,* which is not a proper subject of appeal. x x x "*There being no protest ruling by the customs collector that was appealed to the COC,* ***the filing of the petition before the CTA was premature as there was nothing yet to review***."

APPEARANCES OF COUNSEL

BIR Litigation Division for petitioner.
The Solicitor General for public respondent.
Baniqued & Baniqued for private respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a motion for reconsideration[1] filed by respondent Petron Corporation (Petron) on the Court's Decision[2] dated July 15, 2015 which set aside the Resolutions

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[1] *Rollo,* pp. 371-400.

[2] *Id*. at 360-370. See also *Commissioner of Internal Revenue v. Court of Tax Appeals*, 764 Phil. 195 (2015).

dated February 13, 2013[3] and May 8, 2013[4] issued by the Court of Tax Appeals (CTA) in CTA Case No. 8544 and thereby, dismissed the petition for review[5] before the court *a quo* for lack of jurisdiction and prematurity.

The Facts

On June 29, 2012, petitioner Commissioner of Internal Revenue (CIR) issued a Letter[6] interpreting Section 148(e) of the National Internal Revenue Code[7] (NIRC) and thereby, opining that "*alkylate, which is a product of distillation similar to naphtha, is subject to tax*."[8] In implementation thereof, the Commissioner of Customs (COC) issued Customs Memorandum Circular (CMC) No. 164-2012. Not long after, and in compliance with CMC No. 164-2012, the Collector of Customs assessed excise tax on Petron's importation of *alkylate*.[9]

Petron filed a petition for review[10] before the CTA, contesting the allegedly erroneous classification of *alkylate* and the resultant imposition of excise tax arising from the CIR's interpretation of Section 148(e) of the NIRC.

On February 13, 2013, the CTA issued the first assailed Resolution,[11] reversing its initial dismissal of Petron's petition for review and giving due course thereto.[12] It explained that

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[3] *Id*. at 37-56.

[4] *Id*. at 58-62.

[5] Dated September 24, 2012. *Id*. at 203-236.

[6] Not attached to the *rollo*.

[7] Republic Act No. (RA) 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES," approved on December 11, 1997.

[8] *Rollo*, p. 207.

[9] *Id*.

[10] *Id*. at 203-236.

[11] *Id*. at 37-56.

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

the controversy was not essentially about the constitutionality or legality of CMC No. 164-2012 but a question on the propriety of the interpretation of Section 148(e) of the NIRC in reference to the tax treatment of Petron's *alkylate* importation, which is within the CTA's jurisdiction to review.[13] The CTA also held that the substantial and grave damage and injury that would be suffered from the threatened collection of excise tax warranted the non-exhaustion of administrative remedies and justified Petron's immediate resort to judicial action.[14]

The CIR filed a motion for reconsideration,[15] which the CTA denied in the second assailed Resolution[16] dated May 8, 2013. Subsequently, the CIR elevated the matter to the Court through a petition for *certiorari*,[17] alleging that the CTA had no jurisdiction to take cognizance of a case involving the CIR's exercise of interpretative or quasi-legislative functions and that there was yet no final decision by the COC that was properly appealable to the CTA.

In the July 15, 2015 Decision, the Court upheld the CIR's position that the CTA could not take cognizance of the case because the latter's jurisdiction to resolve tax disputes excluded the power to rule on the constitutionality or validity of a law, rule or regulation and that, in any case, it was premature to elevate a customs collector's assessment without a prior protest and an appeal to the COC.[18] Accordingly, the Court ordered the dismissal of Petron's petition for review filed before the CTA.[19]

Dissatisfied, Petron filed a motion for reconsideration[20] dated October 5, 2015.

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[13] See *id*. at 40 and 44.

[14] See *id*. at 46.

[15] Dated March 1, 2013. *Id*. at 327-348.

[16] *Id*. at 57-71.

[17] Dated July 11, 2013. *Id*. at 2-33.

[18] See *id*. at 366-369.

[19] *Id*. at 369.

[20] *Id*. at 371-398.

The Issue Before the Court

The sole issue in this case is whether or not the Court's July 15, 2015 Decision, which ordered the dismissal of Petron's petition for review before the CTA on the grounds of lack of jurisdiction and prematurity, should be reconsidered.

The Court's Ruling

At the onset, Petron insists that the CTA has jurisdiction to pass upon the validity of the CIR's interpretative ruling on *alkylate*, arguing that the CTA may rule on the validity of a revenue regulation, ruling, issuance or other matters arising under the NIRC and other tax laws administered by the Bureau of Internal Revenue (BIR). As basis, Petron cites for the first time in its motion for reconsideration the Court's ruling in *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*[21] (*Philamlife*).

Philamlife is a 2014 case decided by a Division of the Court, which controversy arose from an unfavorable ruling by the Secretary of Finance that affirmed, through its power of review under Section 4 of the NIRC, the CIR's denial of a request to be cleared of liability for donor's tax. Noting the absence of an express provision in the law concerning further appeals from the Secretary of Finance, the issue framed for resolution was — "*where does one seek immediate recourse from the adverse ruling of the Secretary of Finance in its exercise of its power of review under Sec. 4?*"[22] Resolving this issue, the Court in *Philamlife* held that:

> Admittedly, there is no provision of law that expressly provides where exactly the ruling of the Secretary of Finance under the adverted NIRC provision is appealable to. However, We find that Sec. 7(a)(1) of RA 1125, as amended, addresses the seeming gap in the law as it vests the CTA, albeit impliedly, with jurisdiction over the CA petition as "other matters" arising under the NIRC or other laws administered by the BIR. As stated:

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[21] 747 Phil. 811 (2014).

[22] *Id*. at 823.

> Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue. x x x

Even though the provision suggests that it only covers rulings of the Commissioner, We hold that it is, nonetheless, sufficient enough to include appeals from the Secretary's review under Sec. 4 of the NIRC.[23]

Corollary to this disposition, however, the Court's Third Division extended its discussion on the issue regarding the CTA's jurisdiction over the rulings of the CIR, *viz.*:

> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of *certiorari* by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.[24]

The foregoing remarks appear to be in direct opposition to the ruling in *British American Tobacco v. Camacho, et al.*[25] (*British American Tobacco*), which is a 2008 case decided by the Court *En Banc*, cited as basis by the Court in its July 15, 2015 Decision in this case regarding the issue of jurisdiction.

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[23] *Id.* at 823-824.

[24] *Id.* at 831.

[25] 584 Phil. 489 (2008).

The apparent conflicting jurisprudence on the matter involving the Court's 2008 *En Banc* ruling in *British American Tobacco* and the Court's Third Division Ruling in *Philamlife* has been seemingly settled in the 2016 *En Banc* case of *Banco De Oro v. Republic of the Philippines*[26] (*Banco De Oro*) wherein it was opined that:

> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.
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> In other words, **within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should thus be filed before the Court of Tax Appeals.
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> Republic Act No. 9282, a special and later law than *Batas Pambansa Blg.* 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.
>
> Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, **the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424**.[27] (Emphases supplied)

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[26] G.R. No. 198756, August 16, 2016, 800 SCRA 392.

[27] *Id.* at 418-420; citations omitted.

The *En Banc* ruling in *Banco De Oro* has since not been overturned and thus, stands as the prevailing jurisprudence on the matter. Accordingly, the Court is prompted to reconsider its ruling in this case with respect to the issue of jurisdiction.

However, the Court had also dismissed Petron's petition for review before the CTA on the ground of prematurity. Unlike in *Philamlife* where the petition for review was filed before the Secretary of Finance, Petron in this case directly elevated for review to the CTA *the customs collector's computation or assessment*, which is not a proper subject of appeal. To reiterate the Court's decision in the main:

> x x x *The [Tariff and Customs Code] prescribes that a party adversely affected by a ruling or decision of the customs collector may protest such ruling or decision upon payment of the amount due and, if aggrieved by the action of the customs collector on the matter under protest, may have the same reviewed by the COC. It is only after the COC shall have made an adverse ruling on the matter may the aggrieved party file an appeal to the CTA.*
>
> x x x *There being no protest ruling by the customs collector that was appealed to the COC,* ***the filing of the petition before the CTA was premature as there was nothing yet to review***.[28] (Emphasis supplied)

Nevertheless, Petron has presently manifested that it had already complied with the protest procedure prescribed under the NIRC, and later on, filed an administrative claim[29] for refund and/or tax credit with the BIR on November 21, 2013.[30] Records are bereft of any showing that the CIR had already acted on its claim and hence, Petron filed before the CTA a Supplemental Petition for Review[31] to include a claim for refund and/or tax

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[28] *Rollo*, pp. 368-369. See also *Commissioner of Internal Revenue v. Court of Tax Appeals*, *supra* note 2 at 210; citations omitted.

[29] See Letter dated November 19, 2013, which was received by the BIR on November 21, 2013; *id*. at 417-426.

[30] See *id*. at 373 and 395-396.

[31] Dated January 24, 2014. *Id*. at 434-442.

credit of the excise tax that was levied on its *alkylate* importation. The CTA then gave due course to the petition and, as per Petron's manifestation, the parties have already been undergoing trial.[32] Consequently, considering that the CTA had taken cognizance of Petron's claim for judicial refund of tax which, under Section 7(a)(1)[33] of RA 1125, is within its jurisdiction, the Court finds that these supervening circumstances have already mooted the issue of prematurity. Thus, in conjunction with the *Banco De Oro* ruling that the CTA has jurisdiction to resolve *all tax matters* (which includes the validity of the CIR's interpretation and consequent imposition of excise tax on *alkylate*), the Court finds it proper to reconsider its decision.

WHEREFORE, the motion for reconsideration is **GRANTED**. Respondent Petron Corporation's petition for review docketed as CTA Case No. 8544 is hereby **DECLARED** to be within the jurisdiction of the Court of Tax Appeals, which is **DIRECTED** to resolve the case with dispatch.

SO ORDERED.

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

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[32] *Id.* at 396 and 406.

[33] Section 7. *Jurisdiction.* — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner on Internal Revenue in cases involving disputed assessments, *refunds of internal revenue taxes*, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

[*] Designated member per A.M. No. 17-03-03-SC dated March 14. 2017.

SECOND DIVISION

[G.R. No. 208424. February 14, 2018]

ARMANDO LAGON, *petitioner, vs.* **HON. DENNIS A. VELASCO, in his capacity as Presiding Judge of Municipal Trial Court in Cities of Koronadal, South Cotabato, and GABRIEL DIZON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; LIMITED TO THE CORRECTION OF ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, EXPLAINED.—** It must be noted at the outset that a petition for *certiorari* under Rule 65 of the Revised Rules of Court is a pleading limited to the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. "Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction." It is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion pertains to a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

2. **ID.; JUDICIAL AFFIDAVIT RULE; RATIONALE.—** Seeking to eradicate the scourge of long-drawn protracted litigations, and address case congestion and delays in court, on September 4, 2012, the Court *en banc* promulgated A.M. No. 12-8-8-SC, or the Judicial Affidavit Rule. The Judicial Affidavit Rule was

particularly created to solve the following ills brought about by protracted litigations, such as, the dismissal of criminal cases due to the frustration of complainants in shuttling back and forth to court after repeated postponements; and the dearth of foreign businessmen making long-term investments in the Philippines because the courts are unable to provide ample and speedy protection to their investments, thereby keeping the people poor. At first, the Court approved the piloting by trial courts in Quezon City of the compulsory use of judicial affidavits in place of the direct testimonies of witnesses. Eventually, the success of the judicial affidavit rule was unprecedented, and its implementation led to a reduction of about two-thirds of the time used for presenting the testimonies of witnesses. Indeed, the use of judicial affidavits greatly hastened the hearing and adjudication of cases.

3. ID.; ID.; FAILURE TO FILE JUDICIAL AFFIDAVIT RESULTS TO A WAIVER; LATE FILING MAY BE ALLOWED UPON VALID REASON AND SUBJECT TO SPECIFIC FINE.— Incidentally, the failure to comply with Section 2 of the Judicial Affidavit Rule shall result to a waiver of the submission of the required judicial affidavits and exhibits. However, the court may, upon valid cause shown, allow the late submission of the judicial affidavit, subject to specific penalties, constituting a fine of not less than One Thousand Pesos (Php 1,000.00), nor more than Five Thousand Pesos (Php 5,000.00), at the discretion of the court.

4. ID.; ID.; JUDICIAL AFFIDAVIT RULE *VIS-À-VIS* RULE ON DEMURRER TO EVIDENCE, EXPLAINED; NO CONFLICT BETWEEN THE TWO RULES AND BOTH CAN CO-EXIST HARMONIOUSLY AS TOOLS FOR EFFICIENT ADMINISTRATION OF THE TRIAL.— Juxtaposing the Judicial Affidavit Rule with that of the rule on demurrer to evidence, it becomes all too apparent that there exists no conflict between them. Similar to the judicial affidavit, a demurrer to evidence likewise abbreviates judicial proceedings, and serves as an instrument for the expeditious termination of an action. It is as "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue." All that it grants is an option to a defendant, to seek the dismissal of

the case, should he believe that the plaintiff failed to establish his right to relief. The demurrer challenges the sufficiency of the plaintiff's evidence to sustain a verdict. Thus, in passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the plaintiff's complaint. Clearly, both the Judicial Affidavit Rule and Demurrer to Evidence can co-exist harmoniously as tools for a more efficient and speedy administration of trial procedures. On the one hand, the Judicial Affidavit Rule simply dispenses with the direct testimony, thereby reducing the time at which a case stands for trial, in the same way that the Demurrer to Evidence abbreviates proceedings by allowing the defendant to seek for an early resolution of the case should the plaintiff be unable to sufficiently prove his complaint. These rules do not conflict, and when used hand in hand will lead to an efficient administration of the trial.

5. ID.; ID.; REQUIRING THE DEFENDANT TO SUBMIT JUDICIAL AFFIDAVIT PRIOR TO THE TRIAL AND BEFORE THE PLAINTIFF RESTED HIS CASE IS NOT BURDENSOME OR A CIRCUMVENTION OF DUE PROCESS OF LAW.— [T]he fact that the defendant is mandated to submit his judicial affidavit prior to the trial and before the plaintiff has rested his case is not a cumbersome requirement or a circumvention of due process. On the contrary, this is necessary for the orderly administration of the proceeding before the courts. It must be remembered that in as early as the pre-trial conference, the defendant is already required to submit a pre-trial brief, where he is then tasked to state the number and names of his witnesses, as well as the substance of their testimonies; the issues to be tried and resolved; and the documents or exhibits to be presented and the purpose thereof. Thus, the defendant is already required in this early stage of the proceedings to formulate his defense and plan his strategy to counter the plaintiff's complaint. There is nothing too tedious or burdensome in requiring the submission of the judicial affidavit. In fact, this would even help the defendant in preparing his opposing arguments against the plaintiff.

APPEARANCES OF COUNSEL

Rico & Associates for petitioner.
Viajar Law Office for respondent Gabriel Dizon.

D E C I S I O N

REYES, JR., *J.*:

This treats of the Petition for *Certiorari*[1] under Rule 65 of the Revised Rules of Court seeking the annulment of the Order[2] dated June 6, 2013, issued by public respondent Hon. Dennis A. Velasco (Judge Velasco), directing petitioner Armando Lagon (Lagon) to file the judicial affidavits of his witnesses within five (5) days prior to the commencement of the trial dates.

The Antecedent Facts

Sometime in December 2000, Lagon obtained a cash loan from private respondent Gabriel Dizon (Dizon), in the amount of Three Hundred Thousand Pesos (Php 300,000.00). In payment thereof, Lagon issued PCIBank Check No. 0064914, postdated January 12, 2001, in an equal amount. However, when Dizon presented the check for payment, it was dishonored for being Drawn Against Insufficient Funds.[3]

Consequently, Dizon sent a Letter dated May 6, 2011 to Lagon, demanding the payment of Php 300,000.00. However, Lagon refused to pay.[4]

On June 6, 2011, Dizon filed a Complaint for Sum of Money, Damages and Attorney's Fees against Lagon.[5]

On October 8, 2011, Lagon filed a Motion to Dismiss on the ground of prescription.

In response, Dizon filed an Opposition with Motion to Amend Complaint.[6] In his Amended Complaint, Dizon averred that he

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[1] *Rollo*, pp. 3-19.

[2] *Id*. at 20-21.

[3] *Id*. at 6.

[4] *Id.*

[5] *Id*.

[6] *Id*.

sent two demand letters, one dated March 23, 2010 and another dated May 6, 2011. Both letters were sent through JRS Express.[7]

On February 29, 2012, Lagon filed his Answer asserting that he has paid the loan.[8]

Meanwhile, during the preliminary conference, the parties were directed to file their respective pre-trial briefs within five (5) days from receipt of the trial court's order.

Thereafter, on August 9, 2012, Judge Velasco issued a Pre-Trial Conference Order.[9]

At the initial trial on June 6, 2013, neither of the parties submitted their judicial affidavits or those of their witnesses. Hence, Judge Velasco issued the assailed Order[10] requiring the parties to submit their respective judicial affidavits five (5) days before the trial.[11] The essential portion of the Order dated June 6, 2013, reads:

> In the interest of justice and equity, the plaintiff is hereby allowed to submit his Judicial Affidavits. But for failure of the plaintiff to submit Judicial Affidavits in due time, the Court imposed a fine of Three Thousand pesos (Php 3,000.00) and to be reimbursed an amount of Five Thousand pesos (Php 5,000.00) to the defendant's expenses in coming to Court within five (5) days from today.
>
> The parties are hereby directed to submit Judicial Affidavits of their witnesses within five (5) days prior to the trial dates. Otherwise, the Court will no longer admit the same.[12]

Lagon received a copy of the same Order on June 26, 2013.[13]

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[7] *Id*.

[8] *Id*. at 7.

[9] *Id*.

[10] *Id*. at 20-21.

[11] *Id*. at 7.

[12] *Id*. at 20.

[13] *Id*. at 7.

On June 27, 2013, Lagon filed a Motion for Partial Reconsideration.[14] In his Motion, Lagon requested that he be allowed to submit the judicial affidavit of his witnesses after the plaintiff shall have adduced his evidence. Lagon claimed that Section 2 of the Judicial Affidavit Rule, which mandates the submission by both parties of their judicial affidavits before the pre-trial conference is violative of his right to due process, hence unconstitutional.[15]

On July 10, 2013, Judge Velasco issued the assailed Order[16] denying Lagon's Motion for Partial Reconsideration.[17] Judge Velasco opined that "the requirement of the submission of judicial affidavits of witnesses, not later than 5 days before the pre-trial or preliminary conference or the scheduled hearing, under Section 2 of the Judicial Affidavit Rule is not violative of Lagon's right to due process.[18]

Dissatisfied with the ruling, Lagon sought direct recourse to this Court by filing the instant Petition for *Certiorari*[19] under Rule 65 of the Revised Rules of Court.

The Issue

The lone issue for this Court's resolution is whether or not Section 2 of the Judicial Affidavit Rule, which requires a defendant to adduce his testimony and that of his witnesses by judicial affidavits, and submit his documentary evidence before the pre-trial or preliminary conference, offends his right to due process of law.

In this regard, Lagon asserts that Judge Velasco committed grave abuse of discretion, amounting to lack or excess of

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[14] *Id*. at 66-69.

[15] *Id*. at 22.

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

[17] *Id*. at 7.

[18] *Id*. at 22.

[19] *Id*. at 3-19.

jurisdiction, by compelling him (Lagon) to submit his evidence by judicial affidavits, even before the plaintiff could have adduced his own evidence and rested his case. According to Lagon, under the Judicial Affidavit Rule, the defendant is forced to adduce evidence simultaneously with the plaintiff. This conflicts with the rule on Demurrer to Evidence, which grants a defendant the right to opt out of presenting evidence, and instead move for the dismissal of the complaint upon the failure of the plaintiff to show a right to relief. The defendant is thus stripped of his "due process right not to be compelled to adduce evidence."[20] Moreover, Lagon contends that the Judicial Affidavit Rule violates the order of trial provided under the Rules of Civil Procedure.[21] Additionally, it denies litigants of their right to present adverse, hostile or unwilling witnesses, or to secure the testimonies of witnesses by deposition upon oral examination or written interrogatories, because the party cannot secure their judicial affidavits.[22]

On the other hand, Dizon counters that no grave abuse of discretion may be ascribed against Judge Velasco for merely enforcing the rules promulgated by this Court. Dizon maintains that the Judicial Affidavit Rule was promoted precisely to address the problem of case congestion and delays created by the voluminous cases filed every year and the slow and cumbersome court proceedings. Likewise, Dizon avers that contrary to Lagon's claim, the Judicial Affidavit Rule actually preserves and respects litigants' procedural rights. Due process of law contemplates notice to the party, and an opportunity to be heard before judgment is rendered.[23] Lagon was accorded notice and an opportunity to be heard when Judge Velasco ordered the submission of judicial affidavits prior to the pre-trial conference. It was Lagon, who blatantly refused to comply with the order.[24]

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[20] *Id*. at 12.

[21] *Id*. at 13.

[22] *Id*.

[23] *Id*. at 83.

[24] *Id*.

Dizon points out that the Judicial Affidavit Rule does not in any way prevent Lagon from filing a demurrer to evidence if he feels that the same is truly warranted.[25]

Ruling of the Court

The instant petition is bereft of merit.

It must be noted at the outset that a petition for *certiorari* under Rule 65 of the Revised Rules of Court is a pleading limited to the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[26] "Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction."[27]

It is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion pertains to a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[28]

In the case at bar, Lagon accuses Judge Velasco of having committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed order,[29] requiring him

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[25] *Id*. at 84.

[26] *Tan v. Spouses Antazo,* 659 Phil. 400, 403 (2011).

[27] *Id*.

[28] *Id*. at 404, citing *Office of the Ombudsman v. Magno, et al.,* 592 Phil. 636, 652-653 (2008), further citing *Microsoft Corporation v. Best Deal Computer Center Corporation,* 438 Phil. 408, 414 (2002); *Cuison v. CA*, 351 Phil. 1089, 1101-1102 (1998).

[29] *Rollo*, pp. 20-21.

(Lagon) to submit his Judicial Affidavits before the commencement of the trial of the case.

The Court is not convinced.

In issuing the assailed order, Judge Velasco was actually enforcing the Judicial Affidavit Rule, promulgated by the Court. Therefore, by no stretch of the imagination may Judge Velasco's faithful observance of the rules of procedure, be regarded as a capricious, whimsical or arbitrary act.

Essentially, Article VIII, Section 5(5) of the 1987 Constitution bestows upon the Court the power to "promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts x x x."

Seeking to eradicate the scourge of long-drawn protracted litigations, and address case congestion and delays in court,[30] on September 4, 2012, the Court *en banc* promulgated A.M. No. 12-8-8-SC, or the Judicial Affidavit Rule.

The Judicial Affidavit Rule was particularly created to solve the following ills brought about by protracted litigations, such as, the dismissal of criminal cases due to the frustration of complainants in shuttling back and forth to court after repeated postponements; and the dearth of foreign businessmen making long-term investments in the Philippines because the courts are unable to provide ample and speedy protection to their investments, thereby keeping the people poor.[31] At first, the Court approved the piloting by trial courts in Quezon City of the compulsory use of judicial affidavits in place of the direct testimonies of witnesses.[32] Eventually, the success of the judicial affidavit rule was unprecedented, and its implementation led to a reduction of about two-thirds of the time used for presenting the testimonies of witnesses. Indeed, the use of judicial affidavits greatly hastened the hearing and adjudication of cases.[33]

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[30] *Ng Meng Tam v. China Banking Corporation*, 765 Phil. 979, 998 (2015).

[31] Judicial Affidavit Rule, A.M. No. 12-8-8-SC.

[32] *Id*.

[33] *Id*.

Accordingly, the Court *en banc* directed the application of the Judicial Affidavit Rule to all actions, proceedings, and incidents requiring the reception of evidence[34] before the following tribunals, such as,

(i) the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari'a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC; (ii) The Regional Trial Courts and the Shari'a District Courts; (iii) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts; (iv) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and (v) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.[35]

Thus, in all proceedings before the aforementioned tribunals, the parties are required to file the Judicial Affidavits of their witnesses, in lieu of their direct testimonies. Specifically, Section 2 of the Judicial Affidavit Rule ordains that:

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:

The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

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 or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the same has been

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[34] Except for cases before the Supreme Court and Small Claims cases.

[35] Judicial Affidavit Rule, Section 1.

identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.

This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

Incidentally, the failure to comply with Section 2 of the Judicial Affidavit Rule shall result to a waiver of the submission of the required judicial affidavits and exhibits. However, the court may, upon valid cause shown, allow the late submission of the judicial affidavit, subject to specific penalties, constituting a fine of not less than One Thousand Pesos (Php 1,000.00), nor more than Five Thousand Pesos (Php 5,000.00), at the discretion of the court.[36]

Despite the noble purpose of the Judicial Affidavit Rule, Lagon comes to this Court bewailing the same procedural regulation as violative of his right to due process of law, in that it "forces" him to present evidence even before the plaintiff has rested his case, apparently in violation of the rule on demurrer to evidence.

Juxtaposing the Judicial Affidavit Rule with that of the rule on demurrer to evidence, it becomes all too apparent that there exists no conflict between them. Similar to the judicial affidavit, a demurrer to evidence likewise abbreviates judicial proceedings, and serves as an instrument for the expeditious termination of an action.[37] It is as "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue."[38] All that

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[36] Judicial Affidavit Rule, Section 10.

[37] Willard B. Riano, *Civil Procedure: A Restatement for the Bar* (2009), p. 401, citing *The Consolidated Bank and Trust Corp. (SOLIDBANK) v. Del Monte Motor Works, Inc.*, 503 Phil. 103, 120 (2005).

[38] *Heirs of Pedro Pasag v. Spouses Parocha,* 550 Phil. 571, 582-583 (2007), citing H. Black, *Black's Law Dictionary*, 6th ed., (1990), p. 433.

it grants is an option to a defendant, to seek the dismissal of the case, should he believe that the plaintiff failed to establish his right to relief. The demurrer challenges the sufficiency of the plaintiff's evidence to sustain a verdict.[39] Thus, in passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the plaintiff's complaint.

Clearly, both the Judicial Affidavit Rule and Demurrer to Evidence can co-exist harmoniously as tools for a more efficient and speedy administration of trial procedures. On the one hand, the Judicial Affidavit Rule simply dispenses with the direct testimony, thereby reducing the time at which a case stands for trial, in the same way that the Demurrer to Evidence abbreviates proceedings by allowing the defendant to seek for an early resolution of the case should the plaintiff be unable to sufficiently prove his complaint. These rules do not conflict, and when used hand in hand will lead to an efficient administration of the trial.

Moreover, by no stretch of the imagination may it be concluded that Lagon was deprived of due process of law. There is nothing in the provisions of the Judicial Affidavit Rule, which prohibits a defendant from filing a demurrer to evidence, if he truly believes that the evidence adduced by the plaintiff is insufficient. Besides, in the resolution of the demurrer to evidence, only the evidence presented by the plaintiff shall be considered and weighed by the Court.

Furthermore, the fact that the defendant is mandated to submit his judicial affidavit prior to the trial and before the plaintiff has rested his case is not a cumbersome requirement or a circumvention of due process. On the contrary, this is necessary for the orderly administration of the proceeding before the courts. It must be remembered that in as early as the pre-trial conference, the defendant is already required to submit a pre-trial brief,

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[39] *Heirs of Pedro Pasag v. Spouses Parocha, et al., id.* at 583; *Ong v. People of the Philippines*, 396 Phil. 546, 555 (2000); *Gutib v. CA*, 371 Phil. 293, 300 (1999).

where he is then tasked to state the number and names of his witnesses, as well as the substance of their testimonies; the issues to be tried and resolved; and the documents or exhibits to be presented and the purpose thereof.[40] Thus, the defendant is already required in this early stage of the proceedings to formulate his defense and plan his strategy to counter the plaintiff's complaint. There is nothing too tedious or burdensome in requiring the submission of the judicial affidavit. In fact, this would even help the defendant in preparing his opposing arguments against the plaintiff.

All told, the Court has always emphasized that "procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."[41] It cannot be overemphasized that when the rules are clear, magistrates are mandated to apply them. Judge Velasco honored this principle by issuing the assailed order requiring the submission of judicial affidavits before the commencement of the trial of the case. Accordingly, he cannot be deemed to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction by strictly enforcing the Court's rules. Perforce, the Petition for *Certiorari* must be dismissed.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is **DENIED for lack of merit.** The Order dated June 6, 2013 in Civil Case No. 2293, issued by Hon. Dennis A. Velasco, Presiding Judge, Municipal Trial Court in Cities, Koronadal City, is **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Peralta, and *Perlas-Bernabe, JJ.,* concur.

Caguioa, J., on official business.

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[40] RULES OF COURT, Rule 18, Section 6.

[41] *CMTC International Marketing Corporation v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).

SECOND DIVISION

[G.R. No. 209527. February 14, 2018]

THE REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **VIRGIE (VIRGEL) L. TIPAY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN CIVIL REGISTRY UNDER RULE 108 OF THE RULES OF COURT; GOVERNS THE PROCEDURE FOR THE CORRECTION OF SUBSTANTIAL CHANGES IN THE CIVIL REGISTRY.— It is true that initially, the changes that may be corrected under the summary procedure of Rule 108 of the Rules of Court are clerical or harmless errors. Errors that affect the civil status, citizenship or nationality of a person, are considered substantial errors that were beyond the purview of the rule. Jurisprudence on this matter later developed, giving room for the correction of substantial errors. The Court ultimately recognized that substantial or controversial alterations in the civil registry are allowable in an action filed under Rule 108 of the Rules of Court, as long as the issues are properly threshed out in **appropriate adversarial proceedings**—effectively limiting the application of the summary procedure to the correction of clerical or innocuous errors. x x x **Evidently, the Republic incorrectly argued that the petition for correction under Rule 108 of the Rules of Court is limited to changes in entries containing harmless and innocuous errors.** The cited cases in the petition were already superseded by much later jurisprudence. Most importantly, with the enactment of Republic Act (R.A.) No. 9048 in 2001, the local civil registrars, or the Consul General as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order. This law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving the substantial corrections in the civil registry to Rule 108 of the Rules of Court.

2. ID.; ID.; ID.; WHERE THE PETITION TO CORRECT THE ERRONEOUS ENTRIES IN THE BIRTH CERTIFICATE WAS FILED BEFORE THE EFFECTIVITY OF REPUBLIC ACT NO. 10172, THE PROPER REMEDY WAS TO COMMENCE THE APPROPRIATE ADVERSARIAL PROCEEDINGS WITH THE REGIONAL TRIAL COURT PURSUANT TO RULE 108 OF THE RULES OF COURT.— R.A. No. 9048 defined a clerical or typographical error as a mistake committed in the performance of clerical work, which is harmless and immediately obvious to the understanding. It was further amended in 2011, when R.A. No. 10172 was passed to expand the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person when it is patently clear that there was a typographical error or mistake in the entry. Unfortunately, however, when Virgel filed the petition for correction with the RTC in 2009, R.A. No. 10172 was not yet in effect. **As such, to correct the erroneous gender and date of birth in Virgel's birth certificate, the proper remedy was to commence the appropriate adversarial proceedings with the RTC, pursuant to Rule 108 of the Rules of Court.** The changes in the entries pertaining to the gender and date of birth are indisputably substantial corrections, outside the contemplation of a clerical or typographical error that may be corrected administratively.

3. ID.; ID.; ID.; REQUIREMENTS UNDER RULE 103 OF THE RULES OF COURT CANNOT BE SUBSTITUTED WITH THAT OF RULE 108 AS THESE REMEDIES ARE DISTINCT AND SEPARATE FROM ONE ANOTHER; RESPONDENT'S NAME MAY BE CORRECTED AS A NECESSARY CONSEQUENCE OF THE CORRECTION OF HIS GENDER, AND TO ALLOW THE RECORD TO CONFORM TO THE TRUTH.— With respect to the change of his name to "*Virgel*," the Court does not agree with the CA that the requirements under Rule 103 of the Rules of Court may be substituted with that of Rule 108. These remedies are distinct and separate from one another, and compliance with one rule cannot serve as a fulfillment of the requisites prescribed by the other. Nonetheless, the Court has settled in *Republic v. Mercadera* that changes in one's name are not necessarily confined to a petition filed under Rule 103 of the Rules of Court. Rule 108, Section 2 of the

Rules of Court include "changes of name" in the enumeration of entries in the civil register that may be cancelled or corrected. Thus, the name "*Virgie*" may be corrected to "*Virgel*," as a necessary consequence of the substantial correction on Virgel's gender, and to allow the record to conform to the truth.

4. ID.; ID.; ID.; SINCE RESPONDENT FAILED TO DISCHARGE THE BURDEN OF PROVING THE SUPPOSED FALSITY IN HIS BIRTH CERTIFICATE, THE DATE OF BIRTH APPEARING IN THE NSO COPY IS PRESUMED VALID.— With respect to the date of Virgel's birth, the Court again disagrees with the CA that the alleged date (*i.e.*, February 25, 1976) is undisputed. The NSO copy of Virgel's birth certificate indicates that he was born on May 12, 1976, a date obviously different from that alleged in the petition for correction. As a public document, the date of birth appearing in the NSO copy is presumed valid and *prima facie* evidence of the facts stated in it. Virgel bore the burden of proving its supposed falsity. Virgel failed to discharge this burden. The police clearance presented to the trial court corroborates the entry in the NSO copy, indicating Virgel's date of birth as May 12, 1976. The Court is also unconvinced by the other documentary evidence supposedly showing that Virgel was born on February 25, 1976 because the information indicated in the identification card from the Bureau of Internal Revenue and the Member Data Record from the Philippine Health Insurance Corporation, were all supplied by Virgel. These are self-serving information, which do not suffice to overcome the presumption of validity accorded to the date of birth reflected in the NSO copy of Virgel's birth certificate.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Orlando Oco for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] brought under Rule 45 of the Rules of Court, seeking to reverse and set aside the October 9, 2013 Decision[2] of the Court of Appeals (CA) that denied the appeal of petitioner Republic of the Philippines (Republic) from the Decision[3] of the Regional Trial Court (RTC) of Lupon, Davao Oriental. The trial court, in turn, granted respondent Virgie (Virgel) L. Tipay's (Virgel) petition for the correction of certain entries in his birth certificate.[4]

Factual Antecedents

In a petition dated February 13, 2009, Virgel sought the correction of several entries in his birth certificate. Attached to the petition are two (2) copies of his birth certificate, respectively issued by the Municipal Civil Registrar of Governor Generoso, Davao Oriental and the National Statistics Office[5] (NSO). Both copies reflect his gender as "*FEMALE*" and his first name as "*Virgie*." It further appears that the month and day of birth in the local civil registrar's copy was blank, while the NSO-issued birth certificate indicates that he was born on May 12, 1976.[6] Virgel alleged that these entries are erroneous, and sought the correction of his birth certificate as follows: (a) his gender, from "*FEMALE*" to "*MALE*;" (b) his first name, from "*VIRGIE*" to "*VIRGEL*;" and (c) his month and date of birth to "*FEBRUARY 25, 1976*."[7]

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[1] *Rollo*, pp. 3-6.

[2] Penned by Associate Justice Romulo V. Borja, with Associate Justices Renato C. Francisco and Henri Jean Paul B. Inting, concurring; *id*. at 21-34.

[3] *Id*. at 46-49.

[4] *Id*. at 35-45.

[5] Designated now as the Philippine Statistics Authority, pursuant to Republic Act No. 10625, or the "Philippine Statistical Act of 2013."

[6] *Rollo*, p. 43.

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

The petition was found sufficient in form and substance, and the case proceeded to trial. Aside from his own personal testimony, Virgel's mother, Susan L. Tipay, testified that she gave birth to a son on February 25, 1976, who was baptized as "*Virgel*." The Certificate of Baptism, including other documentary evidence such as a medical certificate stating that Virgel is phenotypically male, were also presented to the trial court.[8]

Ruling of the RTC

There was no opposition to the petition. Soon after, the RTC rendered its Decision[9] dated July 27, 2010 granting Virgel's petition:

> WHEREFORE, premises considered, an Order is hereby issued:
>
> 1. Directing the Local Civil Registrar of Governor Generoso, Davao Oriental to cause the appropriate change in the Certificate of Live Birth of VIRGIE L. TIPAY upon payment of the required legal fees, particularly:
>
> | | | |
> |---|---|---|
> | First Name | : | From: VIRGIE
To: VIRGEL |
> | Sex | : | From: Female
To: MALE |
> | Date of Birth of Child | : | From: *no entry*
To: FEBRUARY 25, 1976 |
>
> SO ORDERED.[10]

From this decision, the Republic filed a Notice of Appeal, which was given due course by the trial court.[11] The Republic, through the Office of the Solicitor General (OSG) argued that the change of Virgel's name from Virgie should have been made through a proceeding under Rule 103, and not Rule 108 of the

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[8] *Id*. at 65-66.

[9] *Id*. at 80-83.

[10] *Id*. at 48-49.

[11] *Id*. at 12.

Rules of Court. This argument was premised on the assumption that the summary procedure under Rule 108 is confined to the correction of clerical or innocuous errors, which excludes one's name or date of birth. Since the petition lodged with the RTC was not filed pursuant to Rule 103 of the Rules of Court, the Republic asserted that the trial court did not acquire jurisdiction over the case.[12]

Virgel refuted these arguments, alleging that changes of name are within the purview of Rule 108 of the Rules of Court. He further disagreed with the position of the Republic and asserted that substantial errors may be corrected provided that the proceedings before the trial court were adversarial. He also argued that the proceedings before the RTC were *in rem*, which substantially complies with the requirements of either Rule 103 or Rule 108 of the Rules of Court.[13]

Ruling of the CA

The CA denied the Republic's appeal in its Decision[14] dated October 9, 2013, the dispositive of which reads:

> ACCORDINGLY, the appeal is DENIED. The July 27, 2010 Decision of the [RTC], 11th Judicial Region, Branch No. 32, Lupon, Davao Oriental, in Special Proceedings Case No. 243-09 is AFFIRMED *in toto.*
>
> SO ORDERED.[15]

In its assailed decision, the CA ruled in favor of Virgel, stating that while the correction of the entry on his gender is considered a substantial change, it is nonetheless within the jurisdiction of the trial court under Rule 108 of the Rules of Court. The CA also held that the petition filed with the trial court fully complied with the jurisdictional requirements of Rule 108 because notices

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[12] *Id.* at 55.

[13] *Id.* at 67-76.

[14] *Id.* at 21-34.

[15] *Id.* at 33.

were sent to the concerned local civil registrar and the OSG. Since Virgel was able to establish that he is indeed male, a fact which remains undisputed, the CA upheld the trial court's decision.[16]

As to the change of Virgel's name from "*Virgie*" to "*Virgel,*" the CA did not find any reason to depart from the decision of the RTC because it was more expeditious to change the entry in the same proceeding. The CA found that the correction of Virgel's name was necessary to avoid confusion, especially since his correct gender is male. In the same vein, the CA ruled that even if the petition with the RTC was considered a Rule 103 proceeding, the requirements under Rule 108 are substantially the same as that under Rule 103. Thus, the CA already deemed these requirements complied with.[17] Finally, regarding the month and date of Virgel's birth, the CA found the documentary evidence credible enough to establish that he was indeed born on February 25, 1976.[18]

Unsatisfied with the ruling of the CA, the Republic appealed to this Court insisting that the entries sought to be corrected are substantial changes outside the jurisdiction of the trial court. The Republic also reiterated its earlier arguments, adding that the CA should not have equated the procedural requirements under Rule 103 with that of Rule 108 of the Rules of Court.[19]

Ruling of the Court

The Court denies the petition. However, this Court finds that the evidence is insufficient to establish that Virgel was born on February 25, 1976.

Rule 108 of the Rules of Court governs the procedure for the correction of substantial changes in the civil registry.

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

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

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

[19] *Id*. at 13-15.

It is true that initially, the changes that may be corrected under the summary procedure of Rule 108 of the Rules of Court are clerical or harmless errors. Errors that affect the civil status, citizenship or nationality of a person, are considered substantial errors that were beyond the purview of the rule.[20]

Jurisprudence on this matter later developed, giving room for the correction of substantial errors. The Court ultimately recognized that substantial or controversial alterations in the civil registry are allowable in an action filed under Rule 108 of the Rules of Court, as long as the issues are properly threshed out in **appropriate adversarial proceedings**—effectively limiting the application of the summary procedure to the correction of clerical or innocuous errors.[21] The Court's ruling in *Republic v. Valencia,*[22] explained the adversarial procedure to be followed in correcting substantial errors in this wise:

> It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding summary in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the appropriate remedy is used. **This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding**. As a matter of fact, the opposition of the Solicitor General dated February 20, 1970 while questioning the use of Article 412 of the Civil Code in relation to Rule 108 of the Revised Rules of Court admits that "the entries sought to be corrected should be threshed out in an appropriate proceeding."
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Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register

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[20] *Republic v. Mercadera*, 652 Phil. 195, 207 (2010), citing *Chua Wee, et al. v. Republic,* 148 Phil. 422, 428 (1971).

[21] See *Wong, etc., et al. v. Republic, et al.*, 201 Phil. 69, 78-79 (1982).

[22] 225 Phil. 408 (1986).

are-(1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to-(l) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: (1) the civil registrar, and (2) any person having or claiming any interest under the entry whose cancellation or correction is sought.

If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be described as "summary". There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.[23] (Emphasis Ours)

Evidently, the Republic incorrectly argued that the petition for correction under Rule 108 of the Rules of Court is limited to changes in entries containing harmless and innocuous errors.[24] The cited cases in the petition were already superseded by much later jurisprudence.[25] Most importantly, with the enactment of Republic Act (R.A.) No. 9048[26] in 2001, the local civil registrars, or the Consul General as the case may be, are now authorized to correct clerical or typographical errors in

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[23] *Id*. at 413.

[24] *Rollo*, p. 14.

[25] See *Republic v. Olaybar*, 726 Phil. 378, 383 (2014); *Lee v. CA,* 419 Phil. 392, 403 (2001).

[26] AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES. Approved on March 22, 2001.

the civil registry, or make changes in the first name or nickname, without need of a judicial order.[27] This law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving the substantial corrections in the civil registry to Rule 108 of the Rules of Court.[28]

The RTC was correct in taking cognizance of the petition for correction of entries in Virgel's birth certificate.

R.A. No. 9048 defined a clerical or typographical error as a mistake committed in the performance of clerical work, which is harmless and immediately obvious to the understanding.[29] It was further amended in 2011, when R.A. No. 10172[30] was passed to expand the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person when it is patently clear that there was a typographical error or mistake in the entry.[31]

Unfortunately, however, when Virgel filed the petition for correction with the RTC in 2009, R.A. No. 10172 was not yet in effect. **As such, to correct the erroneous gender and date of birth in Virgel's birth certificate, the proper remedy was to commence the appropriate adversarial proceedings with the RTC, pursuant to Rule 108 of the Rules of Court**.[32] The

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[27] *R.A. No. 9048*, Section 1.

[28] *Re: Final Report on the Judicial Audit at the RTC of Paniqui, Tarlac*, 562 Phil. 597 (2007).

[29] *R.A. No. 9048*, Section 2(3).

[30] AN ACT FURTHER AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT CLERICAL OR TYPOGRAPHICAL ERRORS IN THE DAY AND MONTH IN THE DATE OF BIRTH OR SEX OF A PERSON APPEARING IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED NINETY FORTY-EIGHT. Approved on August 15, 2012.

[31] *Id.* at Section 1.

[32] *Republic v. Cagandahan*, 586 Phil. 637, 643-644 (2008).

changes in the entries pertaining to the gender and date of birth are indisputably substantial corrections, outside the contemplation of a clerical or typographical error that may be corrected administratively.

The records of this case show that Virgel complied with the procedural requirements under Rule 108 of the Rules of Court. He impleaded the local civil registrar of Governor Generoso, Davao Oriental, the Solicitor General, and the Provincial Prosecutor of Davao Oriental as parties to his petition for correction of entries.[33] The RTC then issued an order, which set the case for hearing on July 10, 2009. In compliance with Rule 108, Section 4 of the Rules of Court, the order was published for three (3) consecutive weeks in a newspaper of general circulation in the province of Davao Oriental. Additionally, the local civil registrar and the OSG were notified of the petition through registered mail.[34]

The OSG entered its appearance and deputized the Office of the Provincial Prosecutor of Mati, Davao City for purposes of the proceedings before the RTC. Accordingly, the prosecutor assigned to the case was present during the hearing but opted not to cross-examine Virgel or his mother after their respective testimonies. There was also no opposition filed against the petition of Virgel before the RTC.[35]

From the foregoing, it is clear that the parties who have a claim or whose interests may be affected were notified and granted an opportunity to oppose the petition. Two sets of notices were sent to potential oppositors—through registered mail for the persons named in the petition, and through publication, for all other persons who are not named but may be considered interested or affected parties.[36] A hearing was scheduled for the presentation of Virgel's testimonial and documentary

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[33] *Rollo*, p. 35.

[34] *Id.* at 27.

[35] *Id.*

[36] *Republic v. Coseteng-Magpayo*, 656 Phil. 550, 560 (2011).

evidence, during which time, the deputized prosecutor of the OSG was present, and allowed to participate in the proceedings. While none of the parties questioned the veracity of Virgel's allegations, much less present any controverting evidence before the trial court,[37] **the RTC proceedings were clearly adversarial in nature. It dutifully complied with the requirements of Rule 108 of the Rules of Court.**

Notably, the Republic does not assail whether the proceedings before the trial court were adversarial, but merely insists on the erroneous premise that a Rule 108 proceeding is limited to the correction of harmless, clerical or typographical errors in the civil registry.[38] Having established that the proper recourse for the correction of substantial changes in the civil registry is Rule 108 of the Rules of Court, the Court cannot sustain the Republic's assertion on this matter. The Court has long settled in *Republic v. Olaybar*[39] that as long as the procedural requirements in Rule 108 were observed, substantial corrections and changes in the civil registry, such as those involving the entries on sex and date of birth, may already be effected, *viz.*:

> Rule 108 of the Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings may either be summary or adversary. If the correction is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary. Since the promulgation of *Republic v. Valencia* in 1986, the Court has repeatedly ruled that "even substantial errors in a civil registry may be corrected through a petition filed under Rule 108, with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding." **An appropriate adversary suit or proceeding is one where the trial court has conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel have**

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[37] *Republic v. CA,* 286 Phil. 811, 815 (1992).

[38] *Rollo*, p. 14.

[39] 726 Phil. 378 (2014).

been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered.

It is true that in special proceedings, formal pleadings and a hearing may be dispensed with, and the remedy [is] granted upon mere application or motion. **However, a special proceeding is not always summary.** The procedure laid down in Rule 108 is not a summary proceeding *per se*. It requires publication of the petition; it mandates the inclusion as parties of all persons who may claim interest which would be affected by the cancellation or correction; it also requires the civil registrar and any person in interest to file their opposition, if any; and it states that although the court may make orders expediting the proceedings, it is after hearing that the court shall either dismiss the petition or issue an order granting the same. **Thus, as long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in entries of the civil register**.[40] (Emphases Ours)

Since the Republic was unable to substantiate its arguments, or even cite a specific rule of procedure that Virgel failed to follow, the Court has no reason to depart from the factual findings of the RTC, as affirmed by the CA. Furthermore, in the absence of evidence refuting Virgel's assertion that he is indeed phenotypically male, the correction of the entry on Virgel's sex in his birth certificate, from "*FEMALE*" to "*MALE,*" was correctly granted.

With respect to the change of his name to "*Virgel,*" the Court does not agree with the CA that the requirements under Rule 103 of the Rules of Court may be substituted with that of Rule 108. These remedies are distinct and separate from one another, and compliance with one rule cannot serve as a fulfillment of the requisites prescribed by the other.[41] Nonetheless, the Court has settled in *Republic v. Mercadera*[42] that changes in one's

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

[41] *Republic v. Coseteng-Magpayo*, *supra* note 36, at 557-558, citing *Republic v. Judge Belmonte*, 241 Phil. 966, 969 (1988).

[42] 652 Phil. 195 (2010).

name are not necessarily confined to a petition filed under Rule 103 of the Rules of Court. Rule 108, Section 2 of the Rules of Court include "changes of name" in the enumeration of entries in the civil register that may be cancelled or corrected. Thus, the name "*Virgie*" may be corrected to *"Virgel,"* as a necessary consequence of the substantial correction on Virgel's gender, and to allow the record to conform to the truth.

With respect to the date of Virgel's birth, the Court again disagrees with the CA that the alleged date (*i.e.,* February 25, 1976) is undisputed. The NSO copy of Virgel's birth certificate indicates that he was born on May 12, 1976, a date obviously different from that alleged in the petition for correction.[43] As a public document, the date of birth appearing in the NSO copy is presumed valid and *prima facie* evidence of the facts stated in it. Virgel bore the burden of proving its supposed falsity.[44]

Virgel failed to discharge this burden. The police clearance presented to the trial court corroborates the entry in the NSO copy, indicating Virgel's date of birth as May 12, 1976.[45] The Court is also unconvinced by the other documentary evidence supposedly showing that Virgel was born on February 25, 1976 because the information indicated in the identification card from the Bureau of Internal Revenue and the Member Data Record from the Philippine Health Insurance Corporation, were all supplied by Virgel.[46] These are self-serving information, which do not suffice to overcome the presumption of validity accorded to the date of birth reflected in the NSO copy of Virgel's birth certificate.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated October 9, 2013 of the Court of Appeals in CA-G.R. CV No. 02286 is **AFFIRMED**, only insofar as the corrections of the following

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[43] *Rollo*, p. 43.

[44] *Baldos v. CA, et al.,* 638 Phil. 601, 608 (2010).

[45] *Rollo*, p. 32.

[46] *Id.*

entries in the birth certificate are concerned: (a) first name, from "*Virgie*" to "*Virgel*;" and (b) gender, from "*FEMALE*" to "*MALE.*"

SO ORDERED.

Carpio (Chairperson), Peralta, and *Perlas-Bernabe, JJ.,* concur.

Caguioa, J., on official business.

FIRST DIVISION

[G.R. No. 218130. February 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERMIE PARIS *y* NICOLAS,** *accused,* **RONEL FERNANDEZ *y* DELA VEGA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; REQUISITES TO BE ADMISSIBLE IN EVIDENCE; WHERE THE ACCUSED WAS NOT ASSISTED BY AN INDEPENDENT AND VIGILANT COUNSEL AT ALL TIMES DURING HIS CUSTODIAL INVESTIGATION, ACCUSED'S EXTRAJUDICIAL CONFESSION IS INADMISSIBLE IN EVIDENCE.— It is settled that for an extrajudicial confession to be admissible in evidence against the accused, the same "must be (a) voluntary, (b) made with the assistance of a competent and independent counsel, (c) express, and (d) in writing." x x x Moreover, Section 2 of Republic Act (RA) No. 7438 requires that "any person arrested, detained, or under custodial investigation shall at all times be assisted by counsel." x x x Fernandez was not assisted by counsel at all times during his custodial investigation. The records show that Fernandez was assisted by Atty. Francisco

only during the time he executed his extrajudicial confession. However, no lawyer assisted Fernandez at the time he was arrested and brought to the police station to answer questions about the robbery with homicide. x x x Moreover, we agree with the CA that Atty. Francisco was not an independent counsel. x x x We have held that a lawyer who assists a suspect during custodial investigation should, as much as possible, be the choice of the suspect. It is also important that the lawyer who will assist the accused should be competent, independent and prepared to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights. In this case, the Court finds that Atty. Francisco was not vigilant in protecting the rights of Fernandez during the course of the custodial investigation. Atty. Francisco allowed Fernandez to answer each question without reminding him that he can refuse to answer them and/or remain silent. Given these circumstances, Fernandez's extrajudicial confession is inadmissible in evidence.

2. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; SUFFICIENT TO JUSTIFY CONVICTION IN CASE AT BAR; THE TWO ACCUSED WERE CO-CONSPIRATORS WHO ARE GUILTY OF ROBBERY WITH HOMICIDE.— Notwithstanding the inadmissibility of Fernandez' extrajudicial confession, his conviction for the crime of robbery with homicide can still be obtained on the basis of circumstantial evidence. "To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused. Jurisprudence requires that the circumstances must be established to form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime." x x x The following pieces of circumstantial evidence, as testified by Fernandez himself, established his guilt for the crime of robbery with homicide: *first*: Fernandez and Paris were acquaintances even prior to the incident; *second*: Fernandez opened the gate of Anna Leizel Trading without first checking who was knocking outside thereby allowing Paris and his companions to freely enter the premises; *third*: Paris and his companions purposely proceeded directly to the room occupied by the victim Salvador; *fourth*: Paris and his companions did not harm Fernandez despite

the latter having already recognized or seen their faces; instead, they went looking for Salvador who was then asleep and killed him; *fifth*: it was Fernandez who directed Paris and his companions to the office of Anna; *sixth*: Fernandez did not offer any resistance nor attempted to help Salvador; and, *seventh*: Fernandez did not do anything after seeing Paris and his companions leave Anna's office carrying a bag; interestingly, he waited for more than three hours before informing his employers about the incident. x x x [T]hese pieces of circumstantial evidence lead to a fair and reasonable conclusion that Fernandez and Paris conspired to rob Anna Leizel Trading making them the authors of the crime to the exclusion of all others. x x x Indeed, why would Paris and his companions harm and kill Salvador, who was totally unaware of their activities since he was inside his room sleeping, and leave Fernandez, who was a witness to their illegal acts, alive and unscathed? Time and again, the Court has ruled that when there is conspiracy, the act of one is the act of all. Thus, "[w]hen homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same." In the present case, both Fernandez and Paris were co-conspirators who are guilty of the special complex crime of robbery with homicide.

3. CRIMINAL LAW; REVISED PENAL CODE; SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE; PENALTY AND CIVIL LIABILITY; INCREMENTAL DAMAGES SHOULD BE PAID ONLY BY APPELLANT.— [A]s to the award of damages, the Court enunciated in *People v. Jugueta* that where the crime of robbery with homicide is committed and where the imposable penalty is *reclusion perpetua*, the proper amounts of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages. Here, the CA awarded ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱75,000.00 as civil indemnity, all with interest of 6% *per annum* from date of finality of Decision until full payment. It however, deleted the award of exemplary damages. Hence, pursuant to our ruling in *Jugueta*, there is a need to increase the award of moral damages from ₱50,000.00

to ₱75,000.00, temperate damages from ₱25,000.00 to ₱50,000.00, and impose exemplary damages in the amount of ₱75,000.00. The award of exemplary damages in the amount of ₱75,000.00 and the incremental amounts of ₱25,000.00 each in the awards of moral damages and temperate damages must be paid solely by appellant pursuant to Section 11, Rule 122 of the Rules of Court[.] x x x [T]he imposition of additional/ incremental damages is not favorable to Paris who did not appeal. Hence, only Fernandez should be made accountable therefor.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal filed by appellant Ronel Fernandez *y* Dela Vega (Fernandez) assailing the July 21, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06013 which affirmed with modification the Judgment[2] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69, in Criminal Case No. L-9196 dated January 22, 2013 finding him and his co-accused Hermie Paris *y* Nicolas (Paris) guilty beyond reasonable doubt of the special complex crime of robbery with homicide under Article 294 of the Revised Penal Code, as amended, and sentencing them to suffer the penalty of *reclusion perpetua*.

In an Information[3] dated June 17, 2011, Paris and Fernandez were charged with robbery with homicide, allegedly committed as follows:

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[1] CA *rollo,* pp. 199-231; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang.

[2] Records, pp. 140-173; penned by Judge Caridad V. Galvez.

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

That on or about June 15, 2011[,] midnight up to about June 16, 2011 early morning, in McKinley St., Poblacion, Binmaley, Pangasinan[,] and within the jurisdiction of this Honorable Court the above-named armed accused in conspiracy with each other, with evident premeditation did, then and there, wil[l]fully, unlawfully[,] and feloniously enter the Anna Leizel Construction Supply building and thereafter broke into the office of the said establishment and upon gaining entry[,] the said accused took[,] with intent to gain[,] the assorted pieces of jewelry worth the sum of ₱128,000.00 and the cash amounting to ₱700,000.00, all owned by Anna Leizel S. Abagat (without her consent) and on the occasion of such asportation, the said accused stabbed Reymark Salvador, a stay-in worker in the establishment on several parts of his body with the [use] of a sharp[-] pointed [weapon] causing the instantaneous death of the said Reymark Salvador, to the prejudice and damage of the said Anna Leizel S. Abagat and the heirs of Reymark Salvador.

Contrary to Article 293 in relation to Articles 294 and 299 of the Revised Penal Code.

During arraignment, Paris and Fernandez separately pleaded not guilty to the offense charged against them. At the pre-trial conference, the prosecution and the defense stipulated on the following facts: that the incident happened at McKinley St., Binmaley, Pangasinan; the identity of the accused and the appellant; and that Fernandez was a stay-in worker of Anna Leizel Trading and Construction Supply (Anna Leizel Trading) at the time of the incident. Trial on the merits followed.

Version of the Prosecution

The prosecution presented the following witnesses: PO1 Osman Honrado, P/C Insp. Mary Ann Cayabyab, Dr. Gladiola Manaois, SPO1 Jose Ysit (SPO1 Ysit), Atty. Franco Francisco (Atty. Francisco), Anna Leizel Abagat (Anna), and Luisito Salvador. Their testimonies were summarized by the Office of the Solicitor General in the Consolidated Brief for Plaintiff-Appellee[4] as follows:

At around midnight of June 16, 2011, Reymark Salvador (Salvador) and Fernandez were sleeping in their separate rooms

[4] CA *rollo,* pp. 163-182.

in the warehouse of Anna Leizel Trading at McKinley Street, Binmaley, Pangasinan.

Fernandez woke up when he heard someone knocking on the gate of the warehouse. He then got up from his bed, opened the gate, and let Paris and his unnamed companions enter the warehouse.

Once inside, Paris and one of his companions asked Fernandez where the office of Anna Leizel Abagat (Anna) is located. Fernandez pointed Anna's office to them. However, before going to said office, Paris and his companion went to Salvador's room. Fernandez heard Salvador crying for help.

Moments later, Paris and his companion left the room but Fernandez could no longer hear anything from Salvador.

Paris and his companions proceeded to Anna's office and began searching the place. Several minutes later, Paris left the office carrying a big bag.

At around five o'clock in the morning of the next day, Fernandez texted Russel Abagat (Russel), Anna's husband, informing him that something happened to Salvador. Fernandez went to the Abagat's residence and informed Russel and Anna that Salvador was stabbed several times.

Fernandez, Russel, and Anna went to the warehouse. Thereat, Fernandez accompanied them to the comfort room where they saw the lifeless body of Salvador.

Russel and Anna went to Binmaley Police Station and reported the incident. Together with several police officers, they went back to the warehouse. When they arrived thereat, Anna proceeded to her office and saw that the door's safety lock was destroyed. When she went inside, she saw that the safety hubs of the steel cabinet were also destroyed and discovered that the money and pieces of jewelry inside the steel cabinet were missing.

Anna approached Fernandez and asked him about what happened in her office. Fernandez apologized and told her that the missing money and pieces of jewelry from her cabinet were taken by Paris and the latter's companions.

Anna called the police officers and informed them of Fernandez's confession. The latter was then brought to Binmaley Police Station.

While at the police station, Colonel Samson, the Chief of Police, informed Senior Police Officer I Jose Ysit (SPO1 Ysit) of Fernandez's intention to confess. At that time, Mercedes dela Vega Fernandez (Mercedes), Fernandez's mother, was also present. SPO1 Ysit approached Fernandez and confirmed from the latter his intention to confess. SPO1 Ysit asked Fernandez whether he wanted a counsel [to] which the latter answered in the affirmative.

Several police officers went to Binmaley City Hall to look for a lawyer. They found Atty. Franco C. Francisco (Atty. Francisco) and informed him that a person in the police station needs a lawyer.

Atty. Francisco went to the police station, and met Fernandez. Atty. Francisco informed Fernandez that he can choose another counsel but the latter told him that he preferred him.

Atty. Francisco also informed Fernandez that any information he will disclose during the confession may be used against him. Fernandez replied that he is aware of the consequences of his voluntary confession.

Fernandez, Mercedes, and Atty. Francisco together with SPO1 Ysit went to the investigator and made his Extra-Judicial Confession x x x. Atty. Francisco translated and explained every question to Fernandez.

When the confession was completed, SPO1 Ysit printed a copy of said confession. Atty. Francisco read and explained one by one the contents of said written confession in the Pangasinan dialect to Fernandez. The extra-judicial confession was then freely signed by Fernandez, Mercedes and Atty. Francisco.

Dr. Gladiola Manaois (Dr. Manaois), the Municipal Health Officer of Binmaley, Pangasinan, testified that she conducted an autopsy on the body of Salvador. She placed her findings in an autopsy report. According to Dr. Manaois, Salvador sustained several stab wounds on his neck and chest which have been caused by a pointed sharp instrument such as a knife or bolo. Dr. Manaois confirmed that the cause of the death of Salvador was due to *hypovolemic* shock secondary to multiple stab wounds.[5]

Version of the Defense

The defense presented Fernandez, Paris, and his sister, Alicia Paris (Alicia). Their testimonies are summarized as follows:

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[5] *Id*. at 168-170.

Fernandez testified that he was a stay-in worker at Anna Liezel Trading. Prior to the incident on June 15, 2011, Fernandez met Paris who worked at Trio 8 Hardware, a nearby hardware store across the street.

At around 12 midnight of June 15, 2011, someone knocked at the gate of the warehouse of Anna Liezel Trading. Thinking it was his employer, Fernandez opened the gate. However, to his surprise, it was Paris and two other unidentified companions all of whom were armed with knives. One of Paris' companions then pushed him and poked him with a 29-cm. knife. Paris and his companions then proceeded to where Salvador was sleeping. He heard Salvador screaming, "*Bok, tulong!*" but he could not have done anything since he was held by one of Paris' companions.

Thereafter, the person who held a knife against him covered Fernandez's eyes with a blindfold. Fernandez then heard a commotion inside Anna's office. After a few minutes, Paris removed the blindfold. The person who held him tried to stab him but Paris prevented it. He claimed that one of Paris' companions threatened to kill him and his family and told him not to report the incident. Thereafter, he saw Paris and his companions leave in a tricycle carrying a bag.

Fernandez then checked on Salvador. He saw Salvador in a pool of blood with several stab wounds in different parts of his body. He was frightened after seeing Salvador dead on the floor. Fernandez then stayed in his room for about three to four hours. He then texted Anna's husband, Russel Abagat, (Russel) to inform him of the incident. After getting no response, Fernandez rode a bicycle and went to Anna's house. He told Russel that something had happened to Salvador.

The two then proceeded to the warehouse. Anna followed, and soon, the police arrived. Fernandez was then apprehended and brought to the police station without being informed of the reason for his arrest.

At the police station, Fernandez claimed that he was forced to admit his participation in the crime. He claimed that three

police officers had inflicted bodily harm upon him by hitting the back of his head and his forehead. This caused him to admit his participation in the crime to SPO1 Ysit. Although he signed an extrajudicial confession, Fernandez denied the truthfulness of the same. He claimed that he only admitted the crime because of fear of being subjected to more physical harm while under the custody of the police. Fernandez claimed that he gave honest answers to questions that pertained to the participation of Paris and his companions.[6]

With regard to Atty. Francisco's assistance during the investigation, Fernandez claimed that Atty. Francisco explained the extrajudicial confession only after it was already printed out and covered only some questions asked. Fernandez claimed that Atty. Francisco did not explain the part of the confession where he admitted joining the culprits in plotting the crime nor the possibility of him being charged with Paris.[7] He further claimed that he signed the extrajudicial confession only because Atty. Francisco and the police promised to make him a star witness to the crime.[8]

Paris, on the other hand, offered the defenses of denial and alibi. He testified that he knew Fernandez since the latter worked at Anna Liezel Trading, a hardware store across the street from Trio 8 Hardware where he used to work. He testified that he was terminated from his employment on June 13, 2011 due to his involvement in an untoward incident during which he was drunk and offended the female employees of Anna Liezel Trading. As a result, Anna reported the said incident to Paris' employer which caused his termination from work.[9]

Paris denied the accusations against him and claimed that he was asleep in their house at Brgy. Tebag, Sta. Barbara at the time of the incident. He claimed that he was at their house

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[6] *Id*. at 78.

[7] *Id*.

[8] TSN, June 14, 2012, pp. 3-36.

[9] TSN, August 2, 2012, pp. 12-13.

the whole day. The following day on June 16, 2011, Paris claimed that he had a drinking spree in the morning and attended a birthday party thereafter. Police officers from Binmaley arrived and invited him for a few questions concerning a child whom Paris allegedly had ran over. When they arrived at Binmaley, Paris was then immediately detained. He claimed that he was forced to admit his participation in the crime when police officers threatened to shoot him, inserted a .38 caliber in his mouth and inflicted physical harm upon him.

When asked how far his house in Brgy. Tebag, Sta. Barbara was from the warehouse in Binmaley, Paris testified that it was about thirty minutes travel time if he used his own vehicle.[10]

Alicia corroborated Paris' testimony that he was at home at the time of the incident. She claimed that Paris slept at 8:00 p.m. and woke up between 6:00 a.m. and 7:00 a.m. the following day on June 16, 2011.[11]

Ruling of the Regional Trial Court (RTC)

On January 22, 2013, the RTC of Lingayen, Pangasinan, Branch 69, rendered judgment finding Paris and Fernandez guilty as charged. The RTC was convinced that the extrajudicial confession of Fernandez was obtained in accordance with constitutional requirements. The RTC thus found Fernandez's extrajudicial confession admissible and used it as basis to establish the conspiracy between Paris and Fernandez to commit the crime of robbery.

The dispositive portion of the RTC's Judgment reads:

> WHEREFORE, in light of all the foregoing, both accused Hermie Paris and Ronel Fernandez are found guilty beyond reasonable doubt of the special complex crime of ROBBERY WITH HOMICIDE and are hereby imposed the penalty of reclusion perpetua.
>
> Accused Hermie Paris and Ronel Fernandez are ORDERED to PAY, jointly and severally, the heirs of Reymark Salvador ₱75,000.00

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[10] *Id*. at 9 and 19.

[11] TSN, August 28, 2012, pp. 5-7.

and ₱30,000.00 as moral damages and exemplary damages, respectively; and to pay ₱25,000.00 as temperate damages, in lieu of actual damages of a lesser amount for the funeral and other expenses.

On the other hand, accused are likewise ordered to pay jointly and severally Anna Liezel Abagat the amount of ₱800,000.00 constituting the actual damages suffered.

SO ORDERED.[12]

Aggrieved by the RTC's Judgment, Paris and Fernandez elevated their case to the CA.

Ruling of the Court of Appeals

On July 21, 2014, the CA affirmed the RTC's Judgment with modification as follows:

WHEREFORE, premises considered, the appeal is DENIED for lack of merit. The Judgment dated 22 January 2013 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 in Criminal Case No. L-9196 finding accused-appellants Hermie Paris *y* Nicolas and Ronel Fernandez *y* Dela Vega guilty beyond reasonable doubt of the special complex crime of robbery with homicide under Article 294 of the Revised Penal Code, as amended, and sentencing them to suffer the penalty of *reclusion perpetua*, and to pay the heirs of Reymark Salvador, jointly and severally, the amount of Php25,000.00 as temperate damages is AFFIRMED WITH MODIFICATION in that the amounts of Php75,000.00 as civil indemnity and Php50,000.00 (instead of Php75,000.00) as moral damages should also be jointly and severally paid by them to the heirs of Reymark Salvador; the amount of Php30,000.00 as exemplary damages in favor of the said heirs is DELETED; the amount of Php700,000.00 (instead of Php800,000.00) should be jointly and severally paid by them to Anna Leizel Abagat as actual damages; and interest at the legal rate of 6% per annum on all the damages, from the date of finality of this Decision until fully paid, is also awarded.

SO ORDERED.[13]

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[12] Records, p. 173.

[13] CA *rollo,* p. 227.

Dissatisfied with the CA's Decision, Fernandez filed a Notice of Appeal[14] dated August 8, 2014.

Issue

The issue in this case is whether Fernandez was guilty of robbery with homicide.

According to Fernandez, his extrajudicial confession cannot be used against him since the same was inadmissible. He further claims that there was insufficient circumstantial evidence against him and that the prosecution failed to establish conspiracy. Fernandez insists that the RTC erroneously convicted him since the prosecution failed to prove his guilt beyond reasonable doubt.

Our Ruling

Admissibility of Fernandez's extrajudicial confession

It is settled that for an extrajudicial confession to be admissible in evidence against the accused, the same "must be (a) voluntary, (b) made with the assistance of a competent and independent counsel, (c) express, and (d) in writing."[15]

Article III, Section 12 of the 1987 Constitution provides:

(1) Any person under investigation for the commission of an offense shall have the right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) **Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.**

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[14] *Id.* at 237.

[15] *People v. Peñaflor*, 766 Phil. 484, 500 (2015).

x x x x x x x x x

(Emphasis supplied)

Moreover, Section 2 of Republic Act (RA) No. 7438[16] requires that "any person arrested, detained, or under custodial investigation shall at all times be assisted by counsel."

In *People v. Cachuela*,[17] the Court held that a custodial investigation is:

> any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. x x x It begins when there is no longer a general inquiry into an unsolved crime and the investigation has started to focus on a particular person as a suspect, i.e., when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense.

In this case, Fernandez was not assisted by counsel at all times during his custodial investigation. The records show that Fernandez was assisted by Atty. Francisco only during the time he executed his extrajudicial confession. However, no lawyer assisted Fernandez at the time he was arrested and brought to the police station to answer questions about the robbery with homicide.

Fernandez testified that he was brought to the Binmaley Police Station at 6:00 a.m. on June 16, 2011 and was asked if he was the one responsible for the crime and if he would rather admit the same.[18] Despite the fact that he was already considered as a suspect of the crime, Fernandez was not assisted by a lawyer at that time. Atty. Francisco only arrived past 1:00 p.m. after

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[16] AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF. Approved April 27, 1992.

[17] 710 Phil. 728, 739 (2013).

[18] TSN, June 14, 2012, pp. 24-26.

Fernandez had already been subjected to questioning by the police officers starting 6:00 a.m.[19] Thus, prior to 1:00 p.m., while Fernandez was in the custody of the Binmaley police and under investigation as a suspect, he was not able to confer with any lawyer.

Moreover, we agree with the CA that Atty. Francisco was not an independent counsel. Atty. Francisco testified that he was a legal consultant in the Office of the Municipal Mayor of Binmaley.[20] As such, his duty was to provide legal advice to the Mayor whose duty, in turn, is to execute the laws and ordinances and maintain peace and order in the municipality. To our mind, Atty. Francisco cannot be considered as an independent counsel since protecting the rights of Fernandez as a suspect is in direct conflict with his duty to the Municipal Mayor and the local government of the Municipality. We have held that a lawyer who assists a suspect during custodial investigation should, as much as possible, be the choice of the suspect. It is also important that the lawyer who will assist the accused should be competent, independent and prepared to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights.[21]

In this case, the Court finds that Atty. Francisco was not vigilant in protecting the rights of Fernandez during the course of the custodial investigation. Atty. Francisco allowed Fernandez to answer each question without reminding him that he can refuse to answer them and/or remain silent.[22]

Given these circumstances, Fernandez's extrajudicial confession is inadmissible in evidence.

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[19] TSN, July 5, 2012, pp. 17-18.

[20] TSN, March 20, 2012, pp. 28-30.

[21] *People v. Cachuela*, *supra* note 17 at 739-730.

[22] TSN, March 20, 2012, pp. 5, 7.

Sufficiency of the Circumstantial Evidence

Notwithstanding the inadmissibility of Fernandez' extrajudicial confession, his conviction for the crime of robbery with homicide can still be obtained on the basis of circumstantial evidence. "To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused. Jurisprudence requires that the circumstances must be established to form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime."[23]

In *Espineli v. People*,[24] we explained circumstantial evidence as follows:

> x x x Circumstantial evidence is that evidence 'which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established.' Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence would be sufficient to convict the offender if i) there is more than one circumstance; ii) the facts from which the inference is derived are proven; and iii) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. All the circumstances must be consistent with one another, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent. Thus, conviction based on circumstantial evidence can be upheld provided that the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others as the guilty person.

The following pieces of circumstantial evidence, as testified by Fernandez himself, established his guilt for the crime of robbery with homicide: *first:* Fernandez and Paris were acquaintances even prior to the incident; *second:* Fernandez opened the gate of Anna Leizel Trading without first checking who was knocking outside thereby allowing Paris and his companions to freely enter the premises; *third:* Paris and his

[23] *Dungo v. People*, 762 Phil. 630, 679 (2015).

[24] 735 Phil. 530, 539-540 (2014).

companions purposely proceeded directly to the room occupied by the victim Salvador; *fourth:* Paris and his companions did not harm Fernandez despite the latter having already recognized or seen their faces; instead, they went looking for Salvador who was then asleep and killed him; *fifth:* it was Fernandez who directed Paris and his companions to the office of Anna; *sixth:* Fernandez did not offer any resistance nor attempted to help Salvador; and, *seventh:* Fernandez did not do anything after seeing Paris and his companions leave Anna's office carrying a bag; interestingly, he waited for more than three hours before informing his employers about the incident.

To our mind, these pieces of circumstantial evidence lead to a fair and reasonable conclusion that Fernandez and Paris conspired to rob Anna Leizel Trading making them the authors of the crime to the exclusion of all others. Under Article 8 of the Revised Penal Code, "[a] conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and [decide] to commit it." In this case, considering the abundance of circumstantial evidence against Fernandez and Paris, the Court finds that Fernandez and Paris conspired to rob Anna. As aptly held by the CA:

> x x x We find that said acts of accused-appellant Fernandez, when taken together with the acts of Paris and his two unidentified companions, show concerted action and joint purpose. x x x [I]t is contrary to human nature that, if Paris and his companions were the only perpetrators of the crime charged, they would also have killed Fernandez to prevent him from being a witness and not merely frighten him.[25]

Indeed, why would Paris and his companions harm and kill Salvador, who was totally unaware of their activities since he was inside his room sleeping, and leave Fernandez, who was a witness to their illegal acts, alive and unscathed?

Time and again, the Court has ruled that when there is conspiracy, the act of one is the act of all.[26] Thus, "[w]hen

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[25] CA *rollo*, p. 224.

[26] *People v. Lago*, 411 Phil. 52, 61 (2001).

homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same."[27] In the present case, both Fernandez and Paris were co-conspirators who are guilty of the special complex crime of robbery with homicide.

Finally, as to the award of damages, the Court enunciated in *People v. Jugueta*[28] that where the crime of robbery with homicide is committed and where the imposable penalty is *reclusion perpetua,* the proper amounts of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages. Here, the CA awarded ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱75,000.00 as civil indemnity, all with interest of 6% *per annum* from date of finality of Decision until full payment. It however, deleted the award of exemplary damages. Hence, pursuant to our ruling in *Jugueta*, there is a need to increase the award of moral damages from ₱50,000.00 to ₱75,000.00, temperate damages from ₱25,000.00 to ₱50,000.00, and impose exemplary damages in the amount of ₱75,000.00. The award of exemplary damages in the amount of ₱75,000.00 and the incremental amounts of ₱25,000.00 each in the awards of moral damages and temperate damages must be paid solely by appellant pursuant to Section 11, Rule 122 of the Rules of Court which provides, *viz.*:

> Section 11. *Effect of appeal by any of several accused.* —
>
> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

Here, the imposition of additional/incremental damages is not favorable to Paris who did not appeal. Hence, only Fernandez should be made accountable therefor.

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[27] *People v. Diu*, 708 Phil. 218, 237 (2013).

[28] G.R. No. 202124, April 5, 2016, 788 SCRA 331, 373.

In fine, based on the evidence on record, save as to the amount of damages awarded, the Court finds no reason to disturb the findings of the CA that Fernandez is guilty beyond reasonable doubt of robbery with homicide.

WHEREFORE, the July 21, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06013 is **AFFIRMED with MODIFICATION** as regards the award of damages as follows: exemplary damages is imposed in the amount of ₱75,000.00; moral damages is increased from ₱50,000.00 to ₱75,000.00; and temperate damages is increased from ₱25,000.00 to ₱50,000.00. The incremental amounts imposed in the awards of moral damages and temperate damages, and the additional award of exemplary damages shall be paid solely by appellant Ronel Fernandez *y* Dela Vega pursuant to Section 11, Rule 122 of the Rules of Court.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 218402. February 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAMIL GALICIA *y* CHAVEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); MAINTENANCE OF A DRUG

[*] Designated as additional member per November 29, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

DEN, ESSENTIAL ELEMENT OF; FAILURE TO ALLEGE AND PROVE THAT DANGEROUS DRUGS WERE BEING SOLD AND/OR USED INSIDE THE SUBJECT SHANTY, APPELLANT MAY NOT BE HELD LIABLE FOR MAINTENANCE OF A DRUG DEN.— For an accused to be convicted of maintenance of a drug den, the prosecution must establish with proof beyond reasonable doubt that the accused is maintaining a den where any dangerous drug is administered, used, or sold. It must be established that the alleged drug den is a place where dangerous drugs are regularly sold to and/or used by customers of the maintainer of the den. x x x After scouring through the records of the case, the Court finds that the prosecution failed to clearly establish that the appellant was guilty of violation of maintenance of a drug den. From the testimonies of the arresting officers, it is clear that the prosecution failed to establish that the shanty where appellant was found was a place where dangerous drugs were **sold or used**. The prosecution's witnesses merely testified that when they entered Target No. 8, they found drug paraphernalia inside the shanty and sachets of crystalline substance in the person of the appellant. The prosecution failed to allege and prove an essential element of the offense — that dangerous drugs were being sold or used inside the shanty located at Target No. 8. What was clear was that appellant was caught in possession of *shabu* and drug paraphernalia. There was nothing in evidence that would indicate that the arresting officers saw that dangerous drugs were being sold and/or used at Target No. 8 in the course of the search of the premises. Since there was no evidence that dangerous drugs were sold and/or used in the shanty located at Target No. 8, appellant may not be held liable for violation of Section 6, Article II, RA 9165 on maintenance of a drug den.

2. **ID.; ID.; ILLEGAL POSSESSION OF DRUGS AND DRUG PARAPHERNALIA, SUFFICIENTLY ESTABLISHED.—** The Court finds that the prosecution sufficiently established appellant's possession of drugs and drug paraphernalia. Both PO2 Beascan and SPO3 Agbalog categorically declared that they found the drugs and the drug paraphernalia in the possession of the appellant during the course of the implementation of the search warrant.

3. **ID.; ID.; ID.; USE OF DANGEROUS DRUGS IS ABSORBED BY ILLEGAL POSSESSION OF DRUGS.—** It is clear from the above that x x x Section 15 does not apply when a person charged with violation of Section 15, Article II, RA 9165 on

use of dangerous drugs, is also found to have possession of such quantity of drugs provided under Section 11 of the same law. This means that appellant may not be charged separately of violation of Section 11 on illegal possession of dangerous drugs and of Section 15 on use of dangerous drug since it is clear from the above that the provisions of Section 11 shall apply. Illegal possession of dangerous drugs absorbs the use of dangerous drugs. This is especially true in this case since appellant was not caught in the act of using drugs. Instead he was caught in the act of possessing drugs and drug paraphernalia. For this reason, the Court dismisses Criminal Case No. 14823-D against appellant on use of dangerous drugs as the same is absorbed by Section 11 on illegal possession of dangerous drugs.

4. ID.; ID.; CHAIN OF CUSTODY RULE; THE POLICE OFFICERS PROPERLY PRESERVED THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUGS AND DRUG PARAPHERNALIA; FAILURE OF THE PROSECUTION TO PRESENT THE FORENSIC CHEMIST TO TESTIFY ON HOW THE SEIZED ITEMS WERE HANDLED AND TAKEN INTO CUSTODY IS NOT FATAL.— With regard to the alleged failure of the police officers to comply with the procedure required in the 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. As correctly held by the CA, the police officer[s] properly preserved the integrity and evidentiary value of the seized items when SPO2 Agbalog and PO2 Beascan seized and marked the sachets of *shabu* with the markings "RLB-1 to RLB-8" and "RLB-9-RLB17" for the aluminum foil tooters. Thereafter, the items were inventoried under the Receipt of Property Seized. PO2 Beascan then delivered the items to the PNP Crime Laboratory for examination. In the Initial Laboratory Report No. D-122-06 dated February 11, 2006 by Forensic Chemist P/Insp. Alejandro C. De Guzman, "RLB-1" to "RLB-8" as well as the aluminum foil tooters marked as "RLB-10", "RLB-12", "RLB-13", and "RLB-17" tested positive for the presence of Methamphetamine Hydrochloride. Finally, the same sachets and aluminum foil tooters were presented and turned over to the court where SPO2 Agbalog declared that the said items were the same items that were seized from the appellant. The failure of the prosecution to present the forensic chemist to testify on

how the seized items were handled and taken into custody is not fatal to the admissibility of the seized drugs and its paraphernalia. x x x What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, the Court upholds the findings of the CA that the *shabu* and its paraphernalia that were presented in court were the same items seized from the appellant with its integrity and evidentiary value uncompromised.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal filed by Ramil Galicia *y* Chavez (appellant) assailing the March 22, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 04637 which affirmed the December 19, 2007 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 154, in Criminal Case Nos. 14821-D, 14822-D, 14823-D, and 14824-D finding him guilty beyond reasonable doubt of violation of Sections 6, 11, 12, and 15, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Sections 6, 11, 12, and 15, Article II of RA 9165 allegedly committed as follows:

CRIMINAL CASE NO. 14821-D
(For violation of Section 6, Article II, RA 9165)

That on or about February 10, 2006, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named

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[1] CA *rollo,* pp. 352-372; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr.

[2] Records, pp. 131-215; penned by Judge Abraham B. Borreta.

accused, without any lawful authority, did then and there willfully, unlawfully, and feloniously maintain a drug den located at the compound along F. Soriano Street, Barangay Palatiw, Pasig City, where dangerous drugs and/ or controlled precursors and essential chemicals are administered, delivered, stored for illegal purposes, distributed, sold, or used in any form, in violation of the above-cited law.

CONTRARY TO LAW.[3]

CRIMINAL CASE NO. 14822-D

(For violation of Section 11, Article II, RA 9165)

That on or about February 10, 2006, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess or otherwise use any dangerous drugs, did then and there, willfully, unlawfully, feloniously, and knowingly have in his possession, custody, and control the following:

a) 0.16 [gram] 'RLB-1'
b) 0.15 [gram] 'RLB-2'
c) 0.15 [gram] 'RLB-3'
d) 0.13 [gram] 'RLB-4'
e) 0.11 [gram] 'RLB-5'
f) 0.19 [gram] 'RLB-6'
g) 0.11 [gram] 'RLB-7'
h) 0.15 [gram] 'RLB-8'

totalling 1.15 grams of Methamphetamine Hydrochloride, commonly known as 'shabu,' a dangerous drug, and twenty (20) unsealed transparent plastic sachets and four (4) aluminum foils (specimen J [RLB-10], specimen L [RLB-12], specimen M [RLB-13], specimen Q [RLB-17]), each containing traces of 'shabu' in violation of the above-cited law.

CONTRARY TO LAW.[4]

CRIMINAL CASE NO. 14823-D
(For violation of Section 15, Article II, RA 9165)

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

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

That on or about February 10, 2006, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, knowingly, and feloniously use, sniff, inhale, or introduce to [his] body, in any manner, methamphetamine hydrochloride commonly known as 'shabu', a dangerous drug, in violation of the aforecited law.

Contrary to law.[5]

CRIMINAL CASE NO. 14824-D
(For violation of Section 12, Article II, RA 9165)

That on or about February 10, 2006, in the City of Pasig, 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 the following, to wit:

a) One (1) digital Tanika black weighing scale
b) One (1) digital Tanika blue weighing scale
c) Seven (7) disposable lighters and
d) Four (4) stainless scissors
e) Five (5) improvised aluminum tooters

which are fit or intended for smoking, consuming, administering, ingesting, or introducing any dangerous drug into the body, in violation of the above-cited law.

CONTRARY TO LAW.[6]

Appellant pleaded not guilty to the offenses charged. Joint trial on the merits followed.

Version of the Prosecution

Arnel Tugade (Tugade), a camera man of the television program "Mission X," received an anonymous call regarding a *shabu tiangge* inside the Mapayapa compound along F. Soriano Street, Pasig City where there was rampant selling and use of *shabu.* Tugade verified the tip by bringing a camera in the compound where he conducted an undercover surveillance and

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[5] *Id*. at 35.

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

filmed the drug-related activities he witnessed inside the said compound.

On January 30, 2006, Tugade went to the office of the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) to report the rampant selling and use of *shabu* within the said compound. Tugade showed the PNP Chief Director and other officers of the AIDSOTF a 15-minute video showing several persons selling and using *shabu* inside shanties found within the compound.

After watching the surveillance footage, Police Senior Inspector Ismael G. Fajardo, Jr. (P/Insp. Fajardo, Jr.) was instructed to conduct further surveillance of the activities inside the compound. P/Insp. Fajardo, Jr. assigned PO2 James Nepomuceno (PO2 Nepomuceno) to accompany Tugade inside the compound to take another video of the compound and to conduct a test-buy.

On January 31, 2006, PO2 Nepomuceno and Tugade went to the compound and conducted a surveillance. They were able to take video footage of several persons selling and using *shabu* inside the compound. They were also able to conduct a test-buy of *shabu* worth ₱300.00. The following day, PO2 Nepomuceno and Tugade conducted another test-buy inside the compound and they were able to buy ₱100.00 worth of *shabu*. Both specimen were submitted to the PNP Crime Laboratory for examination and both tested positive for methamphetamine hydrochloride or *shabu*.

After reviewing the results of the laboratory examination, P/Insp. Fajardo, Jr. reported the same to Superintendent Eduardo Acierto (Supt. Acierto) who, in turn, made his own report to General Marcelo Ele (Gen. Ele). Gen. Ele verified the findings and ordered an aerial and ground surveillance of the compound. Further test-buys were again conducted in the area which confirmed the reported rampant selling and use of *shabu* therein.

Since the reported selling and use of *shabu* in the compound were confirmed, Gen. Ele instructed P/Insp. Fajardo Jr. to apply for a search warrant before the RTC. P/Insp. Fajardo, Jr. applied

for a search warrant and presented PO2 Nepomuceno and Tugade as witnesses. Pictures of persons who were positively identified as sellers and maintainers of drug dens were submitted along with video footage taken by Tugade and the rest of the "Mission X" crew showing drug transactions and use of *shabu*.

On February 9, 2006, Executive Judge Natividad A. Giron-Dizon of the RTC of Quezon City issued Search Warrant No. 4271(06).[7] Gen. Ele was tasked with the supervision and implementation of the search warrant while Supt. Acierto was the designated ground commander.

On February 10, 2006, around 200 men under the command of Supt. Acierto from the joint forces of the Philippine National Police (PNP) AIDSOTF, Special Operations Unit (SOU), Special Action Force (SAF), Traffic Management Group (TMG), and Scene of the Crime Operative (SOCO), joined by members of the media and representatives from the Department of Social Welfare and Development (DSWD), raided the Mapayapa Compound to serve Search Warrant No. 4271-06 against several persons who were alleged to have been engaged in selling and possessing dangerous drugs and *shabu* paraphernalia as well as maintaining a drug den inside the said compound. More than 300 persons were arrested in the raid, 212 of whom were charged in court for various violations under RA 9165. Appellant was one of the persons arrested and charged with the following violations: maintenance of a drug den in violation of Section 6, RA 9165; illegal possession of dangerous drugs and drug paraphernalia in violation of Sections 11 and 12 respectively, RA 9165; and use of dangerous drugs in violation of Section 15, RA 9165.

There were numerous shanties inside the compound requiring the raiding team to divide the compound into different target areas. Assigned to implement the search warrant in Target No. 8 was the team of PO2 Roberto Beascan[8] (PO2 Beascan), SPO2

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[7] *Id*. at 12.

[8] Spelled as "Biascan" in some parts of the records.

Roberto Agbalog (SPO2 Agbalog), P/Insp. Ancieto Pertoza[9] (P/Insp. Pertoza) and P/Supt. Melecio M. Buslig, Jr. When the team entered the target area, persons found inside scampered away. P/Insp. Pertoza presented the search warrant to appellant who was then found inside the shanty designated as Target No. 8. together with his pregnant wife. Appellant attempted to flee but the team was able to place him under control. The team then proceeded to search the premises.

Appellant and his wife were inside the shanty during the search. Appellant was sitting in front of a drug paraphernalia when the team started to conduct its search. In the course of their search, the team found appellant's driver's license inside a wallet found in the sala. The team discovered that the address of the appellant as stated in his driver's license was F. Soriano St., Sto. Tomas, Pasig City, which was the same as the address of Target No. 8. The team likewise noticed that the appellant had a picture of himself inside the house although the same was not seized since it was not listed in the search warrant. When interviewed by the team, appellant admitted that he was the owner of Target No. 8 although this admission was made without the presence of counsel.

In the course of the search, the team was able to find and seize from the appellant plastic sachets containing crystalline substances, weighing scale, cellphone, assorted lighters, wallet containing dollars and a few coins, aluminum foil, and assorted cutters and scissors. The seized items were marked and inventoried in the Receipt of the Property Seized at Target No. 8. The seized items were handled by SPO2 Agbalog. Appellant was informed of his rights and thereafter arrested. Appellant, along with the other persons arrested in the compound, were then brought to Camp Crame.

Meanwhile, the seized items were forwarded to the PNP Crime Laboratory where results yielded positive for methamphetamine hydrochloride. Likewise, Forensic Chemist P/Insp. Angel

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[9] Spelled as "Partosa" in some parts of the records.

Timario reported that the urine sample taken from appellant tested positive for the presence of dangerous drugs.

Version of the Defense

For his defense, appellant claimed that in the morning of February 10, 2006, he was with his pregnant wife on their way to a hospital for a check-up. They were about to board a tricycle when men in uniform who looked like soldiers stopped them and ordered them to go inside the Mapayapa Compound.

Inside the compound, appellant was ordered to join a group of men who were arrested and were lying face down on the ground. His wife was brought to an area inside the compound where she joined several other females who were also arrested. They were all brought to Camp Crame and were thereafter processed and were charged with various violations under RA 9165.

Ruling of the Regional Trial Court

On December 19, 2007, the RTC of Pasig City, Branch 154 rendered judgment finding appellant guilty as charged. The RTC was convinced that the prosecution, through the testimonies of the arresting officers who conducted the search, was able to establish the guilt of appellant beyond reasonable doubt.

The dispositive portion of the RTC's Decision reads:

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

In the cases for violation of Section 6, R.A. 9165 (maintenance of a den)

x x x x x x x x x

The accused Rosalino Babao and **Ramil Galicia** are hereby found GUILTY beyond reasonable doubt of violation of Section 6 of R.A. 9165 and they are hereby sentenced to suffer life imprisonment; they are also ordered to pay a fine of ₱1,000,000.00 EACH.

x x x x x x x x x

In the cases for violation of Section 11 of R.A. 9165 (possession of dangerous drugs)

The following accused are hereby found GUILTY beyond reasonable doubt of the charge of possession of dangerous drugs as charged against them in the information to wit:

Ronnie Catubig	Crim. Case No. 14618-D
Aiko Escullar	Crim. Case No. 14621-D
Ramil Galicia	Crim. Case No. 14822-D and
Roy Bohol Montefero	Crim. Case No. 14617-D

and each of them is hereby sentenced to suffer an indeterminate penalty of SEVENTEEN (17) YEARS and ONE (1) DAY to TWENTY (20) YEARS of imprisonment.

x x x x x x x x x

Each of them is also ordered to pay a fine of ₱400,000.00

In the cases for violation of Section 12 of R.A. 9165 (possession of drug paraphernalia)

The accused ROSALINO BABAO, **RAMIL GALICIA** and ABUBACAR MAUNA SALIC are hereby found GUILTY beyond reasonable doubt of violation of Section 12 of R.A. 9165 (possession of drug paraphernalia). They are hereby sentenced to suffer the indeterminate penalty of imprisonment of ONE (1) YEAR and ONE (1) DAY to THREE (3) YEARS of imprisonment.

Each of them is also ordered to pay a fine of ₱10,000.00

x x x x x x x x x

In the cases for violation of Section 15 of R.A. 9165 (use of dangerous drugs)

The following accused are hereby found GUILTY, it being established beyond reasonable doubt after a confirmatory test that they used dangerous drugs (shabu/marijuana), to wit:

x x x x x x x x x

20. **Ramil Galicia** — Crim. Case No. 14823-D

x x x x x x x x x

They are hereby ordered to undergo rehabilitation in a government rehabilitation center for a period of ONE (1) YEAR or until they are fully cured/rehabilitated.

x x x x x x x x x

SO ORDERED.[10]

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

Ruling of the Court of Appeals

On March 22, 2013, the CA affirmed the RTC's Decision and held as follows:

> WHEREFORE, premises considered, the Decision dated 19 December 2007 issued by the Regional Trial Court of Pasig City, Branch 154, in Criminal Case Nos. 14821-D, 14822-D, 14823[-D], and 14824[-D] is hereby AFFIRMED
>
> SO ORDERED.[11]

Dissatisfied with the CA's Decision, and after denial of his Motion for Reconsideration, appellant filed a Notice of Appeal[12] dated December 19, 2014 manifesting his intention to appeal the CA Decision to this Court.

Issue

The issue in this case is whether appellant is guilty of maintenance of a drug den, illegal possession of dangerous drugs and drug paraphernalia, and use of dangerous drugs. According to appellant, the RTC erroneously convicted him in view of the fact that the prosecution failed to prove his guilt beyond reasonable doubt in all the offenses charged.

Our Ruling

The appeal is partly meritorious.

In Criminal Case No. 14821-D, the prosecution failed to prove that appellant was guilty of maintenance of a drug den.

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[10] *Id.* at 210-215.

[11] CA *rollo,* pp. 371-372.

[12] *Id.* at 405-407.

Appellant was charged with maintenance of a drug den in violation of Section 6, Article II of RA 9165, which provides:

SEC. 6. Maintenance of a Den, Dive or Resort. — 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 or group of persons who shall maintain a den, dive or resort where any dangerous drug is used or sold in any form.

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 or group of persons who shall maintain a den, dive, or resort where any controlled precursor and essential chemical is used or sold in any form.

The maximum penalty provided for under this Section shall be imposed in every case where any dangerous drug is administered, delivered or sold to a minor who is allowed to use the same in such a place.

Should any dangerous drug be the proximate cause of the death of a person using the same in such den, dive or resort, the penalty of death and a fine ranging from One million (₱1,000,000.00) to Fifteen million pesos (₱15,000,000.00) shall be imposed on the maintainer, owner and/or operator.

If such den, dive or resort is owned by a third person, the same shall be confiscated and escheated in favor of the government: Provided, That the criminal complaint shall specifically allege that such place is intentionally used in the furtherance of the crime: Provided, further, That the prosecution shall prove such intent on the part of the owner to use the property for such purpose: Provided, finally, That the owner shall be included as an accused in the criminal complaint.

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.

A drug den is defined under Section 3(l) of RA 9165 as follows:

> (l) Den, Dive or Resort. — A place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold or used in any form.

For an accused to be convicted of maintenance of a drug den, the prosecution must establish with proof beyond reasonable doubt that the accused is maintaining a den where any dangerous drug is administered, used, or sold. It must be established that the alleged drug den is a place where dangerous drugs are regularly sold to and/or used by customers of the maintainer of the den. As correctly pointed out by the appellate court:

> To convict an accused under this section, the prosecution must show that the place he is maintaining is a den, dive, or resort where dangerous drug is used or sold in any form. Hence, two things must be established, thus: (a) that the place is a den — a place where any dangerous drug and/or controlled precursor and essential [chemical] is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; (b) that the accused maintains the said place. **Hence, it is not enough that the dangerous drug or drug paraphernalia were found in the place.** More than a finding that dangerous drug is being used thereat, there must also be a clear showing that the accused is the maintainer or operator or the owner of the place where the dangerous drug is used or sold.[13] (Emphasis supplied)

In this case however, the evidence relied upon by the RTC to convict the appellant of maintenance of a drug den consists of the following: (1) existence of drug paraphernalia inside the shanty known as Target No. 8; (2) the appellant's driver's license allegedly found in the living room; and (3) appellant's picture found inside the shanty.[14]

The prosecution presented the testimonies of PO2 Beascan and SPO3 Agbalog to establish that appellant was maintaining a drug den. They testified that when they served the search

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[13] CA *rollo,* pp. 361-362.

[14] Records, pp. 189-190.

warrant for Target No. 8, they saw drug paraphernalia inside the shanty, appellant's driver's license and picture. PO2 Beascan narrated as follows:

> [PROSEC. TOLENTINO:]
> Q: When you searched the area, what did you find out?
> A: [W]hen we searched target no. 8, we found some plastic sachets containing crystalline substance, weighing scale, cell[ph]one, assorted lighters, wallet containing dollars and some coins.
>
> x x x x x x x x x
>
> Q: And after these items were seized, what did you do with the person with whom you presented the search warrant?
> A: We told him his rights.
>
> Q: You mean to tell us you arrested him?
> A: Yes, sir.
>
> Q: What did you do next?
> A: We proceeded to our office, sir.
>
> Q: And to whom did you turn over the person of Ramil Galicia?
> A: To our office, sir[.]
>
> Q: By the way, how did you come to know his name?
> A: By virtue of the ID we recovered from the target area, sir.
>
> Q: What kind of ID was that?
> A: Driver's license, sir.
>
> Q: Where did you find that driver's license?
> A: Inside the target area, sir.
>
> Q: In what part of the target area?
> A: In a small living room, sir.
>
> Q: What else did you find in that target area no. 8?
> A: Weighing scale, drug, aluminum foil.[15]

During cross-examination, PO2 Beascan added:

> Q: Now, Mr. Witness, during the time that you implemented the search warrant, you also said that you found specifically

[15] TSN, March 7, 2007, pp. 2-4.

among others the driver's license of the accused Ramil Galicia. Where exactly did you find that driver's license?

A: It is contained in a wallet, sir.

Q: [W]here did you find that wallet containing the driver's license?

A: In the sala, sir.

Q: Were you able to see for yourself the driver's license?

A: Yes, sir.

x x x x x x x x x

Q: What was the address indicated in the driver's license?

A: **I cannot recall the address, sir.**

Q: Is it the same address as the address where you implemented the search warrant?

A: **No, sir.**

x x x x x x x x x

Q: So you are not sure if the address indicated in the driver's license is the same address as the one written on the search warrant you implemented as F. Soriano street?

A: I am not sure, sir.

x x x x x x x x x

Q: Since you are not sure whether the accused is really the owner of that target no. 8 because your only connection to this matter is the driver's license, [is it] also possible that the accused is only a visitor?

A: No, sir, because he has a picture inside the house.[16]

After scouring through the records of the case, the Court finds that the prosecution failed to clearly establish that the appellant was guilty of violation of maintenance of a drug den. From the testimonies of the arresting officers, it is clear that the prosecution failed to establish that the shanty where appellant was found was a place where dangerous drugs were **sold or used**. The prosecution's witnesses merely testified that when they entered Target No. 8, they found drug paraphernalia inside

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

the shanty and sachets of crystalline substance in the person of the appellant. The prosecution failed to allege and prove an essential element of the offense — that dangerous drugs were being sold or used inside the shanty located at Target No. 8. What was clear was that appellant was caught in possession of *shabu* and drug paraphernalia. There was nothing in evidence that would indicate that the arresting officers saw that dangerous drugs were being sold and/or used at Target No. 8 in the course of the search of the premises. Since there was no evidence that dangerous drugs were sold and/or used in the shanty located at Target No. 8, appellant may not be held liable for violation of Section 6, Article II, RA 9165 on maintenance of a drug den.

Moreover, the Court is not convinced that the appellant's driver's license and picture allegedly found inside the shanty can serve as a valid basis for convicting him of maintenance of a drug den. First, these items do not prove that the shanty was being used as a drug den. The driver's license and picture only bolster the allegation of appellant's ownership or occupation of the shanty. It did not establish the fact that the shanty was a drug den. Second and more importantly, these items were not offered in evidence and were not part of the records of the case. The arresting officers testified that they did not seize the driver's license and picture because the search warrant they enforced only authorized them to confiscate dangerous drugs and drug paraphernalia. Consequently, the Court will not convict an accused based on evidence that does not appear on the record of the case. Mere assumptions or conjectures cannot substitute the required quantum of evidence in criminal prosecution.

An accused enjoys the presumption of innocence enshrined in the Bill of Rights. Proof beyond reasonable doubt is the quantum of evidence required to sustain appellant's conviction of maintenance of a drug den. Based on all the foregoing, the Court is constrained to acquit the appellant of violation of Section 6, Article II, RA 9165 for insufficiency of the prosecution's evidence.

Use of dangerous drugs is absorbed by illegal possession of drugs.

Section 15, Article II, RA 9165 on use of dangerous drugs, provides:

> A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): ***Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.**

It is clear from the above that the Section 15 does not apply when a person charged with violation of Section 15, Article II, RA 9165 on use of dangerous drugs, is also found to have possession of such quantity of drugs provided under Section 11 of the same law. This means that appellant may not be charged separately of violation of Section 11 on illegal possession of dangerous drugs and of Section 15 on use of dangerous drug since it is clear from the above that the provisions of Section 11 shall apply. Illegal possession of dangerous drugs absorbs the use of dangerous drugs. This is especially true in this case since appellant was not caught in the act of using drugs. Instead he was caught in the act of possessing drugs and drug paraphernalia. For this reason, the Court dismisses Criminal Case No. 14823-D against appellant on use of dangerous drugs as the same is absorbed by Section 11 on illegal possession of dangerous drugs.

Appellant is guilty of illegal possession of dangerous drugs and drug paraphernalia.

Appellant was charged with illegal possession of dangerous drugs after being caught with eight sachets of *shabu* with a total amount of 1.15 grams in his possession. Likewise, appellant

was charged with illegal possession of drug paraphernalia for having possession of seven disposable lighters, five improvised aluminum foil tooters, four sheets aluminum foil, and two weighing scales. The relevant provisions of the law provides as follows:

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 (MDMA) 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 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.

Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

SPO2 Agbalog testified that he confiscated the eight sachets of *shabu* from the appellant whom he identified in open court. His testimony was, as follows:

Q: And with these seized items [which] specially contains this plastic sachet, 8 packs containing crystalline substance, immediately upon seizing the same or confiscating the same at Target No. 8, what did you do?
A: I turned it over to Robert Biascan, sir.

Q: And what did this police officer do after you have turned it over to him?
A: He made the markings, sir.

Q: I am showing to you a plastic sachet, brown envelop will you please go over the same and tell us what is this in relation to this plastic sachet containing this shabu that you have found in Target No. 8?
A: These are the same items that we have confiscated, sir.

Q: And those were confiscated from where, Mr. Witness?
A: From the accused Ramil Galicia, sir.

Q: Where, from the person or in the place?
A: From the person of the accused, sir.

x x x x x x x x x

Q: What were the items that you have confiscated from the accused?
A: These items, sir. These 8 plastic sachets, sir.[17]

With regard to the alleged drug paraphernalia found in the possession of appellant, PO2 Beascan testified that aside from the plastic sachets of *shabu,* they also found drug paraphernalia consisting of aluminum foil used for heating *shabu*, improvised aluminum foil tooters used for inhaling the smoke emitted when *shabu* is heated, disposable lighters, and weighing scales.

The Court finds that the prosecution sufficiently established appellant's possession of drugs and drug paraphernalia. Both PO2 Beascan and SPO3 Agbalog categorically declared that they found the drugs and the drug paraphernalia in the possession of the appellant during the course of the implementation of the search warrant.

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[17] TSN, April 18, 2007, pp. 7-8.

Chain of custody of the seized drugs and drug paraphernalia.

With regard to the alleged failure of the police officers to comply with the procedure required in the 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. As correctly held by the CA, the police officer properly preserved the integrity and evidentiary value of the seized items when SPO2 Agbalog and PO2 Beascan seized and marked the sachets of *shabu* with the markings "RLB-1 to RLB-8" and "RLB-9-RLB17" for the aluminum foil tooters. Thereafter, the items were inventoried under the Receipt of Property Seized.[18] PO2 Beascan then delivered the items to the PNP Crime Laboratory for examination. In the Initial Laboratory Report No. D-122-06 dated February 11, 2006 by Forensic Chemist P/Insp. Alejandro C. De Guzman, "RLB-1" to "RLB-8" as well as the aluminum foil tooters marked as "RLB-10", "RLB-12", "RLB-13", and "RLB-17" tested positive for the presence of Methamphetamine Hydrochloride.[19] Finally, the same sachets and aluminum foil tooters were presented and turned over to the court where SPO2 Agbalog declared that the said items were the same items that were seized from the appellant.

The failure of the prosecution to present the forensic chemist to testify on how the seized items were handled and taken into custody is not fatal to the admissibility of the seized drugs and its paraphernalia. In *People v. Padua*,[20] the Court held:

> Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was

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[18] Records, pp. 15-16.

[19] CA *rollo,* p. 369. See also records, p. 29.

[20] 639 Phil. 235, 251 (2010).

clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. x x x

What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, the Court upholds the findings of the CA that the *shabu* and its paraphernalia that were presented in court were the same items seized from the appellant 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 in Criminal Case Nos. 14822-D and 14824-D on illegal possession of dangerous drugs and drug paraphernalia.

WHEREFORE, the March 22, 2013 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 04637 is **AFFIRMED with the following MODIFICATIONS**:

1. In Criminal Case No. 14821-D for violation of Section 6, Article II, Republic Act No. 9165, appellant Ramil Galicia *y* Chavez is **ACQUITTED** for insufficiency of evidence;

2. Criminal Case No. 14823-D for violation of Section 15, Article II, Republic Act No. 9165 is **DISMISSED**.

SO ORDERED.

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

Martires,[*] *J.,* on official leave.

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[*] Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

FIRST DIVISION

[G.R. No. 218701. February 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GIL RAMIREZ *y* SUYU,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT GENERALLY RESPECTED; BUT REEVALUATION THEREOF, NOT PRECLUDED.—** "In rape cases, the credibility of the complainant's testimony is almost always the single most important issue. When the complainant's testimony is credible, it may be the sole basis for the accused's conviction." "[T]he findings of the trial court regarding the credibility of witnesses are generally accorded great respect and even finality on appeal. 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."

2. **ID.; ID.; CIRCUMSTANTIAL EVIDENCE; REQUISITES.—** "[D]irect evidence of the commission of a crime is not the only basis from which a court may draw its finding of guilt." [R]esort to circumstantial evidence is sanctioned by Rule 133, Section [4] of the [Rules of Court]. "Circumstantial evidence is defined as that which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established." The requisites for circumstantial evidence to sustain a conviction are: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and, (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

3. **ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT, NOT ESTABLISHED IN THE CHARGE OF RAPE.—** The [testimonies of AAA] indubitably casts doubt on the credibility of "AAA" and the veracity of her narration of the incident considering that she was already 27 years old when she testified. There was no allegation that appellant was actually seen inside the house before the alleged

incident and the only occupant before she went to sleep. The circumstances relied upon by the CA in its assailed Decision failed to sufficiently link appellant to the crime. What is extant on record is that the allegation of sexual molestation on "AAA" by appellant was anchored principally on presumption. But in criminal cases, "speculation and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt. Suspicion, no matter how strong, must not sway judgment." In fine, the prosecution failed to discharge the onus of *prima facie* proving appellant's guilt of the crime of rape beyond reasonable doubt. Thus, to still consider appellant's defense would be an exercise in futility.

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.*:

On appeal is the June 2, 2014 Decision[1] of the Court of Appeals (CA) in CA–G.R. CR-HC No. 05573 modifying the Judgment[2] of the Regional Trial Court (RTC), Branch 4 of Tuguegarao City, Cagayan, convicting Gil Ramirez *y* Suyu (appellant) of rape under Article 335 of the Revised Penal Code (RPC), violation of Section 5(b), Republic Act (RA) No. 7610, and attempted rape under par. 1 of Article 335 of the RPC.

The Informations charging appellant read:

Criminal Case No. 11767 (Rape)

That sometime in the year 1989, x x x Province of Cagayan and within the jurisdiction of this Honorable Court, the accused GIL

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[1] CA *rollo*, pp. 131-144; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam (now a member of this Court) and Priscilla J. Baltazar-Padilla.

[2] *Id*. at 67-76; penned by Judge Lyliha L. Abella-Aquino.

RAMIREZ, father of the private complainant "AAA,"[3] held and let the private complainant inhale a substance causing her to lose her consciousness and that thereafter, the accused, with lewd design, did then and there willfully, unlawfully and feloniously lie, and succeeded in having sexual intercourse with the private complainant "AAA," who was then a minor being only a seven-year old girl.

Contrary to law.[4]

Criminal Case No. 11768 (Violation of RA 7610)

That sometime in the year 1996, x x x Province of Cagayan and within the jurisdiction of this Honorable Court, the accused GIL RAMIREZ, who is [the] father of the private complainant "AAA," with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously pull towards a bed inside their house the private complainant who [was] then a minor, being only a 14-year old girl; that the accused threatened the private complainant to kill her if she will not succumb to his bestial desires but the private complainant was able to free herself from the clutches of the accused, and then ran away; that the act of the accused debased, degraded and demeaned the intrinsic worth and dignity of the private complainant as a human being which is prejudicial to her development as a minor.

Contrary to law.[5]

Criminal Case No. 11787 (Attempted Rape)

That sometime in the year 1996, x x x Province of Cagayan and within the jurisdiction of this Honorable Court, the accused GIL

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[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).

[4] Records (Criminal Case No. 11767), p. 1.

[5] Records (Criminal Case No. 11768), p. 1.

RAMIREZ, father of the private complainant "AAA," with lewd design, and by the use of force and intimidation, did then and there willfully, unlawfully and feloniously pull towards a bed inside their house the private complainant who was then a minor, being only a fourteen year old girl; that the accused threatened the private complainant to kill her if she will not succumb to his bestial desires but the private complainant was able to free herself from the clutches of the accused, and then ran away.

The accused commenced the commission of the crime of RAPE directly by overt acts but did not perform all the acts of execution which would have produced it by reason of some causes other than his own spontaneous desistance.

Contrary to law.[6]

Appellant pleaded not guilty to the charges. Joint trial thereafter ensued.

Version of the Prosecution

The prosecution summarized its version of the incidents in the following manner:

"AAA" was born to "BBB," her mother, and herein appellant, on November 19, 1982.

Sometime in 1989, when "AAA" was only seven years old, and while "BBB" was out of their house, appellant purposely made "AAA" inhale a certain substance which caused "AAA" to lose her consciousness. Upon regaining awareness, "AAA" noticed blood in her shorts and her underwear was no longer worn properly. She also felt pain in her sexual organ.

On another occasion, "AAA" was at home when appellant started touching her breast and tried to insert his penis into her vagina. "AAA" fought back but appellant was stronger. Eventually, appellant was able to insert his penis into "AAA's" anus and vagina. Thereafter, appellant threatened "AAA" not to report to anyone what happened; otherwise, he would kill her and her mother.

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[6] Records (Criminal Case No. 11787), p. 1.

Sometime in 1991, while "AAA" was inside their house, appellant suddenly dragged and laid "AAA" on the bed. Armed with a knife, appellant threatened to kill "AAA" and all the members of their family if she would report anything to the authorities. The intended rape was not consummated because "BBB" suddenly arrived.

Sometime in 1996, "AAA" was sleeping in their house when appellant suddenly pulled her out of bed. Appellant's obvious lewd intent was not accomplished because "AAA" was able to extricate herself from appellant's grip and run towards "BBB" who was outside their house at that time.

For several years, "AAA" just suffered in silence because of fear for her own life as well as that of her family.

On May 23, 2005, Dr. Annabelle Soliman *y* Lopez (Dr. Soliman) conducted the medical examination of "AAA." Dr. Soliman described the hymen of "AAA" as anular, thick, wide and estrogenized. Dr. Soliman added that there was a possibility that "AAA" could had no injury even after sexual intercourse.

Version of the Defense

The defense, on the other hand, countered that:

Appellant is the father of "AAA." He denied having raped her in 1989. He claimed that during that year, he sometimes did not go home for 10 to 15 days because he had to stay at his work in Cagayan Valley Medical Center where he was in charge of freezing cadavers. Because of this and his low salary, he and his wife always had an argument every time he went home.

Ruling of the Regional Trial Court

Finding the testimony of "AAA" as straightforward and considering her consistent positive identification of the appellant, the RTC gave credence to the version of the prosecution and rejected appellant's defense of denial as well as the imputation of ill-motive on the private complainant. Thus, on April 30, 2012, the RTC rendered its Decision, the decretal portion of which reads:

WHEREFORE, in view of the foregoing circumstances, this Court finds accused GIL RAMIREZ y Suyu,

1) GUILTY beyond reasonable doubt in Criminal Case No. 11767, for RAPE x x x and imposes upon him the penalty of RECLUSION PERPETUA. He is likewise ordered to pay the private complainant the amount of SEVENTY-FIVE THOUSAND (₱75,000.00) [PESOS] as civil indemnity, SEVENTY[-]FIVE THOUSAND (₱75,000.00) PESOS as moral damages and TWENTY[-]FIVE THOUSAND (₱25,000.00) PESOS as exemplary damages due to the presence of the qualifying circumstances of minority and relationship;

2) GUILTY beyond reasonable doubt in Criminal Case No. 11768, for VIOLATION OF RA 7610, under Article III Section 5 (b), x x x and hereby sentences him to suffer the indeterminate penalty of RECLUSION TEMPORAL or imprisomnent of FOURTEEN (14) YEARS and EIGHT (8) MONTHS to TWENTY (20) YEARS. He is ordered to pay the private complainant the amount of TWENTY THOUSAND (₱20,000.00) PESOS as civil indemnity, FIFTEEN THOUSAND (₱15,000.00) PESOS as moral damages; and

3) GUILTY beyond reasonable doubt in Criminal Case No. 11787, for Attempted Rape, x x x and he is hereby sentenced to suffer an imprisonment of SIX (6) YEARS and ONE (1) DAY to TWELVE (12) YEARS of *prision mayor*.

x x x x x x x x x

SO ORDERED.[7]

Unable to accept the RTC's verdict of conviction and insisting on his innocence, appellant appealed to the CA.

Ruling of the Court of Appeals

The CA noted that in Criminal Case No. 11767, there was no direct evidence of penile penetration. However, it found several pieces of circumstantial evidence which constituted

[7] CA *rollo*, p. 76.

evidence of guilt of appellant beyond reasonable doubt for rape, to wit: "(1) "AAA" was sleeping in their house; (2) "AAA" was awakened when [appellant] forced [her] to smell a substance that caused her to lose consciousness; (3) "AAA" positively identified [appellant] as the only person she saw before she lost consciousness; (4) upon regaining consciousness, there was blood on "AAA's" shorts; (5) "AAA's" panty was also reversed; and, (6) "AAA" felt pain in her vagina."[8]

Based on the foregoing circumstances, the CA concluded that appellant raped "AAA." It found no reason for her nor her mother to fabricate the charge of rape against appellant. Neither did it consider the delay in reporting the incident as indication oa fabricated charge. The CA added that appellant's bare denial was insuffictent to exculpate him.[9]

Regarding appellant's alleged violation of RA 7610, the CA ruled that the presence of lascivious conduct by appellant was not firmly established by the prosecution. There was no evidence that appellant touched "AAA's" genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass or degrade "AAA" to gratify his sexual desires.[10]

On the charge of attempted rape, the CA found the same unsupported by evidence since the prosecution failed to prove that appellant started to rape "AAA" and had commenced the performance of acts of carnal knowledge.[11]

Thus, on June 2, 2014, the CA affirmed with modification the assailed RTC Decision in Criminal Case No. 11767 for rape but acquitted appellant for violation of RA 7610 and attempted rape on ground of reasonable doubt, *viz.*:

WHEREFORE, premises considered, We find accused-appellant GIL RAMIREZ y SUYU GUILTY of Rape in Criminal Case No.

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[8] *Id*. at 138.

[9] *Id*.

[10] *Id*., unpaginated; page 12 of CA Decision.

[11] *Id*. at 141.

11767. The assailed Judgment of the court *a quo* in Criminal Case No. 11767 is MODIFIED to the effect that accused-appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole; and ordered to pay AAA ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages.

In Criminal Case No. 11768, We find accused–appellant GIL RAMIREZ y SUYU NOT GUILTY of Violation of RA 7610, particularly Sexual Abuse, on the ground of reasonable doubt and accordingly ACQUITS him of the said charge; and

In Criminal Case No. 11787, We likewise find accused–appellant GIL RAMIREZ y SUYU NOT GUILTY of Attempted Rape on the ground of reasonable doubt and accordingly ACQUITS him of said offense.

SO ORDERED.[12]

Hence the present appeal.

Our Ruling

"In rape cases, the credibility of the complainant's testimony is almost always the single most important issue. When the complainant's testimony is credible, it may be the sole basis for the accused's conviction."[13] "[T]he findings of the trial court regarding the credibility of witnesses are generally accorded great respect and even finality on appeal. 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."[14]

We find the exception obtaining in this case.

Indeed "direct evidence of the commission of a crime is not the only basis from which a court may draw its finding of guilt."[15] [R]esort to circumstantial evidence is sanctioned by Rule 133,

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[12] *Id*. at 143.

[13] *People v. Dela Torre*, 588 Phil. 937, 945 (2008).

[14] *People v. Bermejo*, 692 Phil. 373, 381 (2012).

[15] *People v. Manchu*, 593 Phil. 398, 406 (2008).

Section [4][16] of the [Rules of Court].[17] "Circumstantial evidence is defined as that which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established."[18] The requisites for circumstantial evidence to sustain a conviction are:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and,

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[19]

As extensively discussed in *People v. Modesto*[20] —

the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, *to the exclusion of all others*, as the guilty person. From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt. Stated in another way, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and is not sufficient to convict the accused.

As reflected in the assailed CA Decision, the conclusion finding appellant's guilt for rape was anchored on the following circumstantial evidence: "(1) "AAA" was sleeping in their house;

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[16] RULES OF COURT, Rule 133, Section 4.

SEC 4. *Circumstantial evidence, when sufficient*. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

[17] *Bastian v. Hon. Court of Appeals*, 575 Phil. 42, 56 (2008).

[18] *People v. Osianas*, 588 Phil. 615, 627 (2008).

[19] *Lonzanida v. People*, 610 Phil. 687, 707-708 (2009).

[20] 134 Phil. 38, 44 (1968), cited in *Lonzanida v. People*, *supra*.

(2) "AAA" was awakened when [appellant] forced [her] to smell a substance that caused her to lose consciousness; (3) "AAA" positively identified [appellant] as the only person she saw before she lost consciousness; (4) upon regaining consciousness. there was blood on "AAA's" shorts; (5) "AAA's" panty was also reversed; and, (6) "AAA" felt pain in her vagina."[21]

To the mind of the Court, these circumstances did not establish with certainty the guilt of appellant as to convince beyond reasonable doubt that the crime of rape was in fact committed or that he was the perpetrator of the offense charged. Significantly, the testimonial account of "AAA" even created a glaring doubt as to whether rape was indeed committed and as regards the real identity of the culprit. We have carefully scrutinized the testimony of "AAA" and found the essential facts insufficient to sustain appellant's conviction. Quoted hereunder is "AAA's" testimony:

Q You said a while ago that your father raped you in 1989, do you still remember the date when it took place?
A I can no longer recall the date but I am sure it was in 1989.

Q Where did it take place?
A At home, sir.

Court:

Q How old were you at that time?
A I was 7 or 8 years old, sir.

Q Now, in what part of your house did it take place?
A Inside the house, sir

Q What were you doing before you were raped?
A I was sleeping at that time, sir.

Q [W]hile you were sleeping, what happened?
A [W]hat I remember was that he let me smell something and I did not know what happened next.

Q Not knowing what transpired to you, why do you say then that your father raped you at that time?

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[21] CA *rollo*, p. 138.

A [W]hen I regained consciousness there was already blood on my shorts and my panty was already reversed and I felt pain in my vagina.

Q [W]hen you woke [up], where was your father at that time
A He was out of the house already, sir.

Q Because of the presence of blood in your shortpants and your panty was not properly worn coupled with the fact that you felt pain in your sexual organ, you presumed that your father raped you at that time?
A Yes, sir.[22]

The foregoing assertion indubitably casts doubt on the credibility of "AAA" and the veracity of her narration of the incident considering that she was already 27 years old when she testified. There was no allegation that appellant was actually seen inside the house before the alleged incident and the only occupant before she went to sleep. The circumstances relied upon by the CA in its assailed Decision failed to sufficiently link appellant to the crime. What is extant on record is that the allegation of sexual molestation on "AAA" by appellant was anchored principally on presumption. But in criminal cases, "speculation and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt. Suspicion, no matter how strong, must not sway judgment."[23]

In fine, the prosecution failed to discharge the onus of *prima facie* proving appellant's guilt of the crime of rape beyond reasonable doubt. Thus, to still consider appellant's defense would be an exercise in futility.

WHEREFORE, the appeal is **GRANTED**, The assailed Decision of the Court of Appeals in CA–G.R. CR-HC No. 05573 finding appellant GIL RAMIREZ *y* Suyu **GUILTY** of rape is **REVERSED and SET ASIDE**. Appellant is hereby **ACQUITTED** of rape for failure of the prosecution to prove his guilt beyond reasonable doubt.

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[22] TSN, October 21, 2009, unpaginated.

[23] *People v. Bon*, 444 Phil. 571, 582-583 (2003).

Appellant is hereby immediately ordered **RELEASED** from detention unless held for other lawful cause. The Director of the Bureau of Corrections is **DIRECTED** to implement this Decision and to report to this Court the action thereon within five days from receipt.

SO ORDERED.

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

Caguioa,[**] *J.*, on official leave.

SECOND DIVISION

[G.R. No. 221932. February 14, 2018]

PATRICIA CABRIETO DELA TORRE, represented by BENIGNO T. CABRIETO, JR., *petitioner, vs.* **PRIMETOWN PROPERTY GROUP, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION IS GOVERNED BY PRESIDENTIAL DECREE 902-A AS AMENDED BY SECURITIES REGULATION CODE (RA 8799) AS WELL AS THE INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION.— The law on rehabilitation and suspension of actions for claims against corporations is

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[*] Designated as additional member per October 4, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[**] Designated as additional member per October 4, 2017 raffle vice *J.* Tijam who recused due to prior participation in the case before the Court of Appeals.

Presidential Decree (*PD*) 902-A, as amended. In January 2004, Republic Act No. 8799 (*RA 8799*), otherwise known as the *Securities Regulation Code*, amended Section 5 of PD 902-A, and transferred to the Regional Trial Courts the jurisdiction of the Securities and Exchange Commission (*SEC*) over petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or a management committee. In the meantime, on December 15, 2000, we promulgated A.M. No. 00-8-10-SC, or the *Interim Rules of Procedure on Corporate Rehabilitation*, which applies to petitions for rehabilitation filed by corporations, partnerships and associations pursuant to PD 902-A, and which is applicable in this case.

2. ID.; ID.; ID.; CONCEPT OF CORPORATE REHABILITATION. — Corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. An essential function of corporate rehabilitation is the Stay Order which is a mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver.

3. ID.; ID.; ID.; PETITIONER'S MOTION FOR INTERVENTION IS PROHIBITED UNDER THE INTERIM RULES; GRANTING PETITIONER'S PRAYER TO EXECUTE A DEED OF SALE IN HER FAVOR FOR A CONDOMINIUM UNIT IS A VIOLATION OF THE LAW, WHICH CONSTITUTES GRAVE ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT.— [R]espondent filed a petition for rehabilitation and suspension of payments with the RTC which issued a Stay Order on August 15, 2003. The initial hearing was set on September 24, 2003; thus, any comment or opposition to the petition should have been filed 10 days before the initial hearing but petitioner did not file any and

already barred from participating in the proceedings. However, petitioner filed a motion for leave to intervene on October 15, 2004, one year after, praying that respondent be ordered to execute in her favor a deed of absolute sale over Unit 3306 of the Makati Prime Citadel Condominium, subject matter of their earlier contract to sell. It bears stressing that intervention is prohibited under Section 1, Rule 3 of the Interim Rules. x x x Clearly, while respondent is undergoing rehabilitation, the enforcement of all claims against it is stayed. Rule 2, Section 1 of the Interim Rules defines a claim as referring to all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all-encompassing as it refers to all actions whether for money or otherwise. There are no distinctions or exemptions. Petitioner's prayer in intervention for respondent to execute the deed of sale in her favor for the condominium unit is a claim as defined under the *Interim Rules* which is already stayed as early as August 15, 2003. In fact, the same order also prohibited respondent from selling, encumbering, transferring or disposing in any manner of any of its properties, except in the ordinary course of business. The RTC's Order granting petitioner's intervention and directing respondent to execute a deed of sale in her favor and to deliver the copy of the owner's duplicate copy of the condominium certificate, with all the pertinent documents needed to effect registration of the deed of sale and issuance of a new title in petitioner's name, is a violation of the law. And the RTC gave undue preference to petitioner over respondent's other creditors and claimants. The CA correctly found that the RTC committed grave abuse of discretion in issuing its Orders dated August 24, 2011 and April 16, 2012.

APPEARANCES OF COUNSEL

Gloriosa S. Navarro for petitioner.
Nexus Law Professional Company for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] dated April 28, 2015 of the Court of Appeals (*CA*) in CA-G.R. SP No. 125314 and the Resolution[2] dated November 25, 2015 denying reconsideration thereof.

Respondent Primetown Property Group, Inc. is primarily engaged in holding, owning and developing real estate. Among its projects are the Century Citadel Inn, Makati, Makati Prime Century Tower and Makati Prime City. It, likewise, expanded its real estate business in Cebu City where it constructed two (2) condotel projects. However, the ascent of respondent was arrested and its shares were brought down by the Asian financial crisis in 1997. It experienced financial difficulties due to the devaluation of the Philippine peso, the increase in interest rates and lack of access to adequate credit. Thus, in 2003, respondent filed a petition for corporate rehabilitation with prayer for suspension of payments and actions with the Regional Trial Court (*RTC*) of Makati City, and was raffled off to Branch 138. On August 15, 2003, the rehabilitation court issued a Stay Order.[3]

On October 15, 2004, petitioner Patricia Cabrieto dela Torre filed a Motion for Leave to Intervene[4] seeking judicial order for specific performance, *i.e.,* for respondent to execute in her favor a deed of sale covering Unit 3306, Makati Prime Citadel Condominium which she bought from the former as she had allegedly fully paid the purchase price. Respondent opposed the motion arguing that it was filed out of time considering that the Stay Order was issued on August 15, 2003 and under

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[1] Penned by Associate Justice Edwin D. Sorongon, concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser; *rollo*, pp. 17-24.

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

[3] *Id.* at 194-195; Per Judge Sixto Marella, Jr.

[4] *Rollo,* pp. 77-81.

the Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*), any claimants and creditors shall file their claim before the rehabilitation court not later than ten (10) days before the date of the initial hearing; and that since the Stay Order was issued on August 15, 2003 and the publication thereof was done in September 2003 with the initial hearing on the petition set on September 24 2003, the motion for intervention should have been filed on or before September 14, 2003.[5]

On August 24, 2011, the RTC issued an Order[6] granting petitioner's motion for intervention as follows:

x x x x x x x x x

The court, after a cursory of the records, finds the intervention to have been filed on time as there will only be an additional requirement and that is leave of court, which was here granted to the intervenor. Dismissal on the ground of belated filing is, therefore, unwarranted.

All things considered, the Court finds clear and convincing proof that intervenor had fully paid for Unit 3306 of the Makati Prime Citadel Condominium and, therefore, is entitled to the grant of relief.

WHEREFORE, order is hereby issued directing petitioner Primetown Properties Group, Inc. (1) to execute the corresponding deed of absolute sale covering Unit 3306 of the Makati Prime Citadel Condominium in favor of intervenor Patricia Cabrieto-Dela Torre; (2) to deliver the copy of the Owner's Duplicate of Condominium Certificate of Title No. 25161, together with all the pertinent documents needed to effect registration of the deed of sale and issuance of a new title in the name of intervenor; and (3) to immediately transfer possession of the subject Unit 3306 to said intervenor Patricia Cabrieto-Dela Torre.[7]

Respondent filed a motion for reconsideration alleging that intervenor is still liable to pay ₱1,902,210.48 as unpaid interest and penalty charges; and it is the Housing and Land Use Regulatory Board (*HLURB*) which has exclusive and original

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

[6] *Id.* at 104-105; Per Acting Presiding Judge Joselito C. Villarosa.

[7] *Id.* at 104.

jurisdiction over the controversies involving condominium units and not the RTC.

The RTC denied the motion for reconsideration in an Order[8] dated April 16, 2012.

Aggrieved, respondent filed with the CA a petition for *certiorari.*

On April 28, 2015, the CA issued its assailed Decision, the decretal portion of which reads:

> WHEREFORE, the petition is GRANTED. The August 24, 2011 Order of the Regional Trial Court of Makati City, Branch 138 is ANNULLED and SET ASIDE. The Motion for Intervention filed by private respondent is DENIED.
>
> SO ORDERED.[9]

In so ruling, the CA found that when the Stay Order was issued, the rehabilitation court is empowered to suspend all claims against respondent whether monetary or otherwise which includes petitioner's action or claim to execute a certificate of title in her favor. Moreso, when respondent countered that petitioner was not entitled to her prayer as she had not yet fully paid the contract price; and that the RTC has no jurisdiction for the enforcement of the contract of sale involving a condominium unit since the exclusive jurisdiction lies with the HLURB.

In a Resolution dated November 25, 2015, the CA denied petitioner's motion for reconsideration.

Dissatisfied, petitioner filed the instant petition for review on *certiorari* alleging the following assignment of errors:

> The Honorable Court of Appeals committed serious and reversible error in brushing aside legal authority and holding that the claim/ action to execute a certificate of title in petitioner's favor is stayed when the rehabilitation court ordered the suspension of claims against herein respondent;

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

[9] *Rollo,* pp. 23-33.

The Honorable Court of Appeals committed serious and reversible error in brushing aside well settled legal authorities and holding that the Honorable Regional Trial Court, Branch 138, Makati City, has no jurisdiction to grant herein petitioner's intervention in Spec. Proc. No. M-5704; and

The Honorable Court of Appeals committed serious and reversible error in nullifying the trial court's factual finding of full payment and grant of herein petitioner's intervention.[10]

Petitioner contends that her claim against respondent was not suspended with the issuance of the Stay Order because when the order was issued on August 15, 2003, she had long already fully paid the purchase price of the condominium unit she bought from respondent, *i.e.,* as of July 25, 1996, and invokes the case of *Town and Country Enterprises, Inc. v. Hon. Quisumbing, Jr., et al.*;[11] and that claims refer to debts or demands of pecuniary nature or the assertion that money be paid by the company under rehabilitation to its creditors, but her prayer for the execution of a deed of absolute sale is not a claim of this character as to be covered and suspended under the Stay Order.

We do not agree.

The law on rehabilitation and suspension of actions for claims against corporations is Presidential Decree (*PD*) 902-A, as amended. In January 2004, Republic Act No. 8799 (*RA 8799*), otherwise known as the *Securities Regulation Code,* amended Section 5 of PD 902-A, and transferred to the Regional Trial Courts the jurisdiction of the Securities and Exchange Commission (*SEC*) over petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the

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

[11] 696 Phil. 1 (2012).

management of a rehabilitation receiver or a management committee. In the meantime, on December 15, 2000, we promulgated A.M. No. 00-8-10-SC, or the *Interim Rules of Procedure on Corporate Rehabilitation,* which applies to petitions for rehabilitation filed by corporations, partnerships and associations pursuant to PD 902-A, and which is applicable in this case.

Corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.[12] An essential function of corporate rehabilitation is the Stay Order which is a mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver.[13] Rule 4, Section 6 of the Interim Rules states:

> Sec. 6. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after

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[12] *Town and Country Enterprises, Inc. v. Hon. Quisumbing, Jr., et al., supra,* at 12-13, citing *Castillo v. Uniwide Warehouse Club, Inc.,* 634 Phil. 41, 49 (2010).

[13] *Veterans Philippine Scout Security Agency, Inc. v. First Dominion Prime Holdings, Inc.*, 693 Phil. 336, 346 (2012).

the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

Under the above-quoted Section, it is provided that if the RTC finds the petition to be sufficient in form and substance, it shall issue, not later than five (5) days from the filing of the petition, an Order as follows:

(a) appointing a Rehabilitation Receiver and fixing his bond;
(b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor;
(c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;
(d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; x x x.

In addition, it is also stated under the same Section that all creditors and all interested parties are directed to file and serve on the debtor a verified comment on or opposition to the petition not later than ten (10) days before the date of the initial hearing and their failure to do so will bar them from participating in the proceedings.

In this case, respondent filed a petition for rehabilitation and suspension of payments with the RTC which issued a Stay Order

on August 15, 2003. The initial hearing was set on September 24, 2003; thus, any comment or opposition to the petition should have been filed 10 days before the initial hearing but petitioner did not file any and already barred from participating in the proceedings. However, petitioner filed a motion for leave to intervene on October 15, 2004, one year after, praying that respondent be ordered to execute in her favor a deed of absolute sale over Unit 3306 of the Makati Prime Citadel Condominium, subject matter of their earlier contract to sell. It bears stressing that intervention is prohibited under Section 1,[14] Rule 3 of the Interim Rules. Hence, the RTC should not have entertained the petition for intervention at all.

In *Advent Capital and Finance Corporation v. Alcantara, et al.,*[15] we said:

> Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary court proceedings. Adversarial proceedings similar to that in ordinary courts are inconsistent with the commercial nature of a rehabilitation case. The latter must be resolved quickly and expeditiously for the sake of the corporate debtor, its creditors and other interested parties. Thus, the Interim Rules "incorporate the concept of prohibited pleadings, affidavit evidence in lieu of oral testimony, clarificatory hearings instead of the traditional approach of receiving evidence, and the grant of authority to the court to decide the case, or any incident, on the basis of affidavits and documentary evidence."[16]

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[14] Section 1. *Nature of Proceedings.*— Any proceeding initiated under these Rules shall be considered in rem. Jurisdiction over all those affected by the proceedings shall be considered as acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines in the manner prescribed by these Rules.

The proceedings shall also be summary and non-adversarial in nature. The following pleadings are prohibited:

x x x x x x x x x

j. Intervention.

[15] 680 Phil. 238 (2012).

[16] *Id.* at 245-246.

Moreover, the RTC had already issued a Stay Order on August 15, 2003 providing, among others, to wit:

> By virtue of the authority of the Court under Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation (hereinafter referred to as Interim Rules), it is ordered that enforcement of all claims against the petitioner, whether for money or otherwise, and whether such enforcement is by court action or otherwise, its guarantors or sureties not solidarily liable with the petitioner, be stayed.
>
> Petitioner is prohibited (a) from selling, encumbering, transferring or disposing in any manner of any of its properties, except in the ordinary course of business and (b) from making any payment of its liabilities, outstanding as of July 2, 2003, the date of the filing of the petition.[17]

Clearly, while respondent is undergoing rehabilitation, the enforcement of all claims against it is stayed. Rule 2, Section 1 of the Interim Rules defines a claim as referring to all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all-encompassing as it refers to all actions whether for money or otherwise. There are no distinctions or exemptions.[18]

Petitioner's prayer in intervention for respondent to execute the deed of sale in her favor for the condominium unit is a claim as defined under the *Interim Rules* which is already stayed as early as August 15, 2003. In fact, the same order also prohibited respondent from selling, encumbering, transferring or disposing in any manner of any of its properties, except in the ordinary course of business. The RTC's Order granting petitioner's intervention and directing respondent to execute a deed of sale in her favor and to deliver the copy of the owner's duplicate copy of the condominium certificate, with all the pertinent documents needed to effect registration of the deed of sale and issuance of a new title in petitioner's name, is a violation of

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[17] *Rollo,* p. 194.

[18] *Spouses Sobrejuanite v. ASB Development Corp.,* 508 Phil. 715, 723 (2005).

the law. And the RTC gave undue preference to petitioner over respondent's other creditors and claimants. The CA correctly found that the RTC committed grave abuse of discretion in issuing its Orders dated August 24, 2011 and April 16, 2012.

In *Negros Navigation Co., Inc. v. Court of Appeals,*[19] we said:

> The justification for the suspension of actions or claims, without distinction, pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[20]

Petitioner's reliance in *Town and Country Enterprises, Inc. v. Hon. Quisumbing, Jr., et al.*[21] to support that her claim against respondent is not suspended by the issuance of the Stay Order is misplaced. In that case, petitioner Town & Country Enterprises, Inc. (*TCEI*) obtained loans in the total amount of ₱12,000,000.00 from Metrobank; that TCEI executed in favor of Metrobank a Deed of Real Estate Mortgage over their twenty parcels of land; that TCEI failed to pay its loan, thus, Metrobank caused the real estate mortgage to be extrajudicially foreclosed and the subject realties to be sold at public auction on November 7, 2001; that Metrobank emerged as the highest bidder and was issued the corresponding Certificate of Sale; as TCEI failed to redeem the property within the prescribed period, the ownership was already vested with Metrobank as of February 6, 2002 notwithstanding that the affidavit of consolidation of ownership was executed only on April 25, 2003. Later, Metrobank moved for the issuance of a writ of possession and

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[19] 594 Phil. 96 (2008).

[20] *Id.* at 112.

[21] *Supra* note 11.

which was eventually granted. In the meantime, TCEI filed on October 1, 2002 a petition for declaration of a state of suspension of payments, where a Stay Order was issued on October 8, 2002. TCEI moved for the suspension of the writ of possession proceedings arguing that the writ of possession issued in favor of Metrobank was invalid and unenforceable because of the issuance of the Stay Order in SEC Case No. 023-02 on October 8, 2002. We ruled that Metrobank had already acquired ownership over the mortgaged properties when TCEI commenced its petition for rehabilitation on October 1, 2002. The rule is settled that the mortgagor loses all interests over the foreclosed property after the expiration of the redemption period and the purchaser becomes the absolute owner thereof when no redemption is made and, therefore, entitled to possession. We also ruled that while the issuance of the Stay Order suspends the enforcement of all claims against the debtor, whether for money or otherwise, and whether such enforcement is by court action or otherwise, effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings, however, the Stay Order issued by the Rehabilitation Court cannot apply to the mortgage obligations owing to Metrobank which had already been enforced before TCEI's filing of its petition.

In contrast, petitioner's ownership of the condominium unit alleging that she had fully paid the purchase price was, however, disputed by respondent based on their Memorandum of Agreement dated January 20, 1997 where petitioner acknowledged that she had paid the principal obligation on the condominium unit but had yet to pay respondent for penalty charges and interest by reason of the delay in the payment of the monthly amortizations. Consequently, when the RTC issued the Stay Order which suspended all claims against respondent, without distinction, petitioner's prayer for the execution of a deed of sale is a claim covered by the Stay Order issued by the RTC. In fact, the parties' contentions already require a full-blown trial on the merits which must be decided in a separate action and not by the rehabilitation court.

Considering the foregoing discussions, we find no need to discuss the other issues raised by petitioner.

WHEREFORE, the petition is **DENIED.** The Decision dated April 28, 2015 and the Resolution dated November 25, 2015 of the Court of Appeals in CA-G.R. SP No. 125314 are hereby **AFFIRMED**.

SO ORDERED.

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

Caguioa, J., on official business.

FIRST DIVISION

[G.R. No. 223102. February 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLOS BAUIT *y* DELOS SANTOS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MAY BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE.— As the appellate court correctly noted: "Jurisprudence teaches us that rape may be committed even in places where people congregate. Thus, it is not impossible or unlikely that rape is perpetrated inside a room adjacent to a room occupied by other persons, as in this case."

2. ID.; ID.; MEDICAL EXAMINATION OF THE VICTIM IS NOT INDISPENSABLE.— As held in *People v. Rubio*, "a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape. The presence of healed or fresh hymenal laceration is

not an element of rape." "In the crime of rape, the testimony of the victim, and not the findings of the medico-legal officer, is the most important element to prove that the felony had been committed." "Moreover, the absence of external injuries does not negate rape. In fact, even the [presence] of spermatozoa is not an essential element of rape."

3. REMEDIAL LAW; EVIDENCE; ILL-MOTIVE; FAILS AS AGAINST THE AFFIRMATIVE TESTIMONY OF A MINOR RAPE VICTIM.— The fact that "AAA" was a rebellious and a problem child or that it was her mother's siblings who instigated the filing of the charge, is not a viable defense for accused-appellant. As the Court held in *People v. Venturina*,[15] "[n]ot even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true." Moreover, the reason ascribed by accused-appellant to accuse him of rape *i.e.*, that the siblings of "BBB" disliked him was unconvincing. "[M]otives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim. Further, ill motives become inconsequential if the rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused."

4. CRIMINAL LAW; QUALIFIED RAPE; PENALTY AND DAMAGES.— x x x [T]he twin qualifying circumstances of minority of the victim and her blood ties to the accused-appellant were properly alleged in the Information, proved during trial, and duly appreciated. The Birth Certificate of "AAA" proved that she was the biological daughter of accused-appellant. He was duly identified as the father of "AAA" and did not even impugn such relationship during the trial. Under the circumstances, where it not for the supervening passage of RA 9346, the proper penalty should be death following Article 266-B of the RPC. Thus, pursuant to Section 2 of the Act, the penalty to be meted out should be *reclusion perpetua* without eligibility for parole. As regards the award of civil indemnity, moral and exemplary damages, we find the same to be in order. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. "[M]oral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. Exemplary damages are also called for, by way of

public example, and to protect the young from sexual abuse." x x x Thus, since the crime committed was rape in its qualified form, we modify the award of damages to "AAA" to ₱100,00.00 as civil indenmity; ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.

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.*:

Challenged before this Court is the March 20, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06646 which affirmed the January 7, 2014 Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 140, in Criminal Case No. 11-1968, finding the accused-appellant Carlos Bauit *y* Delos Santos guilty beyond reasonable doubt of the crime of qualified rape.

In an Information[3] dated July 25, 2011, the accused-appellant was charged with rape, the accusatory portion of which reads as follows:

On or about July 20, 2011, x x x accused, by means of force, threat or intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge [of] his biological daughter, "AAA"[4] a minor, 12 years old, against her will and without her consent.

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[1] CA *rollo*, pp. 101-113; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz.

[2] Records, pp. 111-118; penned by Judge Cristina F. Javalera-Sulit.

[3] *Id*. at 1.

[4] "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

CONTRARY TO LAW.[5]

Accused-appellant entered a plea of not guilty. During the pre-trial conference, the parties did not bring forth any issue that became the subject of stipulation. Trial on the merits then ensued.

Version of the Prosecution

"AAA," a 12-year old high school student, born on September 21, 1998, is the daughter of accused-appellant. In the early morning of July 20, 2011, while she was on her way to the bathroom, accused-appellant suddenly held her and forced her to lie down in their room. Accused-appellant pulled down her short pants and underwear. After removing his own pants, he placed himself on top of her and inserted his penis into her vagina. "AAA" felt pain in the process. She resisted but her effort was in vain. After taking her bath, "AAA" went to school as if nothing happened. Upon the arrival of her mother "BBB" from Cagayan, "AAA" confided to her the incident. With the help of her aunts, the matter was reported to a *barangay kagawad* and then to the police station wherein "AAA" gave her statement. After an investigation, "AAA" was sent to a doctor in Camp Crame for genital examination.

"BBB" is the mother of "AAA." She declared that accused-appellant was her live-in partner. "AAA" is the biological daughter of accused-appellant as acknowledged in the Birth Certificate of the former. As early as March 2011, "AAA" already told her about her being sexually molested but she and "AAA"

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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, Providing Penalties for its Violation, 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).

[5] Records, p. 1.

did not file a case against accused-appellant since the latter was the only one providing support for the two of them.

On July 22, 2011, Medico Legal Officer Dr. Joseph Palmero (Dr. Palmero) examined "AAA". The physical and genital examination, as contained in Medico Legal Report No. R11-1065, yielded deep healed hymenal lacerations at 3:00 o'clock and 7:00 o'clock positions which indicated a blunt penetrating trauma on the genitalia. According to Dr. Palmero, these healed lacerations could have been inflicted more than a week before the examination. Dr. Palmero found no other signs of physical injuries on the body of "AAA." He concluded that "AAA" was no longer a virgin.

Version of the defense

Accused-appellant denied raping "AAA." Instead, he claimed that the filing of the rape case against him was meant to cover up the wrongdoings of "AAA," she being a problem child and rebellious. The case was supposedly instigated by the siblings of "BBB" because they did not like him. According to accused-appellant, he could not have molested "AAA" because he loves her. He further stated that their house has no sala or living room and it was impossible for the rape to happen because the rooms were separated only by plywood and any commotion would surely alarm the occupants of the adjoining rooms.

Ruling of the Regional Trial Court

On January 7, 2014, the trial court rendered its Decision finding accused appellant guilty beyond reasonable doubt of the crime of rape against "AAA," his daughter of minor age, as charged in the Information. The trial court gave credence to the testimony of "AAA" and her positive identification of accused-appellant as her rapist. It found the testimony of "AAA" straightforward and categorical. It ruled that tenacious resistance on the part of "AAA" was irrelevant considering his moral ascendancy over her. It also held that the allegations of accused-appellant that the charge against him was filed to get rid of him and in retaliation for disciplining her too flimsy. It rejected accused-appellant's defense of denial in view of the straightforward

testimony of "AAA." The dispositive portion of the Decision reads as follows:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. Finding the accused Carlos Bauit y Delos Santos GUILTY beyond reasonable doubt of the crime of rape defined and penalized under Article 466-A paragraph 1(a) of Republic Act No. 8353. Consequently, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole pursuant to R.A. 9346.
>
> 2. Said accused is likewise ordered to pay "AAA" civil indemnity in the amount of ₱75,000.00[,] for moral damages, the sum of ₱75,000.00 and ₱30,000.00 as exemplary damages or a total of ₱180,000.00.
>
> *Costs de oficio*.
>
> SO ORDERED.[6]

Ruling of the Court of Appeals

In its Decision dated March 20, 2015, the CA found no merit in the appeal of accused-appellant. The CA ruled that the elements of the crime of rape were indubitably established by the prosecution. The CA concurred with the factual findings of the trial court that accused-appellant committed the crime charged based on the clear, straightforward and categorical testimony of "AAA". The CA found immaterial and irrelevant the fact that the room had no sala and the bathroom was 16 meters away from their room. What mattered, according to the CA, was that "AAA" clearly narrated that the incident happened inside the room they were occupying and not somewhere else. The CA brushed aside accused-appellant's argument that he could not have perpetrated the crime since the four rooms being occupied by "BBB" and her siblings were separated only by thin plywood. The CA reasoned that it was not impossible that rape could be perpetrated inside a room adjacent to a room occupied by other persons. The CA was not convinced that the medical finding

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[6] *Id*. at 118.

of the presence of deep healed lacerations sustained more than a week earlier were caused by somebody else and not by the accused-appellant. Likewise, the CA did not give credence to the claim that the rape charge was fabricated. The dispositive portion of the appellate court's Decision reads as follows:

> WHEREFORE, appeal is DENIED. The assailed Decision dated January 7, 2014 of the Regional Trial Court of Makati City, Branch 140 in Criminal Case No. 11-1968 is AFFIRMED.
>
> SO ORDERED.[7]

Unfazed by the findings and conclusions reached by the courts below, accused-appellant comes to this Court through this appeal.

Our Ruling

The appeal is barren of merit.

In the present recourse, accused-appellant reiterates the same issues raised before the appellate court, arguing that "the court a quo gravely erred in convicting [him] of rape despite the prosecution's failure to prove his guilt beyond reasonable doubt."[8] He insists that there was physical impossibility to commit the rape considering the layout of the place of the alleged incident and the close proximity of the rooms in the house which were separated by mere thin plywoods. He relies on the medico-legal finding that the deep healed lacerations were inflicted by sexual contacts that occurred more than one week from the time of the genital examination of "AAA." He points out that there were barely three days in between the date of the incident and the examination and therefore he could not have been the author of the rape. Moreover, he avers that the absence of any contusion or abrasion on the body of "AAA" and any seminal fluid on her vagina negate the commission of rape.

The arguments of accused-appellant deserve scant consideration considering that all pertain to the issue of credibility of the testimony of the private complainant, "AAA."

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[7] CA *rollo*, p. 112.

[8] *Id*. at 42.

Time and again, the Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. x x x The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[9]

In the case at bar, both the trial and appellate courts uniformly found the testimony of "AAA" in narrating the rape incident to be straightforward, clear and convincing. We reviewed the testimony of "AAA" and found nothing significant to justify a deviation from the above-quoted general rule.

Accused-appellant argues that the testimony of "AAA" was incredible considering the relative distance (about 16 meters away) between the bathroom and the room they shared. "AAA" could have simply used a nearby bathroom. He likewise claims that the rooms were adjacent to each other and separated by thin plywoods and their occupants could easily be awakened if indeed there was resistance from "AAA." The points raised by accused-appellant, however, have no probative significance and do not detract from the findings and conclusions of the courts below. As aptly observed by the Court of Appeals:

x x x Whether or not the bathroom is outside the room being occupied by accused-appellant Bauit and "AAA" and about sixteen (16) meters away is immaterial and irrelevant and will not in any manner affect the credibility of "AAA" and her story that she was raped by her own father. She convincingly testified that she was made to lie down and was sexually abused by accused-appellant Bauit in their room, as she was preparing for school and about to go to the bathroom.

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[9] *People v. Arpon*, 678 Phil. 752, 774 (2011), citing *People v. Condes*, 659 Phil. 375 (2011).

Likewise, whether or not the family has a receiving room or sala would not make the testimony of "AAA" unbelievable or less credible. What matter is that she narrated that the incident happened inside the room they were occupying and not somewhere else.[10]

Moreover, the fact that the rooms were adjacent and divided merely by plywood and any adjacent noise could be heard such that it was unlikely for accused-appellant to commit the rape is of no moment. As the appellate court correctly noted: "Jurisprudence teaches us that rape may be committed even in places where people congregate. Thus, it is not impossible or unlikely that rape is perpetrated inside a room adjacent to a room occupied by other persons, as in this case."[11]

To further complement the attack on the credibility of "AAA," accused-appellant gives emphasis to the medico-legal finding that the deep healed lacerations were caused by sexual contact more than one week before the general examination of "AAA" on July 22, 2011. He posits that since the alleged rape occurred on July 20, 2011, or less than three days before "AAA" was examined, the lacerations were not caused by him but somebody else.

We are not persuaded.

As held in *People v. Rubio*,[12] "a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape. The presence of healed or fresh hymenal laceration is not an element of rape." "In the crime of rape, the testimony of the victim, and not the findings of the medico-legal officer, is the most important element to prove that the felony had been committed."[13] "Moreover, the

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[10] CA *rollo*, p. 110.

[11] *Id*.

[12] 683 Phil. 714, 726-727 (2012).

[13] *People v. Espino, Jr.*, 577 Phil. 546, 566 (2008).

absence of external injuries does not negate rape. In fact, even the [presence] of spermatozoa is not an essential element of rape."[14]

The fact that "AAA" was a rebellious and a problem child or that it was her mother's siblings who instigated the filing of the charge, is not a viable defense for accused-appellant. As the Court held in *People v. Venturina*,[15] "[n]ot even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true." Moreover, the reason ascribed by accused-appellant to accuse him of rape *i.e.*, that the siblings of "BBB" disliked him was unconvincing. "[M]otives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim. Further, ill motives become inconsequential if the rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused."[16]

From the totality of the evidence adduced by the prosecution, we are convinced that the elements of rape under Article 226-A, paragraph 1 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353, were sufficiently established.

Anent the penalty imposed by the trial court and affirmed by the appellate court which is *reclusion perpetua*, we find the same in order.

Article 266-B of the RPC, provides:

> Art. 266-B. Penalties — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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[14] *People v. Pelagio*, 594 Phil. 464, 475 (2008).

[15] 694 Phil. 646, 655 (2012).

[16] *People v. Pamintuan*, 710 Phil. 414, 424-425 (2013).

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In the case at bar, the twin qualifying circumstances of minority of the victim and her blood ties to the accused-appellant were properly alleged in the Information, proved during trial, and duly appreciated. The Birth Certificate of "AAA" proved that she was the biological daughter of accused-appellant. He was duly identified as the father of "AAA" and did not even impugn such relationship during the trial.

Under the circumstances, where it not for the supervening passage of RA 9346,[17] the proper penalty should be death following Article 266-B of the RPC. Thus, pursuant to Section 2 of the Act, the penalty to be meted out should be *reclusion perpetua* without eligibility for parole.

As regards the award of civil indemnity, moral and exemplary damages, we find the same to be in order. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[18] "[M]oral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[19] Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse."[20] However, the amount of damages awarded by the trial court and affirmed by the appellate court should be modified in line with prevailing jurisprudence.[21] Thus, since the crime committed was rape in its qualified form, we modify the award of damages to "AAA" to ₱100,00.00 as civil indemnity; ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. In addition, all damages

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[17] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[18] *People v. Rubio*, *supra* note 12 at 727.

[19] *People v. Padit*, 780 Phil. 69, 84 (2016).

[20] *Id*.

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

awarded shall earn interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.

WHEREFORE, premises considered, the assailed March 20, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06646 is **AFFIRMED with the MODIFICATION** that appellant Carlos Bauit *y* Delos Santos is ordered to pay (a) ₱100,000.00 as civil indemnity; (b) ₱100,000.00 as moral damages; and (c) ₱100,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 223477. February 14, 2018]

CELSO M.F.L. MELGAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (RA 9262); RATIONALE.— RA 9262 is a landmark legislation that defines and criminalizes acts of violence against women and their children (VAWC) perpetrated by women's intimate partners, *i.e.*, husband, former husband, or any person who has or had a sexual or dating relationship, or with whom the woman has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in, *inter alia*, economic abuse.

2. ID.; ID.; DEPRIVATION OR DENIAL OF FINANCIAL SUPPORT TO A COMMON CHILD CONSTITUTES ECONOMIC ABUSE; ELEMENTS THEREOF ESTABLISHED IN CASE AT BAR.— "[E]conomic abuse" may include the deprivation of support of a common child of the man-accused and the woman-victim, whether such common child is legitimate or not. This specific act is penalized by Section 5 (e) of RA 9262[.] x x x Under this provision, the deprivation or denial of financial support to the child is considered an act of violence against women and children. Notably, case law instructs that the act of denying support to a child is a continuing offense. In this case, the courts *a quo* correctly found that all the elements of violation of Section 5 (e) of RA 9262 are present, as it was established that: (*a*) Melgar and AAA had a romantic relationship, resulting in BBB's birth; (*b*) Melgar freely acknowledged his paternity over BBB; (*c*) Melgar had failed to provide BBB support ever since the latter was just a year old; and (*d*) his intent of not supporting BBB was made more apparent when he sold to a third party his property which was supposed to answer for, among others, his support-in-arrears to BBB.

3. ID.; ID.; PSYCHOLOGICAL VIOLENCE UNDER SECTION 5 (i) OF RA 9262, EXPLAINED; IN CASES OF SUPPORT, IT MUST BE SHOWN THAT ACCUSED'S DENIAL OF FINANCIAL SUPPORT FURTHER CAUSED MENTAL OR EMOTIONAL ANGUISH TO THE WOMAN AND/OR HER CHILD.— Section 5 (i) of RA 9262, a form of psychological violence, punishes the act of "**causing mental or emotional anguish, public ridicule or humiliation** to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and **denial of financial support** or custody of minor children or denial of access to the woman's child/children." Notably, "[p]sychological violence is an element of violation of Section 5 (i) just like the mental or emotional anguish caused on the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5 (i) or similar acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to

this party." Thus, in cases of support, it must be first shown that the accused's denial thereof — which is, by itself, already a form of economic abuse — further caused mental or emotional anguish to the woman-victim and/or to their common child.

4. **ID.; ID.; PETITIONER IS PROPERLY CONVICTED OF ECONOMIC ABUSE PURSUANT TO SECTION 5 (e) OF RA 9262 ALTHOUGH HE WAS CHARGED OF VIOLATION OF PSYCHOLOGICAL VIOLENCE UNDER SECTION 5 (i); VARIANCE DOCTRINE, APPLIED.—** In this case, while the prosecution had established that Melgar indeed deprived AAA and BBB of support, no evidence was presented to show that such deprivation caused either AAA or BBB any mental or emotional anguish. Therefore, Melgar cannot be convicted of violation of Section 5 (i) of RA 9262. This notwithstanding — and taking into consideration the variance doctrine which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged — the courts *a quo* correctly convicted Melgar of violation of Section 5 (e) of RA 9262 as the deprivation or denial of support, by itself and even without the additional element of psychological violence, is already specifically penalized therein.

5. **ID.; ID.; ID.; PENALTY OF IMPRISONMENT AND FINE, IMPOSED.—** [T]he courts *a quo* correctly imposed on Melgar the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. In addition, Melgar is also ordered to pay a fine in the amount of ₱300,000.00, to undergo a mandatory psychological counselling or psychiatric treatment, and report compliance to the court.

APPEARANCES OF COUNSEL

Cañete Cañete Law Firm 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 Decision[2] dated August 28, 2015 and the Resolution[3] dated February 10, 2016 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 02211, which affirmed the Judgment[4] dated September 10, 2012 of the Regional Trial Court of Cebu City, Branch 6 (RTC) in Crim. Case No. CBU-87386 finding petitioner Celso M.F.L. Melgar (Melgar) guilty beyond reasonable doubt of violating Section 5 (e) of Republic Act No. (RA) 9262,[5] otherwise known as the "*Anti-Violence Against Women and their Children Act of 2004.*"

The Facts

An Information was filed before the RTC charging Melgar with violation Section 5 of RA 9262, the accusatory portion of which reads:

> That on or about the month of August, 2001 and subsequent thereto, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, having the means and capacity to give financial support, with deliberate intent, did then and there commit acts of economic abuse against one [AAA,[6]] and her minor

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[1] *Rollo*, pp. 12-43.

[2] *Id*. at 50-61. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Renato C. Francisco and Edward B. Contreras concurring.

[3] *Id*. at 64-65. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Edward B. Contreras and Germano Francisco D. Legaspi concurring.

[4] *Id*. at 88-93. Penned by Presiding Judge Ester M. Veloso.

[5] Entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004.

[6] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING

son, [BBB] (12 years old), by depriving them of financial support, which caused mental or emotional anguish, public ridicule or humiliation, to AAA and her son.

CONTRARY TO LAW.[7]

After arraignment wherein Melgar pleaded not guilty to the charge against him, he and AAA entered into a compromise agreement[8] on the civil aspect of the case. After the RTC's approval of the compromise agreement on June 24, 2010, the criminal aspect of the case was provisionally dismissed with Melgar's conformity. However, one (1) year later, or on June 24, 2011, the prosecution moved to set aside the compromise agreement and to revive the criminal action, on the ground that Melgar sold the property, which was supposed to, among others, answer for the support-in-arrears of his son, BBB, from 2001 to 2010 pursuant to their compromise agreement. Consequently, the RTC revived the criminal aspect of the case and allowed the prosecution to present its evidence.[9]

The prosecution alleged that in 1995, AAA had a romantic relationship with Melgar, which resulted in the birth of BBB, an illegitimate child. Melgar freely acknowledged the paternity of BBB as evidenced by the latter's Certificate of Live Birth,

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FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

[7] *Rollo*, pp. 50-51 and 88.

[8] Dated June 23, 2010. *Id.* at 85-87.

[9] See *id.* at 51-52.

as well as numerous photographs showing Melgar with BBB. However, AAA's relationship with Melgar turned sour as the latter had an affair with a younger woman. When BBB was just about one (1) year old, Melgar stopped giving support, prompting AAA to file a case for support, which was eventually granted. This notwithstanding, Melgar still refused to give support for her and BBB. As such, AAA was constrained to file the instant criminal case against Melgar.[10]

To substantiate her claims, AAA averred that Melgar could afford to provide support of ₱8,000.00 per month because he has a lavish lifestyle with his family. He owns a Toyota Avanza and his children are enrolled in [redacted]. On the other hand, her son, BBB, is a scholar at [redacted] and she spends the amount of ₱20,000.00 a month for his needs, of which she asked Melgar for ₱8,000.00 as support.[11]

For his part, Melgar was deemed to have waived his right to adduce evidence due to his repeated failure to appear during trial.[12]

The RTC Ruling

In a Judgment[13] dated September 10, 2012, the RTC found Melgar guilty beyond reasonable doubt of violating Section 5 (e) of RA 9262 and, accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.[14]

The RTC found Melgar to have committed economic abuse against AAA and their son, BBB, when he stopped supporting them. Worse, he sold the property which was supposed to answer for his support-in-arrears from 2001 to 2010.[15]

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[10] See *id*. at 89-90.

[11] See *id*. at 90-91.

[12] *Id*. at 52. See also *id*. at 92.

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

[14] *Id*. at 93.

[15] See *id*. at 92-93.

Melgar moved for reconsideration,[16] which was, however, denied in an Order[17] dated May 9, 2013 of the RTC. Aggrieved, Melgar appealed[18] to the CA.

The CA Ruling

In a Decision[19] dated August 28, 2015, the CA affirmed Melgar's conviction. It held that Melgar is legally obliged to support BBB.[20] As such, when he deliberately and with evident bad faith deprived BBB of support, he committed economic abuse under Section 5 (e) of RA 9262. In this regard, the CA observed that the reinstatement of the criminal case was prompted by Melgar's evident refusal to comply with the judgment based on compromise agreement, particularly, in providing support to his son; and worse, in conveying to another person the parcel of land which was supposed to, among others, answer for the support-in-arrears of his son from 2001 to 2010.[21] Lastly, the CA ruled that Melgar's acts "has clearly caused mental or emotional anguish, public ridicule or humiliation to [AAA] and her child[, BBB]."[22]

Undaunted, Melgar moved for reconsideration,[23] which was, however, denied in a Resolution[24] dated February 10, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Melgar's conviction for violation of Section 5 (e) of RA 9262.

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[16] See motion for reconsideration dated February 4, 2013; *id*. at 94-98.

[17] *Id*. at 99-101.

[18] Not attached to the *rollo*.

[19] *Rollo*, pp. 50-61.

[20] *Id*. at 60.

[21] See *id*. at 55-60.

[22] *Id*. at 60.

[23] See motion for reconsideration dated October 7, 2015; *id*. at 66-78.

[24] *Id*. at 64-65.

The Court's Ruling

The petition is bereft of merit.

Enacted in 2004, RA 9262 is a landmark legislation that defines and criminalizes acts of violence against women and their children (VAWC) perpetrated by women's intimate partners, *i.e.*, husband, former husband, or any person who has or had a sexual or dating relationship, or with whom the woman has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in, *inter alia*, economic abuse.[25] The said law defines "economic abuse as follows:

Section 3. *Definition of Terms.* — x x x.

x x x x x x x x x

D. "*Economic abuse*" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;

3. destroying household property;

4. controlling the victim's own money or properties or solely controlling the conjugal money or properties.

x x x x x x x x x

As may be gathered from the foregoing, "economic abuse" may include the deprivation of support of a common child of

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[25] See Section 3 (a) of RA 9262. See also *Garcia v. Drilon*, 712 Phil. 44, 66 (2013).

the man-accused and the woman-victim, whether such common child is legitimate or not.[26] This specific act is penalized by Section 5 (e) of RA 9262, pertinent portions of which read:

> Section 5. *Acts of Violence Against Women and Their Children*. — The crime of violence against women and their children is committed through any of the following acts:
>
> x x x x x x x x x
>
> (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
>
> x x x x x x x x x
>
> (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
>
> (3) Depriving or threatening to deprive the woman or her child of a legal right;
>
> x x x x x x x x x

Under this provision, the deprivation or denial of financial support to the child is considered an act of violence against

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[26] Under the Family Code, parents are obliged to provide for their children, whether legitimate or illegitimate, support which comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. This obligation to give support is demandable from the time the person who is entitled thereto needs it, and such obligation may be enforced through a civil action for this purpose. (See Articles 194, 195, and 203 of the Family Code.)

women and children.[27] Notably, case law instructs that the act of denying support to a child is a continuing offense.[28]

In this case, the courts *a quo* correctly found that all the elements of violation of Section 5 (e) of RA 9262 are present, as it was established that: (*a*) Melgar and AAA had a romantic relationship, resulting in BBB's birth; (*b*) Melgar freely acknowledged his paternity over BBB; (*c*) Melgar had failed to provide BBB support ever since the latter was just a year old; and (*d*) his intent of not supporting BBB was made more apparent when he sold to a third party his property which was supposed to answer for, among others, his support-in-arrears to BBB. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties and, hence, due deference should be accorded to the same.[29]

In an attempt to absolve himself from criminal liability, Melgar argues, *inter alia*, that he was charged of violation of Section 5 (i) of RA 9262 as the Information alleged that the acts complained of "caused mental or emotional anguish, public ridicule or humiliation to [AAA] and her son[, BBB]." As such, he contends that he cannot be convicted of violation of Section 5 (e) of RA 9262.[30]

Melgar's contention is untenable.

Section 5 (i) of RA 9262, a form of psychological violence,[31] punishes the act of "**causing mental or emotional anguish,**

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[27] *Del Socorro v. Van Wilsem*, 749 Phil. 823, 839 (2014).

[28] *Id*. at 840.

[29] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[30] See *rollo*, pp. 21-34.

[31] Under Section 3 (a) (C) of RA 9262, "'[*p*]*sychological violence*' refers to acts or omissions causing or likely to cause mental or emotional suffering

public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and **denial of financial support** or custody of minor children or denial of access to the woman's child/children." Notably, "[p]sychological violence is an element of violation of Section 5 (i) just like the mental or emotional anguish caused on the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5 (i) or similar acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party."[32] Thus, in cases of support, it must be first shown that the accused's denial thereof — which is, by itself, already a form of economic abuse — further caused mental or emotional anguish to the woman-victim and/or to their common child.

In this case, while the prosecution had established that Melgar indeed deprived AAA and BBB of support, no evidence was presented to show that such deprivation caused either AAA or BBB any mental or emotional anguish. Therefore, Melgar cannot be convicted of violation of Section 5 (i) of RA 9262. This notwithstanding — and taking into consideration the variance doctrine which allows the conviction of an accused for a crime proved which is different from but necessarily included in the crime charged[33] — the courts *a quo* correctly convicted Melgar

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of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children."

[32] *Dinamling v. People*, 761 Phil. 356, 376 (2015).

[33] See *People v. Caoili*, G.R. Nos. 196342 and 196848, August 8, 2017. See also Sections 4 and 5 of Rule 120 of the 2000 Revised Rules of Criminal Procedure, which read:

of violation of Section 5 (e) of RA 9262 as the deprivation or denial of support, by itself and even without the additional element of psychological violence, is already specifically penalized therein.

As to the proper penalty to be imposed on Melgar, Section 6 of RA 9262 provides that violations of Section 5 (e) shall be punished by, *inter alia*, *prision correccional*. Notably, while such crime is punishable by a special penal law, the penalty provided therein is taken from the technical nomenclature in the Revised Penal Code (RPC). In *Quimvel v. People*,[34] the Court succinctly discussed the proper treatment of prescribed penalties found in special penal laws vis-à-vis Act No. 4103,[35] otherwise known as the Indeterminate Sentence Law, *viz.*:

Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon* [(G.R. No. 93028, July

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

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.

[34] See G.R. No. 214497, April 18, 2017.

[35] Entitled "AN ACT TO PROVIDE AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES," approved on December 5, 1933.

29, 1994, 239 SCRA 555)] that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.[36]

Otherwise stated, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.[37]

Applying the foregoing to this case, the courts *a quo* correctly imposed on Melgar the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. In addition, Melgar is also ordered to pay a fine in the amount of ₱300,000.00, to undergo a mandatory psychological counselling or psychiatric treatment, and report compliance to the court.[38]

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated August 28, 2015 and the Resolution dated February 10, 2016 of the Court of Appeals in CA-G.R. CEB-CR No. 02211 finding petitioner Celso M.F.L. Melgar **GUILTY** beyond reasonable doubt of violating Section 5 (e) of Republic Act No. 9262, otherwise known as the "*Anti-Violence Against*

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[36] See *Quimvel v. People*, *supra* note 34.

[37] See *Peralta v. People*, *supra* note 29, citing *Mabunot v. People*, G.R. No. 204659, September 19, 2016, 803 SCRA 349, 364.

[38] Pertinent portions of Section 6 of RA 9262 read:

> Section 6. Penalties. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:
>
> x x x x x x x x x
>
> In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than Three hundred thousand pesos (₱300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

Women and Their Children Act of 2004," are hereby **AFFIRMED** with **MODIFICATION**, sentencing petitioner Celso M.F.L. Melgar: (*a*) to suffer the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum; (*b*) to pay a fine in the amount of ₱300,000.00; and (*c*) to undergo a mandatory psychological counselling or psychiatric treatment and report compliance to the Regional Trial Court of Cebu City, Branch 6.

SO ORDERED.

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

Caguioa, J., on official business.

SECOND DIVISION

[G.R. No. 225709. February 14, 2018]

JASPER GONZALEZ* ***y* DOLENDO,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; CAN ONLY BE OVERTHROWN BY PROOF OF GUILT BEYOND REASONABLE DOUBT.— [I]t must be emphasized that "[t]he constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt, that is, that degree of proof that produces conviction in an unprejudiced mind. Hence, where the court entertains a reasonable doubt as to the guilt of the accused, it is not only the right of the accused to be freed; it is the court's constitutional duty to acquit them." In this light, the Court is convinced that

* "Gonzales" in some parts of the records.

Gonzalez' conviction must be set aside. x x x Given the difference in the prosecution and defense's versions of Gonzalez' arrest, including the variance regarding the physical evidence presented in court, it behooved the lower court to examine and calibrate more carefully the evidence presented by both sides. As it was, the defense's evidence weighed more than the prosecution's evidence. At the very least, their evidence were evenly balanced such that the appreciation of such evidence called for the tilting of the scales in favor of Gonzalez. After all, the burden is on the prosecution to overcome the presumption of innocence of the accused.

2. ID.; POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; ELECTION OFFENSES; POSSESSION OF DEADLY WEAPON IN A PUBLIC PLACE; ELEMENTS.— Gonzalez was charged under Section 261 (p) (q) of the OEC, as amended by Section 32 of RA 7166. x x x In order to secure a conviction of an accused based on these provisions, the prosecution must prove that: (*a*) the person is bearing, carrying, or transporting firearms or other deadly weapons; (*b*) such possession occurs during the election period; and (*c*) the weapon is carried in a public place. Notably, it is essential that **possession of the deadly weapon in a public place** be established beyond reasonable doubt.

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 Decision[2] dated August 7, 2015 and the Resolution[3] dated

[1] *Rollo*, pp. 11-26.

[2] *Id.* at 31-39. 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.

June 22, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 36523, affirming the conviction of petitioner Jasper Gonzalez *y* Dolendo (Gonzalez) for violation of Section 261(q) of the Omnibus Election Code, as amended by Section 32 of Republic Act (RA) No. 7166.

The Facts

This case stemmed from two (2) separate Informations[4] filed before the Regional Trial Court of Valenzuela City, Branch 269 (RTC) accusing Gonzalez of violating: (1) Section 261(p) (q)[5] of the Omnibus Election Code (OEC),[6] as amended by Section 32[7]

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[4] See Information dated February 24, 2012 for Crim. Case No. 173-V-12 (violation of OEC); records, p. 1. See also *rollo*, pp. 13 and 58.

[5] **Section 261**. ***Prohibited Acts***.— The following shall be guilty of an election offense:

x x x x x x x x x

(p) *Deadly weapons*. — Any person who carries any deadly weapon in the polling place and within a radius of one hundred meters thereof during the days and hours fixed by law for the registration of voters in the polling place, voting, counting of votes, or preparation of the election returns. However, in cases of affray, turmoil, or disorder, any peace officer or public officer authorized by the Commission to supervise the election is entitled to carry firearms or any other weapon for the purpose of preserving order and enforcing the law.

(q) *Carrying firearms outside residence or place of business*. – Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: *Provided, That* a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables. (Emphasis supplied)

[6] *Batas Pambansa Blg*. 881 (December 3, 1985).

[7] Section 32 of RA 7166 pertinently states:

Section 32. ***Who May Bear Firearms***. — During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized

of RA 7166;[8] and (2) Section 11, Article II[9] of RA 9165 or the

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in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

x x x x x x x x x

(Emphasis supplied)

[8] Entitled "AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as the "SYNCHRONIZED ELECTIONS LAW OF 1991" (November 27, 1991).

[9] Section 11, Article II of RA 9165 reads in part:

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 (MDMA) 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

"Comprehensive Dangerous Drugs Act of 2002,"[10] to wit:

Criminal Case No. 173-V-12

That on or about February 23, 2012 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) Kitchen Knife, without securing an exemption from the COMELEC pursuant to Sec. 261 (p)(q) OEC as amended by Sec. 32, of R.A. 7166.

Contrary to Law.[11]

Criminal Case No. 174-V-12

That on or about February 23, 2012, in Valenzuela City 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 have in his possession and control one (1) heat-sealed transparent plastic sachet containing zero point eight (0.80) gram, found to be *methylamphetamine hydrochloride* [sic] (shabu), knowing the same to be dangerous drugs.

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hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of *marijuana*; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

[10] 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.

[11] Records, p. 1. See also *rollo,* pp. 13 and 58.

Contrary to Law.[12]

The prosecution alleged[13] that in the early morning of February 23, 2012, an operative of the Station Anti-Illegal Drugs (SAID), Special Operation Task Group (SOTG), Valenzuela City, was informed of the rampant selling of illegal drugs at a wake in Tamaraw Hills, Barangay Marulas, Valenzuela City, which thus led to the conduct of an anti-illegal drug operation. At about 3:30 a.m., certain Police Officer (PO) 2 Lim, PO2 Recto, and PO1 Raya, together with PO1 Julius R. Congson (PO1 Congson), proceeded to surveil the area near No. 75 Tamaraw Hills Street. While in the area,PO2 Recto and PO1 Congson saw a person coming out of an alley about four (4) meters away, with a fan knife in his right hand. Since there was a ban issued by the Commission on Elections[14] (COMELEC) on the carrying of deadly weapons at that time, PO2 Recto and PO1 Congson approached the person and introduced themselves as police officers. The person, who they later identified as Gonzalez, immediately ran away, prompting the police officers to chase and eventually, arrest him. PO1 Congson recovered the knife

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[12] See *rollo*, pp. 13 and 58.

[13] See *rollo*, pp. 59-61; Brief for the Appellee dated April 30, 2015, CA *rollo*, pp. 61-76; and TSN, June 20, 2012, pp. 1-23.

[14] See Resolution No. 9357 dated January 31, 2012, entitled "RULES AND REGULATIONS ON THE BEARING, CARRYING OR TRANSPORTING OF FIREARMS OR OTHER DEADLY WEAPONS IN CONNECTION WITH THE MARCH 3, 2012 PLEBISCITE TO RATIFY THE DIVISION OF BARANGAY ANUMAY, VALENZUELA CITY, AND THE CREATION OF TWO (2) NEW BARANGAYS THEREFROM, TO BE KNOWN AS BARANGAY ANUMAY WEST AND BARANGAY ANUMAY EAST, PURSUANT TO ORDINANCE NO. 37, SERIES OF 2011, APPROVED ON NOVEMBER 21, 2011, OF THE *SANGGUNIANG PANLUNGSOD* OF VALENZUELA CITY," and Resolution No. 9350 dated January 31, 2012, entitled "CALENDAR OF ACTIVITIES AND PERIODS OF PROHIBITED ACTS IN CONNECTION WITH THE MARCH 03, 2012 PLEBISCITE TO RATIFY THE DIVISION OF BARANGAY CANUMAY IN VALENZUELA CITY, AND THE CREATION OF TWO (2) NEW BARANGAYS THEREFROM, TO BE KNOWN AS BARANGAY CANUMAY EAST AND BARANGAY CANUMAY WEST, PURSUANT

from Gonzalez, frisked the latter, and ordered him to bring out the contents of his pocket, which revealed one heat-sealed transparent plastic sachet containing what PO1 Congson believed to be shabu. PO1 Congson further recovered another heat-sealed transparent plastic pack, labeled "Calypso", containing several plastic sachets. Thereafter, Gonzalez started shouting, causing several persons from the wake (including Gonzalez' mother) to approach him. The police officers then decided to bring Gonzalez to the nearby barangay hall,where the seized items were inventoried[15] and turned over.[16] After duly receiving the submitted specimen, the forensic chemist examined[17] the same which tested positive for methamphetamine hydrochloride.[18]

In his defense,[19] Gonzalez denied the charges against him and instead, claimed that on February 23, 2012, at around 3:00 a.m., he was just at their house in No. 75 Tamaraw Hills Street. He was about to go to sleep when four (4) male persons arrived and arrested him. The men then tied his hands with his wife's brassiere, and thereafter, showed him a sachet of shabu and took the knife that was on top of the table. They then dragged him down from their house, bringing with them his child, while he shouted for someone to call his mother. Many of his neighbors who heard or were awakened by his shouts and the crying of his child came out of their houses and saw his arrest. At the ground floor, he was photographed with the knife placed on the top of a small table. Thereafter, the arresting persons boarded him on a vehicle. They drove around Ugong for thirty (30)

TO CITY ORDINANCE NO. 37, SERIES OF 2011, APPROVED ON NOVEMBER 21, 2011 BY THE *SANGGUNIANG PANLUNGSOD* OF VALENZUELA CITY; *rollo*, pp. 115-118 and 119-123, respectively.

[15] See Inventory of Seized Properties/Items dated February 23, 2012; *rollo*, p. 85.

[16] See *rollo*, pp. 59-60; CA *rollo*, pp. 67-69; and TSN, June 20, 2012, pp. 5-12.

[17] See Initial Laboratory Report dated February 23, 2012; *rollo*, p. 73.

[18] See *rollo*, p. 60; and CA *rollo*, p. 69.

[19] See *rollo*, pp. 61-62; Brief for the Accused-Appellant dated January 5, 2015, CA *rollo*, pp. 28-42; and TSN, August 7, 2013, pp. 1-9.

minutes, fetched Senior Police Officer 3 Ronald C. Sanchez (SPO3 Sanchez) at his office at the third floor of the city hall, and then proceeded to the Marulas Barangay Hall to wait for the barangay kagawad. When the kagawad arrived, he just signed a paper about the seized evidence. Gonzalez was then brought to Camp Crame for drug testing, and afterwards to the detention cell at the new city hall.[20]

The RTC Ruling

In a Decision[21] dated January 6, 2014, the RTC found Gonzalez guilty beyond reasonable doubt of violation of Section 261(q) of the OEC,[22] holding that all the necessary elements thereof have been proven, namely: (1) Gonzalez was found holding the fan knife with his right hand; (2) such possession occurred during the prohibited period; and (3) he was carrying the knife while casually walking towards Tamaraw Hills Street from an alley—a public place.[23] The RTC gave no credence to Gonzalez' version of his arrest in light of his positive identification as the culprit, as well as the presumption of regularity accorded to the police officers in the performance of their duties.[24] It also brushed aside the testimonies of Gonzalez' three (3) witnesses for their failure to actually see what had transpired immediately preceding his arrest.[25]

As regard the charge of violation of Section 11 of RA 9165, the RTC found Gonzalez not guilty due to insufficiency of evidence.[26]

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[20] See *rollo,* pp. 61-62; CA *rollo*, p. 34; and TSN, August 7, 2013, pp. 3-8.

[21] *Rollo*, pp. 58-69. Penned by Presiding Judge Emma C. Matammu.

[22] *Id*. at 69.

[23] See *id*. at 65.

[24] See *id*. at 66.

[25] See *id*.

[26] See *id*. at 66-69. Essentially, the RTC ruled that the prosecution has failed to show that the integrity and evidentiary value of the seized items have been duly preserved, particularly pointing out that "SPO3 Sanchez failed to account for what happened to the items and where they were kept while in his possession," as well as specify the "precautionary measures he

Aggrieved, Gonzalez elevated his conviction to the CA.[27] Pending his appeal, Gonzalez renewed his Surety Bond[28] posted in this case, and thereafter, applied for bail,[29] which the RTC granted in an Order[30] dated January 24, 2014.

The CA Ruling

In a Decision[31] dated August 7, 2015, the CA affirmed the RTC Decision,[32] finding that the prosecution had established beyond reasonable doubt that Gonzalez was "found in possession of a fan knife at the time he was apprehended by the police officers during [the ban] enforced by the COMELEC."[33]It held that Gonzalez failed to demonstrate by clear and convincing evidence his defense that "he uses [the fan knife] as a utensil in cooking."[34]

Undaunted, Gonzalez moved for reconsideration,[35] which was denied in a Resolution[36] dated June 22, 2016; hence, this petition.

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had undertaken, if any, in order to ensure that there had been no change in the condition of the seized items and no opportunity for someone not in the chain to have possession thereof from the time he received them from PO1 Congson until he turned them over to [Police Inspector Aileen Z.] Valencia." (See *id*. at 68.)

[27] See Notice of Appeal dated January 17, 2014; records, p. 316.

[28] See Renewal Certificate of Plaridel Surety and Insurance Company; *id* at 318. Said certificate, however, indicates that the renewal period is only for two (2) years from March 2, 2013.

[29] See Manifestation/Compliance dated January 23, 2014 of Plaridel Surety and Insurance Company; *id.* at 317.

[30] *Id*. at 319.

[31] *Rollo*, pp. 31-39.

[32] *Id*. at 38.

[33] *Id*.

[34] *Id*. at 37.

[35] See motion for reconsideration dated September 14, 2015; CA *rollo*, pp. 102-107.

[36] *Rollo*, pp. 41-42.

The Issue Before the Court

The issue for the Court's resolution is whether or not Gonzalez' conviction for violation of Section 261(q) of the OEC, as amended by Section 32 of RA 7166, should be upheld.

The Court's Ruling

The petition is meritorious.

At the outset, it must be emphasized that "[t]he constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt, that is, that degree of proof that produces conviction in an unprejudiced mind. Hence, where the court entertains a reasonable doubt as to the guilt of the accused, it is not only the right of the accused to be freed; it is the court's constitutional duty to acquit them."[37]

In this light, the Court is convinced that Gonzalez' conviction must be set aside.[38]

Gonzalez was charged under Section 261(p) (q) of the OEC, as amended by Section 32 of RA 7166. Section 261(p) (q) of the OEC, as originally worded, provides:

Section 261. *Prohibited Acts.* — The following shall be guilty of an election offense:

x x x x x x x x x

(p) *Deadly weapons*. — Any person who carries any deadly weapon in the polling place and within a radius of one hundred meters thereof during the days and hours fixed by law for the registration of voters in the polling place, voting, counting of votes, or preparation of the

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[37] See *Maamo v. People,* G.R. No. 201917, December 1, 2016, 811 SCRA 458, 461.

[38] As a general rule, a Rule 45 Petition, under which Gonzalez seeks redress, addresses only questions of law. However, there are exceptions to this Rule. A factual re-examination is justified "when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal."(*Ligtas v. People*, 766 Phil. 750, 764 [2015].)

election returns. However, in cases of affray, turmoil, or disorder, any peace officer or public officer authorized by the Commission to supervise the election is entitled to carry firearms or any other weapon for the purpose of preserving order and enforcing the law.

(q) *Carrying firearms outside residence or place of business*. — Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: *Provided, That* a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

while Section 32 of RA 7166, pertinently reads:

Section 32. ***Who May Bear Firearms***. — **During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places**, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

x x x x x x x x x

(Emphasis and underscoring supplied)

COMELEC Resolution No. 9357, implementing Section 32 of RA 7166 for the conduct of a plebiscite in Valenzuela City on March 3, 2012, defines "deadly weapon" as:

Section 2. *Firearm; Deadly weapon.*— x x x.

Deadly weapon includes bladed instrument, hand grenades or other explosives, except pyrotechnics.

A bladed instrument is not covered by the prohibition when possession of the bladed instrument is necessary to the occupation of the possessor or when it is used as a tool for legitimate activity.

In order to secure a conviction of an accused based on these provisions, the prosecution must prove that: (*a*) the person is

bearing, carrying, or transporting firearms or other deadly weapons; (*b*) such possession occurs during the election period; and (*c*) the weapon is carried in a public place. Notably, it is essential that **possession of the deadly weapon in a public place** be established beyond reasonable doubt. In his petition, Gonzalez prayed for his acquittal in view of the serious doubts on the prosecution's evidence. Particularly, he claims that PO1 Congson's narration of events was uncorroborated and in fact contradicted by the physical evidence submitted in court, as well as by the testimonies of his witnesses, corroborating his version of the events,which thereby puts into question PO1 Congson's credibility.[39]

The Court agrees, as the prosecution failed to dispel all reasonable doubts surrounding Gonzalez' arrest.

In particular, the prosecution failed to establish its allegation that, immediately before and at the time of his arrest, Gonzalez was *holding a knife in a public place* — the critical elements of the crime of violation of Section 261(p) (q) of the OEC, as amended by Section 32 of RA 7166. Records show that aside from the testimony of PO1 Congson, the prosecution did not present any other evidence that would corroborate his version leading to Gonzalez' arrest. PO1 Congson claimed that at around 4:00 a.m., he and the other police officers saw Gonzalez holding a fan knife in his right hand as he was walking out of an alley where they eventually arrested him after a chase.[40] Gonzalez, on the other hand, presented three (3) witnesses[41] — neighbors who lived below and across his house where he was arrested and who were there at the time of his arrest. All these witnesses corroborated Gonzalez' version, particularly on five (5) critical points, namely: (*a*) Gonzalez and his child were brought downstairs from his house located at the second floor by the

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[39] See *rollo,* pp. 20-23.

[40] See *rollo*, pp. 132-133. See also TSN, June 20, 2012, pp. 7-8.

[41] See testimonies of: (1) Irene Paat, TSN, September 4, 2013; pp. 1-6; (2) Aida Alde, TSN, September 25, 2013; pp. 1-7; and (3) Ferdinand Perez, TSN, October 16, 2013, pp. 1-10. See also *rollo*, pp. 179-200.

arresting persons; (*b*) his hands were tied behind his back as he was being dragged downstairs; (*c*) his photograph was taken soon after the arrest took place at around 3:00 a.m.; and (*d*) there were a total of four (4) male persons who conducted the arrest.[42] One of the witnesses even confirmed that Gonzalez' hands were tied by a brassiere.[43] In other words, all three (3) witnesses rendered more credible the defense's claim that Gonzalez was arrested at his home; at the very least, their testimonies rendered doubtful the prosecution's claim that police officers arrested Gonzalez on the street in the regular performance of their duties. Unfortunately, the RTC simply brushed these aside, thus leading to the erroneous conclusion that "[n]o one actually saw the factual circumstances immediately preceding his arrest."[44]

Moreover, while the information and the physical evidence[45] presented before the lower court both revealed a kitchen knife, PO1 Congson categorically testified that he saw a fan knife.[46] A fan knife, locally known as "*balisong*"[47] or "*Batangas*",[48] is a folding pocket knife with two handles counter-rotating around the tang so that, when the knife is closed, the blade resides concealed inside the grooved handles.[49] In contrast, a kitchen

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[42] See testimonies of: (1) Irene Paat, TSN, September 4, 2013; pp. 3-6; (2) Aida Alde, TSN, September 25, 2013; pp. 3-6; and (3) Ferdinand Perez, TSN, October 16, 2013, pp. 3-10. See also *rollo*, pp. 181-184, 187-190, and 194-200.

[43] See testimony of Irene Paat,TSN, September 4, 2013, p. 5. See also *rollo*, p. 183.

[44] *Rollo*, p. 66.

[45] See records, p. 1. See also Affidavit of Attestations of SPO3 Sanchez; *rollo*, p. 82; Inventory of Seized Properties/Items; *rollo*, p. 85; and Exhibit "U"; *rollo*, p. 100.

[46] TSN, June 20, 2012, p. 7. See also *rollo*, p. 132.

[47] See *People v. Mendoza,* 348 Phil. 744, 748 and 755 (1998).

[48] See *People v. Velarde,* 331 Phil. 774, 777 and 786 (1996).

[49] Also known as "butterfly knife." (See <http://www.butterflyknifebutterflyknife.com/default.html#The_Butterfly_Knife> [visited January 29, 2018] and<http://www.butterflyknife.com/butterflyknives/butterfly-knife-info/> [visited January 29, 2018].See also <http://www.yourdictionary.com/balisong>[visited January 29, 2018]).

knife has one handle that does not fold, with its blade clearly visible. Obviously, a fan knife is far from being the same as a kitchen knife. To the Court's mind, there is doubt as to whether PO1 Congson had actually seen Gonzalez come out of an alley holding a fan knife.

Given the difference in the prosecution and defense's versions of Gonzalez' arrest, including the variance regarding the physical evidence presented in court, it behooved the lower court to examine and calibrate more carefully the evidence presented by both sides. As it was, the defense's evidence weighed more than the prosecution's evidence. At the very least, their evidence were evenly balanced such that the appreciation of such evidence called for the tilting of the scales in favor of Gonzalez.[50] After all, the burden is on the prosecution to overcome the presumption of innocence of the accused.[51]

In fine, the Court finds that the prosecution failed to prove beyond reasonable doubt that Gonzalez committed the crime charged.

WHEREFORE, the petition is **GRANTED.** The Decision dated August 7, 2015 and the Resolution dated June 22, 2016 of the Court of Appeals in CA-G.R. CR No. 36523 are hereby **REVERSED** and **SET ASIDE.** Accordingly, petitioner Jasper Gonzalez *y* Dolendo is **ACQUITTED** of the crime charged.

SO ORDERED.

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

Caguioa, J., on official business.

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[50] See "equipoise doctrine" which states that "when the evidence of the prosecution and the defense are so evenly balanced the appreciation of such evidence calls for the tilting of the scales in favor of the accused." The constitutional basis of the rule is the Bill of Rights which finds expression in Sec. 1(a), Rule 115 of the Rules of Court. (*Vicario v. CA*, 367 Phil. 292, 302 [1999].)

[51] See *Daayata v. People*, G.R. No. 205745, March 8, 2017.

SECOND DIVISION

[G.R. No. 226494. February 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOMAR SISRACON *y* RUPISAN, MARK VALDERAMA *y* RUPISAN, ROBERTO CORTEZ *y* BADILLA, LUIS PADUA *y* MITRA and ADONIS MOTIL *y* GOLONDRINA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— The elements of rape committed under Article 266-A(1)(a) of the Revised Penal Code, as amended, are: (a) that the offender, who must be a man, had carnal knowledge of a woman, and (b) that such act is accomplished by using force or intimidation. In this case, all the elements of the crime of rape have been properly established by the prosecution and aptly appreciated by the RTC and the CA.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON IS GENERALLY ACCORDED GREAT RESPECT ON APPEAL, SINCE THE TRIAL JUDGE HAS THE ADVANTAGE OF ACTUALLY EXAMINING BOTH REAL AND TESTIMONIAL EVIDENCE INCLUDING THE DEMEANOR OF THE WITNESSES.— Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts. The trial judge has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. Hence, the 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, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound

by the former's findings. The rule is even more stringently applied if the appellate court has concurred with the trial court.

3. **CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; MAY BE INFERRED FROM THE ACTS OF THE ACCUSED BEFORE, DURING OR AFTER THE COMMISSION OF THE CRIME WHICH, WHEN TAKEN TOGETHER, WOULD BE ENOUGH TO REVEAL A COMMUNITY OF CRIMINAL DESIGN.—** As to the finding that appellants conspired in the commission of the crime, AAA's testimony on the incidents before, during and after the felonious act, is unambiguous x x x. Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. It is apparent, therefore, that conspiracy attended the commission of the crime and the CA did not err finding such x x x.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; CAN ALSO SUFFICIENTLY AND COMPETENTLY ESTABLISH A CRIME BEYOND REASONABLE DOUBT, FOR PROOF OF THE COMMISSION OF THE CRIME NEED NOT ALWAYS BE BY DIRECT EVIDENCE.—** Appellants' contention that conspiracy was not proven because AAA failed to identify the exact persons who raped her because she was rendered unconscious is untenable. While it is true that there was no direct evidence to establish that some of the appellants had carnal knowledge of AAA as the latter was unconscious, however, proof of the commission of the crime need not always be by direct evidence, for circumstantial evidence could also sufficiently and competently establish the crime beyond reasonable doubt. Indeed, the Court had affirmed convictions for rape based on circumstantial evidence.

5. **ID.; ID.; ID.; ID.; REQUISITES.—** Circumstantial evidence is sufficient for conviction if (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the 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.

6. ID.; ID.; POSITIVE IDENTIFICATION; DOES NOT ONLY MEAN IDENTIFICATION BY THE USE OF VISUAL SENSE BUT INCLUDES OTHER HUMAN SENSES WITH WHICH ONE COULD PERCEIVE.— [P]ositive identification need not only mean the identification by the use of the visual sense. It also includes other human senses with which one could perceive. In this case, AAA, was able to positively identify appellant Jomar as the first person who raped her by recognizing the latter's voice.

7. ID.; ID.; DENIAL AND ALIBI; MUST BE BRUSHED ASIDE WHEN THE PROSECUTION HAS SUFFICIENTLY AND POSITIVELY ASCERTAINED THE IDENTITY OF THE ACCUSED.— Denial and alibi are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And as often stressed, a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails over denial, which is a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.

8. CRIMINAL LAW; REPUBLIC ACT NO. 9344; MINIMUM AGE OF CRIMINAL RESPONSIBILITY; FOR ACCUSED WHO ARE MINORS TO BE EXEMPT FROM CRIMINAL LIABILITY, IT MUST BE PROVED THAT THEY DID NOT ACT WITH DISCERNMENT.— It is indisputable and proven in court that the appellants, except appellant Roberto, are all minors when the crime was committed. x x x According to x x x [Section 6 of R.A. No. 9344], the minor appellants herein, all above 15 but below 18 years of age, shall only be exempt from criminal liability if they did not act with discernment. In *Madali, et al. v. People,* this Court held that discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each

case. In this particular case, the prosecution was able to prove the presence of discernment.

9. ID.; ID.; AUTOMATIC SUSPENSION OF SENTENCE; WHEN A CHILD BELOW EIGHTEEN YEARS OF AGE COMMITS A CRIME AND IS FOUND GUILTY, THE COURT SHALL PLACE HIM UNDER SUSPENDED SENTENCE EVEN IF HE HAS REACHED EIGHTEEN OR MORE AT THE TIME OF JUDGMENT.— It is error x x x for the RTC and the CA to not have applied Section 38 of R.A. 9344. Section 38 of RA No. 9344 provides that when the child below 18 years of age who committed a crime and was found guilty, the court shall place the child in conflict with the law under suspended sentence even if such child has reached 18 years or more at the time of judgment. x x x Necessarily, herein minor appellants shall be entitled to appropriate disposition under Section 51, R.A. No. 9344, which extends even to one who has exceeded the age limit of twenty-one (21) years, so long as he committed the crime when he was still a child, and provides for the confinement of convicted children.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is to resolve the appeal of appellants Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina that seeks to reverse and set aside the Decision[1] dated August 12, 2015 of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 05986 affirming the Decision dated September 13, 2010 of the Regional

[1] Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Pedro B. Corales and Ma. Luisa C. Quijano-Padilla; *rollo,* pp. 2-44.

Trial Court (*RTC*) of x x x, Rizal, Branch 76 finding the same appellants guilty beyond reasonable doubt of nine (9) counts of Qualified Rape as defined and penalized under Article 266-A and Article 266-B, par. 1, in relation to Article 266-B, 2nd par. of the Revised Penal Code (*RPC*), as amended by Republic Act (*R.A.*) No. 8353 and in further relation to Section 5 of R.A. 8369.

The facts follow.

According to the victim, AAA, she was fifteen (15) years old and the President of a youth group when the incident happened on February 29, 2004. Around 11 o'clock in the evening of that same day, AAA was about to go home when she passed by the basketball court. She saw a group composed of the following:

1. John Andrew Valderama alias "John John;"
2. Luis Padua alias "Buboy;"
3. Ranil Camaymayan alias "Sedeng;"
4. Rex Dandan alias "Itoy;"
5. Mark Valderama alias "Macmac;"
6. Jomar Sisracon alias "Jomar;"
7. Roberto Cortez alias "Unad;"
8. Randy Mulog alias "Randy;" and
9. Adonis Motil alias "Ulo" or "Dondon."

Appellant Roberto called AAA and asked her to approach them because they wanted to ask her about the organization that they recently joined. AAA agreed and discussed with them the mission and vision of the organization. Thereafter, AAA told the group that she wanted to go home, but the latter asked her to stay longer as they were about to have a drinking spree. AAA told them that she could not stay longer because her mother would get angry at her and that she had to go to school the following day. The group insisted that she stay long and finally, AAA told them that she could stay but only until 11:30 in the evening. The group then told AAA to go with them at the apartment of Ranil's aunt which is just a street away from where they were. When they were on the way to the apartment, the group suddenly ran. AAA inquired why they ran and they replied that a certain Pita was there and that they didn't want the latter to go with them because he was unruly and noisy. Pita was

known in their place as "*sinto sinto*" or "*kulang-kulang sa pag-iisip*" (mentally deranged). AAA had known Pita for a long time including Ranil, who was a friend of her bother, BBB and who regularly went to their house attending social affairs. Pita eventually joined the group.

The group arrived at the apartment and upon entering, Ranil lit a candle and Adonis closed the door. Ranil then opened a bottle of Emperador Brandy and took a glass from which each of them had their "*tagay*" (shots). AAA sat beside Jomar and since she was not used to drinking liquor, she forced herself to swallow, the same slowly and by covering her nose. At 11:30 p.m., AAA told the group that she must go home. Pita also told AAA that it's time for them to go home. Since Pita insisted that he and AAA should both go home, he was forced to go home alone because the group started to hurt him by striking him in the nape ("*binabatuk-batukan*"). AAA also tried to leave the apartment but appellants Jomar and Adonis blocked her way. Adonis even proceeded to guard the door of the apartment. AAA was then threatened by the group that they would hurt her older brother ("*Kuya*"), BBB, if she insisted on leaving, thus, she decided to return to her seat. While this was happening, the others were conversing with each other. Shortly, the group opened a second bottle of Emperador Brandy and resumed drinking. AAA had a shot of the liquor that was poured by Ranil and was given to her by Jomar. After five to ten minutes from drinking the liquor, AAA felt her legs and body turning numb, her vision turning blurryand she started feeling dizzy. As she was closing her eyes, AAA felt that she was being carried by Jomar. AAA was familiar with the voice of Jomar and it was the latter who said, "*Dito na, dito na*." AAA was then placed in a "*papag*" where Jomar proceeded to lower her shorts. AAA tried to resist by bringing up her shorts but to no avail due to her weakness. After successfully lowering AAA's shorts, Jomar went on top of her and inserted his penis into her vagina causing her pain. After performing the deed, Jomar invited the others to take their turns by saying, "*Sino ang susunod*?" A person of heavier weight went on top of AAA and it was then that the latter lost her consciousness. When AAA regained her

consciousness, she felt that somebody was putting on her dress and heard shouts that he was coming ("*Si BBB, si BBB andyan na*?"). She then heard footsteps and a commotion ensuing. When she awakened, AAA was already inside a mobile unit with her brother and her mother on their way to a clinic in Camp Crame. From Camp Crame, they proceeded to the Municipal Hall of x x x, Rizal and were brought to the Office of the Prosecutor at around 1 o'clock of March 1, 2004. Thereafter, BBB was told to identify the suspects and pointed at five (5) persons, namely, appellants Adonis, Jomar, Luis, Mark and Roberto. During her identification of the suspects, the parents of the accused, AAA's mother and brother, and the fiscal were present.

Thus, the following nine (9) Informations were filed against the appellants and their other companions:

Criminal Case No. 7693

That on or about the 29th day of February 2004, in the Municipality of x x x, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7694

That on or about the 29th day of February 2004, in the Municipality of xxxx, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil

y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7695

That on or about the 29th day of February 2004, in the Municipality of xxxx, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7696

That on or about the 29th day of February 2004, in the Municipality of xxxx, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil

Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7697

That on or about the 29th day of February 2004, in the Municipality of xxxx, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7698

That on or about the 29th day of February 2004, in the Municipality of xxxx, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously

have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7699

That on or about the 29th day of February 2004, in the Municipality of xxxx, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7700

That on or about the 29th day of February 2004, in the Municipality of x x x x, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of

commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Criminal Case No. 7701

That on or about the 29th day of February 2004, in the Municipality of xxxx, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Rex Dandan, Randy Mulog, and Roberto Cortez y Badilla in conspiracy with Adonis Motil y Golondrina, 15 years old, John Andrew Valderama y Rupisan, 16 years old, Jomar Sisracon y Rupisan, 17 years old, Mark Valderama y Rupisan, 17 years old, Luis Padua y Mitra, 16 years old and Ranil Camaymayan alias Sedeng, 17 years old, minors, and with one another by means of force, and intimidation, while the offended party is unconscious, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, the offended party, a minor, fifteen (15) years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstance of commission of the offense of more than two (2) persons, which is aggravated by the circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and Nighttime.

CONTRARY TO LAW.

Upon arraignment on October 14, 2004, with the assistance of counsel *de parte*, appellants Jomar Sisracon, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina, all pleaded "Not Guilty." Accused John Andrew Valderama y Rupisan, Ranil Camaymayan alias "Sedeng," Rex Dandan and Randy Mulog are still at-large.

After pre-trial, the trial on the merits ensued.

Aside from the testimony of AAA, the prosecution presented the testimonies of Dr. Mamerto Bernabe, a medico-legal officer assigned at the PNP Crime Laboratory, Camp Crame, Quezon City, BBB, AAA's brother, and CCC, a barangay tanod of Brgy. x x x, Municipality of x x x, Rizal.

Dr. Bernabe testified that on March 1, 2004, he conducted a physical and genital examination over the person of AAA

and that the physical examination showed an injury on the left breast of AAA akin to a suction injury also known as "kissmark." As to the genital examination, Dr. Bernabe found that on the hymen, there was a shallow healing laceration at 7 to 8 o'clock positions which means that there was forcible entry, perhaps a blunt object that passed through the hymen orifice and in the process of stretching the said hymenal orifice, the point of resistance gave way and produced the laceration. Dr. Bernabe, therefore, concluded that AAA is in non-virgin state physically and that the findings are compatible with recent loss of virginity.

BBB, AAA's brother, testified that he was at the meat shop from 1 a.m. to 1:30 a.m. on the day of the incident when a certain Rommel arrived and the latter talked to BBB's lady companions, Angie and Weng. Rommel told Angie and Weng that BBB's sister was at the apartment of appellant Ranil's aunt. After learning what Rommel told to his companions, BBB asked a certain Delfin and a certain Johnrey to accompany him to the said apartment. When they reached the place, BBB noticed that there was no light in the house and saw Randy Mulog at the back of the door and as soon as the latter saw BBB, he went inside the house and closed the door. BBB then entered the house and noticed that there were men inside who were in the act of dressing up. BBB also saw Ramil Camaymayan and Rex Dandan hurriedly coming out from a room while fixing their clothes. BBB proceeded to the room and noticed that it reeked of alcohol and saw Luis Padua fixing his shorts. BBB then saw his sister, AAA, lying sideways on the bed with her underwear lowered down and her blouse raised up. BBB asked them why they did that to his sister but the men ran away. Johnrey, BBB's companion, chased and caught up with John Andrew Valderama. Thereafter, they went to the *barangay* hall where BBB reported the incident. After thirty minutes, a *barangay tanod* arrived accosting appellants Mark, Luis, Adonis, Jomar and John Andrew Valderama. They all then proceeded to the municipal hall and while thereat, BBB, his mother, AAA, and his aunt were told to go to Camp Crame to have AAA examined by a medico-legal officer. After going to Camp Crame, they returned to the municipal hall and gave their statements.

CCC, a *barangay tanod,* corroborated some parts of the testimony of BBB.

On the other hand, in their testimonies, appellants Roberto, Adonis, Luis, Jomar and Mark, all denied the allegations.

According to appellant Roberto, in the evening of February 29, 2004, he was at the apartment of Ranil's aunt for a drinking session. He started drinking with the others around 9 o'clock in the evening. He was seated on a chair at the back of the door. Around 12:00 midnight, AAA arrived at the apartment and told them that she had a problem at home and that her stepfather, who might still have been awake, might rape her ("*Mapagsamantalahan*"). As they were all surprised, appellant Roberto and the others talked to AAA for about five (5) minutes until the latter went inside the apartment and sat down. As soon as AAA entered the apartment, appellant Roberto and the others put away the things they used during their drinking spree. Thereafter, they were about to sleep but AAA was still inside the room. AAA was left inside the room, while appellant Roberto slept outside the room. Around 1 o'clock in the morning, AAA's brother, BBB, arrived at the apartment shouting and looking for his sister. Appellant Roberto accompanied BBB inside the room where AAA slept. AAA, however, refused to go home. Thereafter, BBB went out of the room holding a knife and chased the other appellants. The others ran away, while apellants Jomar, Mark, Adonis and Luis remained with appellant Roberto inside the apartment. Appellant Roberto and the other appellants did not leave the apartment because they thought that their other companions would return. When BBB returned, he was already with *barangay tanods* who arrested the appellants. After they were arrested, the appellants were brought first to the *barangay* hall and then to the police station. According to appellant Roberto, AAA was not at the police station when he and the other appellants were told that they were being charged with rape.

Appellant Adonis testified that on February 29, 2004, he was with the group of appellant Jomar in the house of the aunt of Ranil drinking liquor. He arrived at the place around 9 o'clock in the evening and around 10 o'clock, they started to drink.

While they were drinking, around 11 o'clock, AAA suddenly arrived alone at the apartment. Around 12 o'clock midnight, appellant Adonis decided to go home. The others were left behind. The others were preparing to sleep when appellant Adonis left. It was also at that time that AAA went inside the room alone. When appellant Adonis was already sleeping at home, he heard noises outside around 2 o'clock. Then he was told by a neighbor that his friends were arrested. Appellant Adonis thought of going to the apartment of the aunt of Ranil but he was prevented by his parents. In the morning, appellant Adonis was awakened by his parents and was told that policemen were looking for him. Appellant Adonis talked with the policemen and the latter invited him to the municipal hall. Appellant Adonis went with the policemen while being accompanied by his father. At the precinct, appellant Adonis discovered that he was being implicated in a case but the complainant was not around.

As testified by appellant Luis, on the evening of February 29, 2004, he was drinking Emperador Brandy in the apartment of Ranil's aunt. They started drinking around 9 o'clock and were able to consume two bottles by 12 o'clock midnight. While they were drinking, AAA arrived around 10 o'clock and the latter was met by appellant Roberto. Then AAA joined them in their drinking spree. Appellant Luis was surprised because despite going there alone, AAA still joined in their drinking. The drinking spree ended around 12 midnight which was also the time when appellant Adonis left the apartment. AAA went inside the room to sleep, while the rest of them stayed at the sala. They were awakened around 1 o'clock when they heard the voice of BBB, AAA's brother, who was looking for his sister. BBB and his companions forcibly opened the door prompting appellant Luis and the others to hide at the restroom because BBB and his companions were all carrying weapons. When BBB learned through his companions that AAA was there, he briefly left and then returned in the company of *barangay* officials. Appellant and his companions did not leave the place because they knew that they did not do anything wrong. They were then arrested by the *barangay tanods*. Appellant Luis and the other appellants were the ones arrested, while the rest were able to run away.

They were then brought to the *barangay* hall and were investigated although their parents were not present. They were then taken to the police station wherein AAA was not present but only the latter's mother.

Appellant Jomar also testified that on March 1, 2004, he was arrested at the apartment of his friend Ranil after they had just finished a drinking session. He was arrested while he was asleep at the sofa. Thereafter, he and the other appellants were brought by the arresting officers to the *barangay* hall. They were told that they were arrested due to a rape incident which surprised appellant Jomar but decided to keep mum. At the police precinct, they were not assisted by any lawyer and that appellant Adonis was arrested the following day and was also detained.

Finally, according to appellant Mark, on February 29, 2004 before midnight, he was at the house of appellant Roberto when he met with his friends and proceeded to the apartment of the aunt of Ranil. They arrived at the apartment around 9 o'clock in the evening and then proceeded to drink liquor. While they were drinking, AAA arrived. Although AAA was not offered a drink she still joined appellant Mark's group. They finished drinking around 12 o'clock midnight. AAA then went inside the room to sleep, while the others prepared a place to sleep outside the room. After an hour, they were awakened by the arrival of BBB who was very angry and started to create trouble. Appellant Roberto approached BBB and accompanied him inside the room. When BBB and appellant Roberto went out of the room, BBB started to thrust a knife that he was holding to the persons outside the room. Then BBB ran after the others that ran away. Thereafter, BBB returned to the apartment together with *barangay* officials around 1 o'clock a.m. of March 1, 2004 and appellant Luis and the other appellants were subsequently arrested. They were then brought to the *barangay* hall before they were taken to the police station where they were investigated and their names were taken. According to appellant Mark, AAA was not around the police station when he and the other appellants were being investigated.

In its Decision dated September 13, 2010, the RTC found the appellants guilty as charged and sentenced them with the following:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1. In Criminal Case No. 7693, accused(s) Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos(₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

2. In Criminal Case No. 7694, accused(s) Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra, Adonis Motil y Golondrina and Jomar Sisracon y Rupisan, are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

3. In Criminal Case No. 7695, accused(s) Roberto Cortez y Badilla, Luis Padua y Mitra, Adonis Motil y Golondrina, Jomar Sisracon y Rupisan and Mark Valderama y Rupisan are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

4. In Criminal Case No. 7696, accused(s) Luis Padua y Mitra, Adonis Motil y Golondrina, Jomar Sisracon y Rupisan, Mark Valderama y Rupisan and Roberto Cortez y Badilla, are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

5. In Criminal Case No. 7697, accused(s) Adonis Motil y Golondrina, Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla and Luis Padua y Mitra, are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

6. In Criminal Case No. 7698, accused(s) Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina, are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

7. In Criminal Case No. 7699, accused(s) Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina, are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd

par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

8. In Criminal Case No. 7700, accused(s) Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina, are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

9. In Criminal Case No. 7701, accused(s) Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina, are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation of Sec. 5 of R.A. 8369, and sentencing each of them to suffer the penalty of *Reclusion Perpetua* and to indemnify [the] victim [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

Accused(s) Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina are hereby ordered to be committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.

Accused(s) Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina are to be credited for the time spent for their preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.

In the meantime, let the cases against accused John Andrew Valderama y Rupisan, Rex Dandan, Ranil Camaymayan and Randy Mulog be sent to the archives pending their apprehension. The alias Warrants of Arrest dated January 22, 2007 issued against them remain in effect.

SO ORDERED.[2]

The CA, in its Decision dated August 12, 2015, affirmed with modification the decision of the RTC, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Decision dated September 13, 2010 of the Regional Trial Court of x x x, Rizal, Branch 76, is hereby AFFIRMED with MODIFICATION. In Criminal Cases No. 7693, 7694, 7695, 7696, 7697, 7698, 7699, 7700 and 7701 appellants Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina are hereby found GUILTY beyond reasonable doubt of the crime of Qualified Rape as defined and penalized under Art. 266-A, par. 1 in relation to Art. 266-B, 2nd par. of the Revised Penal Code as amended by R.A. 8353 and in further relation to Sec. 5 of R.A. 8369.

ACCORDINGLY, appellants Roberto Cortez y Badilla is hereby sentence[d] to suffer the penalty of *Reclusion Perpetua* for each criminal case he was found guilty of. Appellants Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Luis Padua y Mitra and Adonis Motil y Golondrina are hereby sentence[d] to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as the minimum period, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as the maximum period for each criminal case they are hereby found guilty.

Appellants are also hereby ordered to indemnify [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages for each criminal case.

Appellants are further ordered to pay [AAA] interest on all damages awarded at the legal rate of Six Percent (6%) *per annum* until the same are fully paid.

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[2] CA *rollo,* pp. 65-68.

SO ORDERED.[3]

Hence, the present appeal.

Appellants, in their Brief, assigns the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PRIVATE COMPLAINANT'S TESTIMONY.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN THEIR FAVOR.

III

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANTS COMMITTED THE ACTS COMPLAINED OF, THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE SEXUAL MOLESTATIONS ARE QUALIFIED BY TWO OR MORE PERSONS AND NIGHTTIME.

IV

THE TRIAL COURT GRAVELY ERRED IN FINDING CONSPIRACY BETWEEN ACCUSED-APPELLANTS AND THEIR OTHER CO-ACCUSED.[4]

It is the contention of the appellants that there are no concrete evidence to show that AAA has been sexually abused by them, hence, it is wrong for the trial court to rely merely on the testimony of AAA in convicting them with the crime charged in the Informations. They also claim that based on the testimony of AAA, there was no proof of the identity of the appellants as

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[3] *Rollo*, pp. 42-43.

[4] CA *rollo,* pp. 26-27.

the perpetrators of the crime. Appellants also pointed out other matters and statements on AAA's testimony that they claim to be inconsistent with one another. They, likewise, assert that they cannot be convicted of rape with the aggravating circumstance of nighttime and committed by two or more persons because the records show that the prosecution failed to establish that they took advantage of the same situations in the commission of the crime. They also claim that the trial court should have appreciated the privileged mitigating circumstance of minority under par. 2, Art. 68 of the Revised Penal Code in their favor. They further argue that the prosecution failed to prove beyond reasonable doubt that they acted with discernment.

The present appeal is unmeritorious.

Article 266-A, 1st paragraph of the RPC, as amended by R.A. 8353 and R.A. 8369, to which the appellants stand charged provides the following:

ARTICLE 266-A. *Rape, When and How Committed.* — Rape is committed —

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

a. Through force. Threat or intimidation;

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

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

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

In relation to the above provision of the RPC, the same law provides:

ARTICLE 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

The elements of rape committed under Article 266-A(l)(a) of the Revised Penal Code, as amended, are: (a) that the offender, who must be a man, had carnal knowledge of a woman, and (b) that such act is accomplished by using force or intimidation.[5]

In this case, all the elements of the crime of rape have been properly established by the prosecution and aptly appreciated by the RTC and the CA.

Through the testimony of AAA, it was clearly proven that the appellants committed the crime and, as such, an attack on her credibility is futile. In *People v. Malana*,[6] this Court ruled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, thus:

> In reviewing rape cases, we are guided by the following well-entrenched principles: (1) an accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.
>
> The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case. None of these circumstances are

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[5] *People v. Aaron*, 438 Phil. 296, 309 (2002).

[6] 646 Phil. 290, 302 (2010). (Citations omitted)

present in the case at bar to warrant its exception from the coverage of this rule.

It is well-established that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped. A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused, as in this case where the accusations were raised by private complainant against her own father.[7]

Therefore, the CA did not err in finding merit to the findings of the RTC, thus:

In the instant case, the prosecution was able to establish all the elements of the crime of rape. First, [AAA] testified that Jomar went on top of her and, against her will, inserted his penis in her vagina. After having carnal knowledge with [AAA], Jomar told the others "*sino ang susunod*?" Thus, another man of heavier weight went on top of [AAA] and inserted his penis in her vagina. [AAA] identified that it was Jomar who carried him to another room and placed her in a "*papag*" because she heard him say, "*dito na, dito na.*" It should be emphasized that [AAA] testified that she was familiar with Jomar's voice because she knew him and the other appellants since childhood. [AAA] used to invite these appellants in their house whenever there were occasions and sometimes in going to videoke. Hence, this Court agrees with the findings of the court *a quo* as regards [AAA]'s positive identification of Jomar, through his voice, as one of the persons who raped her. The court *a quo* said in this wise:

[AAA] testified, in a manner that is clear, candid and with unmistakable certainty, that at the time, date and place of the incident, by means of force and intimidation and while she is unconscious and deprived of reason, the accused took part in sexually molesting her. During the Court hearing on January 22, 2007, the victim pointed to each of the accused being tried in the persons of Motil, Sisracon, Padua, Cortez and Valderama (Mark) as the ravishers. Yet all of these accused on trial could not ascribe any ill motive on the part of [AAA] that might have implied her to institute the present action.

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[7] *Id.* at 301-303. (Citations omitted)

> [AAA] was detailed in her narration and remained consistent even on rigid cross-examination. She testified on all incidents that transpired from the beginning until the end of her ordeal. That was, from the time when she was made to go with the group of the accused to the apartment up to the time when she was eventually rescued by her brother [BBB] and the barangay tanods. A candid and honest narration by the victim of how she was abused must be given full faith and credit for they contain earmarks of credibility. When the testimony of the victim is simple and straightforward, the same must be given full faith and credit. The determination of the outcome of every rape case, hinges upon the credibility of the complainant's testimony.[8]

Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts.[9] The trial judge has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. Hence, the 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, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.[10] The rule is even more stringently applied if the appellate court has concurred with the trial court.[11]

As to the finding that appellants conspired in the commission of the crime, AAA's testimony on the incidents before, during and after the felonious act, is unambiguous, thus:

> Q: After [you] drunk it, what did you do or say, if any?
> A: I saw the clock and I noticed that it was almost 11:30 in the

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[8] *Rollo*, pp. 24-25. (Citations omitted)

[9] *People v. Nieto*, 571 Phil. 220, 233 (2008).

[10] *People v. Dominguez, Jr.*, 650 Phil. 492, 520 (2010).

[11] *People v. Barcela*, 734 Phil. 332, 343 (2014).

evening so I told them that I have to go home because my mother will get angry, ma'am.

Q: And what did they say?
A: They told me "no" and to stay for a little while because they would still buy another bottle of liquor, ma'am.

Q: Who said that you cannot go home?
A: Jomar, ma'am.

Q: After that, what happened?
A: Then I told them that I have to leave then Pita approached me and told me "let us go home," ma'am.

Q: And what happened after that?
A: After that, they did not allow us to go home but Pita insisted to go outside, ma'am.

x x x x x x x x x

Q: Why was he able to leave?
A: *Kasi po binatok-batukan lang po sya doon sa loob ng apartment ng mga kabarkada niya at kinakawawa lang po siya doon, ma'am.*

Q: Who allowed Pita to leave?
A: None, ma'am, he insisted to go out.

Q: And what about you, what happened to you?
A: I could not leave the apartment because they [were] blocking my way, ma'am.

Q: And who was blocking your way?
A: Jomar, ma'am.

Q: Aside from Jomar who else was blocking your way?
A: The one who was at the door, ma'am.

Q: And who was at the door?
A: Dondon, ma'am.

Q: While this was happening, what about the others, what were they doing?
A: They were talking to each other, ma'am.

Q: So what happened after they blocked your way out of the door?
A: I returned to the place where I was seated.[12]

[12] TSN, January 22, 2007, pp. 24-26.

Q: Ms. Witness, you mentioned last January 22, 2007 hearing that when you were about to leave the apartment, your way was blocked by Jomar Sisracon and a certain Ronron (sic), what is the real name of this Ronron (sic)?
A: Adonis Motil, ma'am.

Q: After your way was blocked by these persons, what did you do?
A: I returned to the place where I was seated.

PROS. GONZALES
May we request that the answer of the witness be quoted on record?

A: *Natatakot po kasi ako, kasi po bago pa po kami mag-inuman nung first time po, nagbanta na po sila na babanatan nila ang kuya ko, ma'am.*

Q: After you returned to your seat, what happened, Miss Witness?
A: I just sat down and then they conversed with each other.

Q: While conversing, what happened?
A: They started making the "tagay" of the second bottle, ma'am.

x x x x x x x x x

Q: After your dizziness and your vision was quite blurred, could you recall what happened next?
A: When my eyes were closed, I felt that somebody was carrying me, ma'am.

Q: Do you know who was that somebody who was carrying you?
A: Yes, ma'am.

Q: Who?
A: Jomar Sisracon, ma'am.

Q: How did you know that the person carrying you is Jomar Sisracon?
A: Because he was uttering "dito na, dito na," ma'am.

Q: You mentioned that from your seat Jomar Sisracon carried you, in what place did Jomar Sisracon carry you?
A: I felt that he placed me on a papag because the bed is hard, ma'am.

Q: After Jomar Sisracon placed you [on] the said papag, what happened next?
A: Jomar was lowering my shorts, ma'am.

ATTY. GUANZON:
May we make it of record that the witness is in tears.

ATTY. VICTORIA:
Q: When Jomar [was] lowering your shorts, what were you doing at that time?
A: I tried to raise my shorts up, ma'am.

Q: Did you succeed in pulling up your shorts?
A: No, ma'am, because I was very weak during that time that is why I was not able to raise up my shorts.

Q: After Jomar lowered your shorts, Miss Witness, what happened next?
A: He went on top of me then he tried to insert his penis, ma'am.

Q: Where?
A: Inside my vagina, ma'am.

Q: Did he succeed in inserting his penis?
A: Yes, ma'am, because I felt pain.

x x x x x x x x x

Q: You mentioned that you felt pain?
A: Yes, ma'am.

Q: After that, what happened next?
A: He left and shouted "sino ang susunod?", ma'am.

Q: Who uttered those words "sino and susunod?"
A: Jomar Sisracon, ma'am.

x x x x x x x x x

Q: After Jomar Sisracon shouted "sino ang susunod?"
A: Somebody followed him, ma'am.

Q: This somebody, do you know who is this person next to Jomar?
A: No, ma'am.

Q: What did this person do to you?
A: He also went on top of me, ma'am.

Q: And when he went on top of you, what happened next?
A: He was heavy and he was also inserting his penis inside my vagina, ma'am.

Q: Did he succeed in inserting his penis into your vagina?
A: I do not know because I already lost consciousness, ma'am.

Q: Were you able to identify the second person?
A: What I know is that he is heavier than Jomar, ma'am.

Q: You mentioned awhile ago that you lost your consciousness, where did you regain your consciousness?
A: When somebody was dressing me up I remember that somebody was shouting "si BBB, si BBB andyan na," ma'am.

x x x x x x x x x

Q: Do you recall what happened next when you were lying on the papag?
A: As if there was a commotion because I heard footsteps, ma'am.

Q: After hearing those footsteps and the commotion, do you still recall what happened?
A: When I was lying on the papag, I felt that somebody was dressing me up, ma'am.

Q: Do you know that somebody who was dressing you up?
A: No, ma'am.[13]

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.[14] It is apparent, therefore, that conspiracy attended the commission of the crime and the CA did not err finding such, thus:

Third, the commission of the crime of rape was accomplished by appellants, in conspiracy with each other. The testimony of [AAA] reveals that appellants conspired with one another in raping her. All of the appellants acted in concert to achieve a common goal which was to have carnal knowledge with [AAA]. In the instant case, Roberto invited [AAA] to a drinking spree with the other appellants with the common plan of intoxicating her with liquor until she was helpless

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[13] TSN, March 8, 2007, pp. 3-10.

[14] *People v. Evangelio*, 672 Phil. 229, 246 (2011), citing *Co v. The Fifth Division, Sandiganbayan*, 549 Phil. 783, 805 (2007).

to resist their desires and satisfy their lust. While they were at the apartment, appellants prevented [AAA] from leaving when appellants Jomar and Adonis blocked her way out of the apartment while John guarded the door. Also, the appellants threatened her brother with harm if she refused to stay. Thus, [AAA] was forced to stay and take another shot of liquor given by Jomar which made her dizzy and her vision blurry. It was at this point that appellants took advantage of her intoxication and helplessness by taking her to a room with the purpose of raping her. Despite her weakness due to intoxication, [AAA] tried to resist by pulling her shorts back up to no avail.

Conspiracy is also apparent, when Jomar was finished having carnal knowledge with [AAA] and he told the others "*Sino ang susunod*?" Moreover, when Randy saw [AAA] outside the apartment he went inside and closed the door. He acted as a lookout for any outside intrusion. [AAA], in fact testified that she heard someone saying "Si [BBB], si [BBB] andyan na" referring to the complainant's brother and warning the others that [BBB] is coming. x x x

x x x x x x x x x

More, when [BBB] went inside the apartment he saw accused Ranil and Rex fixing their clothes and hurriedly coming out of a room. When [BBB] entered the room, he smelled liquor and he saw Luis fixing his shorts which signify that they participated in raping [AAA]. Moreover, appellants appear to have consented in all the acts of their co-accused taking turns in raping [AAA] considering none of them prevented the commission of the crime, but rather participated in aiding one another in their dastardly acts.[15]

Appellants' contention that conspiracy was not proven because AAA failed to identify the exact persons who raped her because she was rendered unconscious is untenable. While it is true that there was no direct evidence to establish that some of the appellants had carnal knowledge of AAA as the latter was unconscious, however, proof of the commission of the crime need not always be by direct evidence, for circumstantial evidence could also sufficiently and competently establish the crime beyond reasonable doubt.[16]

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[15] *Rollo*, pp. 26-27.

[16] *People v. Belgar*, 742 Phil. 404, 415 (2014).

Indeed, the Court had affirmed convictions for rape based on circumstantial evidence.[17]

Circumstantial evidence is sufficient for conviction if (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[18] 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.[19] Again, based on AAA's testimony, the summation of the circumstances that led to the commission of the crime prove beyond reasonable doubt that some of the appellants raped her and that all of them conspired in the commission of the said crime. Furthermore, positive identification need not only mean the identification by the use of the visual sense. It also includes other human senses with which one could perceive.[20] In this case, AAA, was able to positively identify appellant Jomar as the first person who raped her by recognizing the latter's voice.

However, based on the testimony of AAA, that she recognized appellant Jomar as the first person who raped her followed by another person of heavier built before she passed out, it is more appropriate to convict the appellants with just two (2) instead of nine (9) counts of rape as earlier ruled by the RTC and affirmed by the CA. Those two instances of rape have been proven beyond reasonable doubt as gleaned from AAA's clear testimony in court, as well as in her sworn testimony before the PNP, thus:

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[17] *Id.*, citing *People v. Tabarangao*, 363 Phil. 248, 261 (1999); *People v. Abiera*, G.R. No. 93947, May 21, 1993, 222 SCRA 378, 384; *People v. Ulili*, G.R. No. 103403, August 24, 1993, 225 SCRA 594, 606; *People v. Santiago*, 274 Phil. 847, 859 (1991).

[18] Rules of Court, Rule 133, Sec. 4.

[19] *People v. Evangelio, et al.*, *supra* note 14, at 243, citing *Diega v. Court of Appeals*, 629 Phil. 385, 396 (2010).

[20] *People v. Bueza*, 266 Phil. 752, 757 (1990).

Pasubali: Matapos mo malaman at mabatid ang iyong mga karapatan ayon sa ating saligang batas, ikaw ba ay nakahanda pa ring magbigay ng iyong sinumpaang salaysay?

Sagot: Opo, nakahanda po.

01. Tanong: Anong iyong pangalan, edad, hanapbuhay, tirahan at iba pang bagay tungkol sa iyong pagkatao?
Sagot: AAA, 15 taong gulang, 3rd year high school student ng x x x at kasalukuyang nakatira sa x x x.

02. T: Ano ang dahilan at naririto ka sa loob ng silid siyasatan ng pulisya ng x x x, Rizal at nagbigay ng iyong slaysay?

S: Dahil gusto ko po ireklamo itong aking mga kaibigan dahil sa kanilang ginawang pagsasamantala sakin.

03. T: Saan at kalian nangyari itong sinasabi mong pagsasamantala sa iyo?
S: Doon po sa isang bakanteng bahay doon sa x x x, Rizal nitong petsa 29 ng Pebrero 2004 bago mag-alas 12:00 ng gabi.

04. T: Maari mo bang isalaysay sa akin kung paano ka pinagsamantalahan ng sinasabi mong mga kaibigan mo?
S: Opo, noong mga bandang mag-aalas 11:00 ng gabi ako pauwi na sa amin ng madaanan ko itong aking mga kaibigan na sina JOMAR SISRACON y Rupisan, MARK ANTHONY VALDERAMA y Rupisan, ROBERTO CORTEZ y Badilla, LUIS BADUA y Mitra, ROMMEL MARIANO y Angeles, JOHN ANDREW VALDERA y Rupisan, ADONIS MOTIL y Guladrina, REX DANDAN at RAMIL CAMAYMAYAN at isa pang nagngangalang alias ITOY. At ako nga ay kanilang tinawag at kinausap tungkol sa aming samahan. At ako ay kanilang niyayang uminom subalit ako ay tumanggi. At ako nga ay kanilang hinarang at ayaw nila akong pauwiin. At ako nga ay napilitan sa kanila na sumama at sinabi ko sa kanila na hanggang 11:30 lang ako ng gabi dahil ako ay pagagalitan sa amin. At pagdating namin doon sa sinasabing apartment kung saan walang nakatira, ako ay niyaya nilang uminom at ako nga ay tumanggi subalit sinabi nila sa akin na kung hindi daw ako iinom ay kanilang babanatan ang kuya. Kaya ako ay natakot at napilitan ding uminom at sinabi ko sa kanila na hanggang sa isang bote lang ako. At ng maubos na namin iyong isang bote ay nagpaalam na akong uuwi subalit ayaw nila akong pauwiin at sila ay nag-ambag ambagan pa ng pera at muling bumili ng isa pang bote ng alak. At ayaw kong uminom at nagpapaalam na ako subalit ayaw nga nila at sinasabi nga nila sa akin na hindi daw

sila kaya ng aking kuya at kanilang paulit ulit na sinasabi na babanatan daw ang aking kuya. At ako ay pilit nilang pinainom pa at nang ako ay maka-dalawang tagay pa ay nakaramdam na ako ng pagkahilo at nagdilim na ang aking paningin. At naramdaman ko na lang na ako ay binubuhat na papasok doon sa isang kuwarto at ako ay inihiga sa isang papag. **At naramdaman ko din na habang ako ay nakahiga na ay may naghuhubad sa aking suot na short at nabobosesan ko ito na si Jomar Sisracon at pilit ko ngang itinataas ang aking short subalit binaba ito ni Jomar. At wala na nga akong magawa dahil nahihilo na nga ako. At naramdaman ko na lang na pinatungan na ako nitong si Jomar at pilit na ipinapasok ang kaniyang ari sa aking ari at ako nga ay nanlaban subalit wala na akong magawa dahil na rin sa ako ay nahihilo na. At naramdaman ko na lang na naipasok din niya ang kanyang pagkalalaki sa aking ari. At nang siya ay makatayo na ay narinig ko na nagsalita na siya ng kung sino daw ang susunod. At pagkatapos niyang sabihin niya iyon ay may naramdaman na lang akong may pumasok na namang isang lalaki na mas malaki dito kay Jomar at ako ay kanyang pinatungan at nagawa ngang maipasok ang kanyang ari sa aking pagkababae. At wala na nga akong magawa pa at habang siya ay nakapatong sa akin ay nawalan na ako ng malay.**

05. T: Mayroon ka bang narinig sa kanila habang ikaw ay pinagsasamantalahan nitong taong iyong tinutukoy?

S: Naririnig ko na lang po sa kanila habang ako nga ay nakahiga ang mga salitang sino ang susunod sabay tawanan sila ng tawanan.

06. T: Ilang ulit mo bang narinig iyang salitang iyong sinasabi na kung sino ang susunod?

S: Bali isang beses lang po.

07. T: Matapos ka ngang patungan nitong pangalawang lalaking iyong sinasabi ano pa ang nangyari?

S: Nawalan na po ako ng malay noong nakapatong po sa akin tong sinasabi kong pangalawang lalaki na pumatong sa akin.

08. T: Nakilala mo ba itong sinasabi mong pangalawang lalaki na pumatong at gumamit sa iyo?

S: Hindi ko na po siya nakilala pero napansin ko na mas matangkad siya doon kay Jomar na aking nakilala na unang gumamit sa akin.

09. T: Paano ka nagkamalay?

S: Naramdaman ko na lang na may nagsasalita na ito daw aking kuya ay nandiyan na at naramdaman ko na lang na parang nagtakbuhan na sila.

10. T: Noong matapos ninyong maubos iyong isang boteng alak na inyong nainom napag-alaman mo ba kung anong oras na iyon?
S: Ang alam ko po bago mag alas 12:00 ng gabi ay naubos na namin iyong isang bote ng alak at doon nga ako nagpaalam subalit ako ay kanilang pinigilan.

11. T: Anong klaseng alak ba itong sinasabi mong pinainom sa iyo?
S: Long neck na Emperador Brandy.

12. T: Ano ba ang naramdaman mo nang dadatnan ka ng iyong kuya?
S: Wala na po, talagang hindi na kaya ng katawan ko, hinang-hina na ako.

13. T: Pansamantala ay wala akong itatanong sa iyo mayroon ka pa bang gustong idagdag o ibawas sa salaysay mong ito?
S: Wala na po.[21]

Needless to say, the other seven counts of rape have not been proven beyond reasonable doubt. The findings of the medico-legal officer also cast doubt as to the possibility that the victim was raped nine times. His testimony reads as follows:

Q: What kind of examination have you conducted on this person, Mr. Witness?
A: We have conducted a physical and genital examination, ma'am.

x x x x x x x x x

Q: Mr. Witness, you mentioned that you conducted the physical examination, what was the result of the said physical examination?
A: The physical examination alone shows injury on the left breast, and let me read from the report, "ecchymosis, left breast measuring 0.5 cm. x 0.05 cm. From the anterior midline, ma'am.

Q: What do you mean by the word "ecchymosis?"
A: It means type of injury akin to the sanctioned injury as identified by other agency, ma'am.

Q: In layman's term?
A: Kissmark, ma'am.

Q: How about the genital examination you conducted, what is the result of the said examination?

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[21] Records, pp. 17-18.

A: For the genital, we have pubic hair, moderate, labia majora are full, convex, coaptated and erythematous. Labia minora, pinkish, brown, congested. Hymen shallow healing lacerations at 7 and 8 o'clock positions. The posterior fourchette, abraded. The external vaginal orifice offers strong resistance of the examining index finger. The rest of the organs were not examined because it would no longer permit further examination, ma'am.

Q: Mr. Witness, you mentioned on the portion of the hymen, shallow healing laceration at 7 and 8 o'clock positions, could you please explain this finding in layman's term?

A: That shallow healing laceration at 7 and 8 o'clock positions would mean injury at the hymen and the position, that would refer to the face of the clock when we view in front, which means the injury would be at the posterior part and right side of the hymen, sir.

Q: This 7 to 8 injury?

A: In the clock, 7 and 8 o'clock would refer to the position of the clock, the hymenal is the face.

Q: This laceration at 7 and 8 o'clock positions, what is the significance of these positions?

A: It would mean that there was a forcible entry, perhaps a blunt object, passed thru this hymenal orifice. In the process of stretching this hymenal orifice, the point of resistance gave way and produced this laceration, sir.

Q: In short, there is a forcible entry on the hymen of the victim?

A: Yes, sir.

Q: On the posterior fourchette, what do you mean by that?

A: It is the back part of the vestibule, it is intersection of the labia minora. This would be equivalent with the floor of the vestibule or front part of the vagina, sir.

Q: What is this abraded?

A: It is also sustained injury due to the passage of a blunt object, ma'am.

Q: Meaning, the passage is with force also?

A: Yes, ma'am.

Q: Mr. Witness, you mentioned here in your conclusion the subject is in non-virgin state physically, and the rest, can you please explain the conclusion indicated in this medico-legal report?

A: The conclusion reads, subject is in non-virgin state physically. Findings are compatible with recent loss of virginity. Barring unforeseen complication, it is estimated that the above injuries will resolve within 1 (sic) (1) to two (2) days. Although at the present time we no longer use the word virgin or non-virgin. The report was made on March 8, 2004 and the protocol still use this term non-virgin which would only mean that the hymen has already been lacerated. So it is no longer intact. That is the meaning of non-virgin, wherein this injury in the hymen based on the second statement is compatible with recent loss of virginity and the third statement would refer to the injury sustained by the left breast that will resolve within 1 (sic) (1) to two (2) days, ma'am.

Q: Based on your findings, both on the genital and extragenital, could you make a conclusion or opinion that the victim was a victim of rape?

A: Because rape is a question which I believe could have been resolved by the Court and rape has two (2) general elements of which is, as alleged by the disclosure of the victim, which is loss of consent and the other would be the presence of sexual intercourse, I can confirm to this Court that there was penetration of the vagina, ma'am.

Q: How about the item here on the physical injuries, and you mentioned here, strong resistance?

A: That was the strong resistance of the vaginal musculature of the victim during my examination, this also did not permit me to go further in the vaginal wall, ma'am.[22]

The above findings of the medico-legal officer is merely an affirmation that there was penetration on AAA's vagina but is inconclusive as to the number of times or number of persons that caused such penetration. On the basis of the medico-legal officer's findings, one can even surmise that the victim should have incurred far greater injuries if she had been raped nine times in a span of a little more than one hour. As such, there is the existence of doubt on the other seven counts of rape charged against the appellants.

Nevertheless, due to the aforementioned, appellants' defense of denial is inconsequential. Denial and alibi are inherently

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[22] TSN, March 17, 2005, pp. 4-7.

weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[23] And as often stressed, a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails over denial, which is a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.[24]

It is indisputable and proven in court that the appellants, except appellant Roberto, are all minors when the crime was committed. Jomar was then 17 years and 4 months old, Mark was 17 years and 10 months old, Adonis was 15 years and 11 months old, and Luis was 16 years and 11 months old. Section 6 of R.A. No. 9344 provides:

> SEC. 6. *Minimum Age of Criminal Responsibility*. — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.
>
> A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.
>
> The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

According to the above provision, the minor appellants herein, all above 15 but below 18 years of age, shall only be exempt from criminal liability if they did not act with discernment. In *Madali, et al. v. People*,[25] this Court held that discernment is

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[23] *People v. Barberan,* G.R. No. 208759, June 22, 2016, 794 SCRA 348, 360.

[24] *People v. Alberto Fortuna Alberca*, G.R. No. 217459, June 7, 2017.

[25] 612 Phil. 582, 606 (2009).

that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case. In this particular case, the prosecution was able to prove the presence of discernment. As ruled by the RTC:

> Discernment is the mental capacity to understand between right and wrong. It would be recalled from the testimony of victim[AAA] that the accused being tried in Court took steps in guarding the premises to ensure that she is prevented from leaving the apartment. Victim[AAA] was unable to leave the apartment because they blocked her way. The group even threatened to harm the brother of the victim if she persists on leaving the place. Furthermore, when the brother of the victim discovered the beastly act committed upon his sister and in a shouting manner questioned them as to why they raped his sister, they ran away. Which acts are clearly indicative that they were aware that what they've done is wrong. Therefore, the close participation of the accused that led to the consummation of their evil designs undoubtedly supports the belief that they acted with discernment.[26]

The CA, as well, aptly ruled that the minors in this case acted with discernment, thus:

> Moreover, in the instant case, We rule that the appellants committed the crime of rape with discernment taking into consideration the following circumstances, namely: 1. appellants took advantage of [AAA]'s helplessness when she was intoxicated resulting to her unconsciousness; 2. appellants prevented her from going home when appellants Jomar and Adonis blocked her way out of the apartment while John guarded the door; 3. Randy acted as lookout to warn his co-accused of any intrusion as would prevent the commission of the crime; and 4. appellants are fully aware that the crime they were about to commit is rape, which is a heinous crime. All these circumstances point to a conclusion that the appellants were all aware that they were committing a wrongful act.

In determining if such a minor acted with discernment, the High Court's pronouncement in *Valentin v. Duqueña* is instructive:

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[26] CA *rollo,* p. 64. (Citations omitted)

> The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine, who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong, and such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of said minor, not only before and during the commission of the act, but also after and even during the trial.[27]

The CA, therefore, did not err modifying the penalties imposable on the same minor appellants. As ruled by the CA:

Pursuant to Article 68 (2) of the RPC, when the offender is over 15 and under 18 years of age, the penalty next lower than that prescribed by law is imposed. Based on Article 61 (2) of the RPC, *reclusion temporal* is the penalty next lower than *reclusion perpetua* to death. Applying the Indeterminate Sentence Law and Article 64 of the RPC, therefore, the range of the penalty of imprisonment imposable on appellants Jomar, Mark, Adonis, and Luis should be *prision mayor* in any of its periods, as the minimum period, to *reclusion temporal* in its medium period, as the maximum period. Accordingly, the proper indeterminate penalty that should be imposed upon the herein minor appellants should range from six (6) years and one (1) day of *prision mayor*, as the minimum period, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as the maximum period.

Anent the aggravating circumstance attending the commission of the crime, We agree with the findings of the court *a quo* when it ruled that:

> Anent the qualifying circumstance stated in each information of two or more persons that committed the offense – in the case of People v. Lamberte, G.R. No. L-65153, July 11, 1986, it was held that the "use of deadly weapon" or "by two or more persons" — qualifies the crime.
>
> In this regard the aggravating circumstances mentioned in the Informations, the Court appreciates the presence of nighttime, as strong indications show that the accused specifically sought

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[27] *Rollo,* p. 33.

> it to facilitate the commission of the crime. Abuse of superior strength is not to be considered as an aggravating circumstance in view of the existence of conspiracy, thus the same is deemed inherent.[28]

It is error, however, for the RTC and the CA to not have applied Section 38 of R.A. 9344. Section 38 of RA No. 9344 provides that when the child below 18 years of age who committed a crime and was found guilty, the court shall place the child in conflict with the law under suspended sentence even if such child has reached 18 years or more at the time of judgment. Thus:

> SEC. 38. *Automatic Suspension of Sentence*. — Once the child who is under eighteen (18) yearsof age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

The applicability of the above provision has already been thoroughly discussed by this Court in *People v. Ancajas, et al.*,[29] thus:

> In *People v. Sarcia*, we ruled on the applicability of Section 38, RA No. 8344 even if the minor therein was convicted of reclusion perpetua and we ratiocinated as follows:
>
> > The above-quoted (Section 38 of RA No. 9344) provision makes no distinction as to the nature of the offense committed

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

[29] 772 Phil. 166 (2015).

> by the child in conflict with the law, unlike P.D. No. 603 and A.M. No. 02-1-18-SC. The said P.D. and Supreme Court (SC) Rule provide that the benefit of suspended sentence would not apply to a child in conflict with the law if, among others, he/she has been convicted of an offense punishable by death, reclusion perpetua or life imprisonment. In construing Sec. 38 of R.A. No. 9344, the Court is guided by the basic principle of statutory construction that when the law does not distinguish, we should not distinguish. Since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense, the Court should also not distinguish and should apply the automatic suspension of sentence to a child in conflict with the law who has been found guilty of a heinous crime.

Moreover, the legislative intent, to apply to heinous crimes the automatic suspension of sentence of a child in conflict with the law can be gleaned from the Senate deliberations on Senate Bill No. 1402 (Juvenile Justice and Delinquency Prevention Act of 2005), the pertinent portion of which is quoted below:

> If a mature minor, maybe 16 years old to below 18 years old is charged, accused with, or may have committed a serious offense, and may have acted with discernment, then the child could be recommended by the Department of Social Welfare and Development (DSWD), by the Local Council for the Protection of Children (LCPC), or by my proposed Office of Juvenile Welfare and Restoration to go through a judicial proceeding; but the welfare, best interests, and restoration of the child should still be a primordial or primary consideration. Even in heinous crimes, the intention should still be the child's restoration, rehabilitation and reintegration. x x x

In fact, the Court En Banc promulgated on November 24, 2009, the Revised Rule on Children in Conflict with the Law, which echoed such legislative intent.

Although suspension of sentence still applies even if the child in conflict with the law is already 18 years of age or more at the time the judgment of conviction was rendered, however, such suspension is only until the minor reaches the maximum age of 21 as provided under Section 40 of RA No. 9344, to wit:

> SEC. 40. *Return of the Child in Conflict with the Law to Court.* — If the court finds that the objective of the disposition

> measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.
>
> If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

The RTC did not suspend the sentence of appellant Allain pursuant to Section 38 of RA No. 9344. Appellant is now 34 years old, thus, Section 40 is also no longer applicable. Nonetheless, we have extended the application of RA No. 9344 beyond the age of 21 years old to give meaning to the legislative intent of the said law.

In *People v. Jacinto*, we ruled:

> These developments notwithstanding, we find that the benefits of a suspended sentence can no longer apply to appellant. The suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of twenty-one (21) years. Section 40 of the law and Section 48 of the Rule are clear on the matter. Unfortunately, appellant is now twenty-five (25) years old.
>
> Be that as it may, to give meaning to the legislative intent of the Act, the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of conviction is not material. What matters is that the offender committed the offense when he/she was still of tender age.
>
> Thus, appellant may be confined in an agricultural camp or any other training facility in accordance with Sec. 51 of Republic Act No. 9344.

> Sec. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities.* — A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.
>
> Following the pronouncement in Sarcia, the case shall be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility.[30]

Necessarily, herein minor appellants shall be entitled to appropriate disposition under Section 51, R.A. No. 9344, which extends even to one who has exceeded the age limit of twenty-one (21) years, so long as he committed the crime when he was still a child, and provides for the confinement of convicted children.[31]

As to the award of damages, the same must be modified in accordance with *People v. Jugueta*.[32] Since the imposable penalty is death,due to the presence of an aggravating circumstance, but due to R.A. No. 9346, the actual penalty imposable is *reclusion perpetua*, the civil indemnity shall be ₱100,000.00, moral damages shall be ₱100,000.00 and exemplary damages shall be ₱100,000.00 for every information filed against appellants.

WHEREFORE, the appeal of Jomar Sisracon y Rupisan, Mark Valderama y Rupisan, Roberto Cortez y Badilla, Luis Padua y Mitra and Adonis Motil y Golondrina is **DISMISSED** for lack of merit. Consequently, the Decision dated August 12, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05986, affirming the Decision dated September 13, 2010 of the Regional Trial Court of x x x, Rizal, Branch 76, finding each appellant guilty beyond reasonable doubt of Qualified Rape as defined and penalized

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[30] *Id.* at 187-190. (Citations omitted).

[31] *People, et al. v. CA, et al.,* 755 Phil. 80, 118-119 (2015).

[32] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

under Article 266-A and Article 266-B, par. 1, in relation to Article 266-B, 2nd par. of the Revised Penal Code, as amended by Republic Act No. 8353 and in further relation to Section 5 of Republic Act No. 8369, is **AFFIRMED** with the **MODIFICATION** that appellants are guilty beyond reasonable doubt of the same crime on two (2) counts only and that the same appellants shall indemnify AAA the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages per *People v. Jugueta*[33] for each count. Furthermore, this case is **REMANDED** to the court of origin for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

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

Caguioa, J., on official business.

FIRST DIVISION

[G.R. No. 233073. February 14, 2018]

L.C. BIG MAK BURGER, INC., *petitioner, vs.* **McDONALD'S CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; THERE MUST BE THE INTENT TO DISOBEY THE COURT ORDER; PETITIONER'S GOOD FAITH IN COMPLYING WITH THE COURT'S ORDER MANIFEST IN CASE AT BAR.— Respondent maintains that

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[33] *Id.*

> even after the service of the writ of execution of the Decision on November 17, 2005 upon the petitioner, the latter continues to use the words "Big Mak" in its stalls and products in and out of Metro Manila. x x x However, evidence show that petitioner had been using "Super Mak" and/or its corporate name "L.C. Big Mak Burger Inc." in its business operations instead of the proscribed mark "Big Mak" pursuant to the ruling of the Infringement Court. x x x [W]hether or not petitioner's action in complying with the court's order was proper is not an issue in this contempt case. Settled is the rule that in contempt proceedings, what should be considered is the intent of the alleged contemnor to disobey or defy the court. x x x A person should not be condemned for contempt where he contends for what he believes to be right and in good faith however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose. Petitioner's good faith in complying with the court's order is manifest in this case.

APPEARANCES OF COUNSEL

Brillantes Arcilla Martinez Diokno & Dela Cruz for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45, assailing the Decision[2] dated February 2, 2017 and Resolution[3] dated July 26, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 36768 entitled *McDonald's Corporation v. L.C. Big Mak Burger, Inc. and Francis Dy (in his capacity as President of L.C. Big Mak Burger, Inc.).*

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[1] *Rollo*, pp. 28-52.

[2] Penned by CA Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan concurring, *id*. at 9-21.

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

The Factual Antecedents

The instant petition stemmed from Civil Case No. 90-1507, which McDonald's Corporation (respondent) filed against L.C. Big Mak Burger, Inc. (petitioner) for trademark infringement and unfair competition raffled to the Regional Trial Court (RTC) of Makati City, Branch 137 (Infringement Court).[4]

In the said case, the Infringement Court, acting on the prayer for the issuance of a writ preliminary injunction, issued an Order[5] dated August 16, 1990, directing petitioner to refrain from:

> a) using for its fast food restaurant business the name "Big Mak" or any other mark, word, name, or device, which by colorable imitation is likely to confuse, mislead or deceive the public into believing that the [petitioner's] goods and services originate from, or are sponsored by or affiliated with those of [respondent's], and from otherwise unfairly trading on the reputation and goodwill of the Mcdonald's Marks, in particular the mark "BIG MAC";
>
> b) selling, distributing, advertising, offering for sale or procuring to be sold, or otherwise disposing of any article described as or purporting to be manufactured by [respondent];
>
> c) directly or indirectly using any mark, or doing any set or thing, likely to induce the belief on the part of the public that [petitioner] and their products and services are in any way connected with [respondent's] and their products and services.
>
> in such places within the jurisdiction of the National Capital Judicial Region.
>
> x x x x x x x x x
>
> SO ORDERED.[6]

After trial, the said court rendered a Decision[7] dated September 5, 1994, disposing of the case as follows:

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[4] *Id*. at 9.

[5] *Id*. at 91A-92.

[6] *Id*. at 92.

[7] *Id*. at 93-104.

WHEREFORE, judgment is rendered in favor of [respondent] McDonald's Corporation and McGeorge Food Industries Inc. and against [petitioner] L.C. Big Mak Burgers, Inc. as follows:

1. The writ of preliminary injunction issued in this case on 11 November 1190 [sic] is made permanent;

2. [Petitioner] L.C. Mak Burger, Inc. is ordered to pay [respondent] actual damages in the amount of ₱400,000.00, exemplary damages in the amount of ₱100,000.00 and attorneys fees and expenses of litigation in the amount of ₱100,000.00;

3. The complaint against defendants Francis B. Dy, Edna A. Dy, Rene B. Dy, William B. Dy, Jesus Aycardo, Araceli Aycardo and Grace Huerto, as well as all counter-claims, are dismissed for lack of merit as well as for insufficiency of evidence.

SO ORDERED.[8]

The CA overturned the September 5, 1994 Decision in a decision[9] dated November 26, 1999 in CA-G.R. CV No. 53722. However, We reversed the CA in Our Decision[10] dated August 18, 2004 in G.R. No. 143993 and thus reinstated the Infringement Court's Decision, *viz.*:

WHEREFORE, we GRANT the instant petition. We SET ASIDE the Decision dated 26 November 1999 of the Court of Appeals and its Resolution dated 11 July 2000 and REINSTATE the Decision dated 5 September 1994 of the Regional Trial Court of Makati, Branch 137, finding respondent L.C. Big Mak Burger, Inc. liable for trademark infringement and unfair competition.

SO ORDERED.[11]

Thusly, on November 14, 2005, Infringement Court, issued a Writ of Execution[12] to implement its September 5, 1994 Decision.

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

[9] *Id*. at 105-115.

[10] *Id*. at 116-154.

[11] *Id*. at 152.

[12] *Id*. at 155-157.

On May 5, 2008, however, respondent filed a Petition for Contempt[13] against petitioner and Francis Dy, in his capacity as President of L.C. Big Mak Burger, Inc., docketed as Spec. Pro. No. 08-370 and raffled to the RTC of Makati, Branch 59 (Contempt Court). Basically, respondent averred therein that despite service upon the petitioner and its president of the Writ of Execution in the trademark infringement and unfair competition case, the latter continues to disobey and ignore their judgment obligation by continuously using, as part of their food and restaurant business, the words "Big Mak." It was also alleged that petitioner refused to fully pay the damages awarded to the respondent in the said case.[14]

In its Answer with Compulsory Counterclaims,[15] petitioner denied refusing to settle its judgment debt, averring that as a matter of fact, it offered and tendered payment to the respondent through the sheriff but respondent refused to accept the same and demanded that payment be made directly to it. Petitioner further argued that it is evident from the August 18, 2004 Decision of the Supreme Court, that the prohibition covers only the use of the mark "Big Mak" and not the name "L.C. Big Mak Burger, Inc." Petitioner then averred that at that time, its stalls were using its company name "L.C. Big Mak Burger, Inc." and not the mark "Big Mak" and that it had already stopped selling "Big Mak" burgers for several years already. Moreover, petitioner averred that it has already changed the name of some of its stalls and products to "Supermak" as evidenced by pictures of its stalls in Metro Manila. Also, petitioner pointed out that the preliminary injunction issued in Civil Case No. 90-1507 was enforceable only within the National Capital Judicial Region as can be gleaned from its express provision.[16]

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[13] *Id*. at 158-167.

[14] *Id*. at 164.

[15] *Id*. at 169-180.

[16] *Id*. at 170-179.

On April 7, 2014, RTC-Makati Branch 59, rendered a Decision[17] as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [petitioner] L.C. BIG MAK BURGER, INC. and FRANCIS DY, and against [respondent] **DISMISSING** this instant petition for lack of merit. [Respondent] is also ordered to pay the [petitioner and Francis Dy] the following sums:

1. ₱500,000.00 to [petitioner] L.C. Big Mak Burger, Inc. for the damages it suffered to its business reputation;

2. ₱500,000.00 to x x x Francis Dy as moral damages;

3. ₱100,000.00 for exemplary damages; and

4. ₱100,000.00 as and for attorney's fees.

Costs against [respondent].

SO ORDERED.[18]

On appeal, the CA, in its assailed Decision,[19] reversed the Contempt Court's ruling and instead found petitioner guilty of indirect contempt, thus:

WHEREFORE, premises considered, the present appeal is **GRANTED**. The Decision dated April 7, 2014 issued by the RTC, Branch 59, Makati City in *Civil Case No. 08-370* is **REVERSED** and a new one is entered finding [petitioner] L.C. Big Mak Burger, Inc. **guilty** of indirect contempt.

Accordingly, [petitioner] L.C. Big Mak Burger, Inc. is ordered to pay a **FINE** in the amount of Thirty Thousand Pesos (₱30,000.00) and is enjoined to faithfully comply with the ruling of the Supreme Court in *G.R. No. 143993* as implemented by RTC, Branch 59, [sic] Makati City.

SO ORDERED.[20]

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[17] Penned by Judge Winlove M. Dumayas, *id*. at 246-269.

[18] *Id*. at 268-269.

[19] *Id*. at 9-21.

[20] *Id*. at 20.

Petitioner's motion for reconsideration was denied in the CA's Resolution[21] dated July 26, 2017, thus:

WHEREFORE, the Motion for Reconsideration filed by [petitioner and Francis Dy] is hereby **DENIED**.

The Decision promulgated on February 2, 2017 **stays**.

SO ORDERED.[22]

Hence, this petition.

The Issue

Is petitioner guilty of indirect contempt?

The Ruling of this Court

At the outset, once again, it is important to emphasize that the only issue for Our resolution is whether or not petitioner is guilty of indirect contempt.

Section 3, Rule 71 of the Rules of Court provides:

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

x x x x x x x x x

b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

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

[22] *Id*. at 8.

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

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

x x x x x x x x x

But nothing in this section shall be construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

Respondent maintains that even after the service of the writ of execution of the said Decision on November 17, 2005 upon the petitioner, the latter continues to use the words "Big Mak" in its stalls and products in and out of Metro Manila. Also, respondent averred that petitioner continuously refused to fully pay the damages awarded to it.

We resolve.

Let Us examine once again the court's lawful order that was allegedly defied by the petitioner. In the August 16, 1990 injunction order made permanent by this Court in Our final and executory Decision in G.R. No. 143993 dated August 18, 2004, petitioner was ordered to refrain from:

a) using for its fast food restaurant business the name "Big Mak" or any other mark, word, name, or device, which by colorable imitation is likely to confuse, mislead or deceive the public into believing that the [petitioner's] goods and services originate from, or are sponsored by or affiliated with those of [respondent's], and from otherwise unfairly trading on the reputation and goodwill of the Mcdonald's Marks, in particular the mark "BIG MAC";

b) selling, distributing, advertising, offering for sale or procuring to be sold, or otherwise disposing of any article described as or purporting to be manufactured by [respondent];

c) directly or indirectly using any mark, or doing any set or thing, likely to induce the belief on the part of the public that [petitioner] and their products and services are in any way connected with [respondent's] and their products and services

in such places within the jurisdiction of the National Capital Judicial Region.

x x x x x x x x x

SO ORDERED.[23]

In ruling that there was disobedience tantamount to an indirect contempt on the part of the petitioner, the CA found that: (1) there is an express admission on Francis Dy's judicial affidavit[24] that the company complied with the court's order only in 2009 or after the petition for indirect contempt was filed against them;[25] (2) that petitioner's use of its corporate name is likewise an infringement of respondent's mark, a defiance therefore to the subject injunction order.[26]

We do not agree.

First, contrary to what respondent attempted to impress to the courts, it is not wholly true that petitioner continues to use the mark "Big Mak" in its business, in complete defiance to this Court's Decision.

Testimonial and documentary evidence were in fact presented to show that petitioner had been using "Super Mak" and/or its corporate name "L.C. Big Mak Burger Inc." in its business operations instead of the proscribed mark "Big Mak" pursuant to the ruling of the Infringement Court.

There is also nothing on record that will show that Francis Dy made an admission that petitioner began to comply with the writ of execution only in 2009. If at all, the CA misinterpreted Francis Dy's allegation in the said judicial affidavit that "by early 2009" petitioner's stalls and vans only reflected "Super Mak" and the corporate name "L.C. Big Mak Burger, Inc." Also, the fact that the photographs presented during trial were

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[23] *Id*. at 92.

[24] *Id*. at 455-470.

[25] *Id*. at 67.

[26] *Id*. at 17-19.

taken in 2009 was taken by the CA as the time when the petitioner started to implement changes in their business operations pursuant to the writ of execution. A careful reading of the pertinent portions of the said judicial affidavit, however, would show no such admission, thus:

29. Q: What did you do when you received the Writ of Execution?
A: We issued 6 checks each for ₱100,000.00 to pay the ₱600,000.00 that our company was ordered to pay. I believe we gave the checks to the Sheriff.

30. Q: What else did you do?
A: Since the decision of the trial court also ordered us to stop using the name "Big Mak" in our restaurants in Metro Manila, we complied. We desisted from using the words "Big Mak", standing alone, within Metro Manila, and even outside of it.

x x x x x x x x x

36. Q: Aside from complying with the order to stop the use of Big Mak, what else did you do?
A: We changed the name of our stalls within Metro Manila from "Big Mak" to "Super Mak".

37. Q: Do you have any proof that would show the change of the name?
A: There are some photographs of the stalls within Metro Manila that now reflect the name "Super Mak".

x x x x x x x x x

39. Q: I am now showing you six (6) photographs of stalls bearing the name "Super Mak". What relation do these documents have with the photographs you mentioned?
A: These photographs are accurate depictions of our stalls in Metro Manila that have the name "Super Mak".

x x x x x x x x x

40. Q: So you have already stopped using "Big Mak" in Metro Manila?
A: Yes. In fact, by early 2009, our stalls and vans in Metro Manila only reflect "Super Mak" and our corporate name "L.C. Big Mak Burger, Inc."

41. Q: Do you have any proof to show the use of "Super Mak" and "L.C. Big Mak Burger, Inc." in early 2009?

A: There are photographs of our stalls and vans in Pasig, Trinoma, V. Luna, Lagro, and Fatima were taken on 12 January 2009 as depicted by the newspaper being held in front of our vans and stalls.

42. Q: If I show you the photographs of the stalls and vans in Pasig, Trinoma, V. Luna, Lagro, and Fatima, would you be able to identify those?

A: Yes, Sir.

43. Q: I am now showing you fourteen (14) phtographs of stalls bearing the name "Super Mak" and or "L.C. Big Mak Burger, Inc." What relation do these documents have with the photographs you mentioned.

A: These photographs are accurate depictions of our stalls in Pasig, Trinoma, V. Luna, Lagro, and Fatima in that have [sic] the name "Super Mak" or "LC Big Mak Burger, Inc."

x x x x x x x x x

44. Q: What about the newspaper you mentioned that was in the photographs?

A: The newspaper, The Philippine Star, being held in the photographs shows the date when the photographs were taken. The date of the newspaper is 12 January 2009, to show that the photographs were taken on 12 January 2009. Photographs were also taken on February 28, 2009 and the front page of the said issue of the Philippine Star was also shown in some of them.[27]

x x x x x x x x x

Evidently, there is nothing on the aforequoted judicial affidavit which may be taken as an admission of a belated compliance with the subject injunction order. At most, what was established is the fact that the subject photographs were taken in 2009, which does not in any way mean that the changes depicted in those photographs were implemented only at the time they were taken.

What could readily be seen in the aforecited circumstances is the fact that petitioner indeed implemented changes in its business to address the matter of infringement and unfair

[27] *Id.* at 462-466.

competition. In fact, in as early as during the trial of the said case, certain changes had already been made by the petitioner to rule out the charge of infringement and unfair competition. During the trial of the infringement and unfair competition case, the wrappers and bags for petitioner's burger sandwiches already reflected its corporate name instead of the words "Big Mak."

These circumstances belie the imputation of disobedience, much less contemptuous acts, against the petitioner.

Second, petitioner's use of its corporate name in its stalls and products cannot, by itself, be considered to be tantamount to indirect contempt, contrary to the CA's conclusion.

What is actually being argued in this case is petitioner's use of its corporate name. According to the respondent, as the proscribed "Big Mak" words appears in petitioner's corporate name, the use of the same in petitioner's stalls and products is still an infringement of respondent's mark. Ultimately, thus, respondent argues that petitioner's use of its corporate name is a defiance to the injunction order. This argument was sustained by the CA in its assailed Decision.

Again, We do not agree.

It bears stressing that the proscription in the injunction order is against petitioner's use of the mark "Big Mak." However, as established, petitioner had already been using its corporate name instead of the proscribed mark. The use of petitioner's corporate name instead of the words "Big Mak" solely was evidently pursuant to the directive of the court in the injunction order. Clearly, as correctly found by the RTC, petitioner had indeed desisted from the use of "Big Mak" to comply with the injunction order.

Third, at any rate, whether or not petitioner's action in complying with the court's order was proper is not an issue in this contempt case. Settled is the rule that in contempt proceedings, what should be considered is the intent of the alleged contemnor to disobey or defy the court.

Contempt of court has been defined as a **willful** disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.[28] (emphasis supplied)

Indeed, as can be gleaned from the above-cited jurisprudential definition of contempt, the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered.[29] A person should not be condemned for contempt where he contends for what he believes to be right and in good faith however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[30]

Petitioner's good faith in complying with the court's order is manifest in this case.

Petitioner's questioned action, *i.e.*, the use of its corporate name, is anchored upon the January 3, 1994 Decision[31] of the Securities and Exchange Commission (SEC) in SEC-AC No. 426 entitled *McDonald's Corporation and McGeorge Food Industries, Inc. v. L.C. Big Mak Burger, Inc., et al.*, wherein respondent sought the change of petitioner's corporate name to some other name which is not confusingly or deceptively similar to respondent's "Big Mac" mark. In the said case, the SEC dismissed respondent's case, ruling that petitioner's use of the name "Big Mak Burger" has priority in right; and that petitioner's corporate name is not identical or confusingly similar

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[28] *Castillejos Consumers Association, Inc. v. Dominguez, et al.*, 757 Phil. 149, 158 (2015).

[29] *Saint Louis University, Inc., et al. v. Olairez, et al.*, 730 Phil. 444, 461 (2014).

[30] *Id.* at 461.

[31] *Rollo*, pp. 233-240.

to respondent's "Big Mac" mark, hence, there is no basis to cancel petitioner's corporate name, among others.

Notably, it was a patent error on the part of the CA to rule that the said SEC Decision was binding upon the parties *until* this Court issued its final and executory Decision in G.R. No. 143993, giving the impression that the latter Decision overturned or modified SEC's final and executory Decision.[32] To be sure, the complaint for change of corporate name before the SEC is a separate and distinct case from that of the infringement and unfair competition case before the trial court. Hence, inasmuch as the SEC Decision had long attained finality, the judgment in the separate case of infringement and unfair competition cannot reverse nor modify the said SEC Decision.

In any event, what is relevant and essential in this contempt case is the fact that by virtue of petitioner's reliance upon the said lawful and binding SEC Decision in the use of its corporate name in lieu of the proscribed "Big Mak" mark to comply with the subject injunction order, petitioner's good faith is clearly manifest. Petitioner's justification of its questioned action is not at all implausible. This Court finds no reason to reject petitioner's explanation or doubt its good faith as certainly, the use of its corporate name was warranted by the SEC Decision. It was also not unreasonable for the petitioner, through its officers, to think that the stalls and products bearing its corporate name would send the message to the public that the products were the petitioner's and not those of respondent's, the very evil sought to be prevented and/or eradicated by the decision in the infringement/unfair competition case.

Considering that condemnation for contempt should not be made lightly, and that the power to punish contempt should be exercised on the preservative and not on the vindictive principle, the Court finds no difficulty in reaching the conclusion that there was no willful disregard or defiance of its order/decision.[33]

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[32] *Id*. at 65.

[33] *The Executive Secretary and Lomibao v. Gordon, et al.*, 359 Phil. 266, 275 (1998).

We are, therefore, one with the Contempt Court in dismissing the contempt case. There being no issue raised as to the damages awarded and more importantly, finding that the Contempt Court had correctly discussed the rationale for such award, We find it unnecessary to disturb the same.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The assailed Decision dated February 2, 2017 and Resolution dated July 26, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 36768 are hereby **REVERSED and SET ASIDE**. Accordingly, the Decision dated April 7, 2014 of the Regional Trial Court of Makati City, Branch 59 is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 233100. February 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRISTHIAN[*] KEVIN GUIEB *y* BUTAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES CONFERS THE APPELLATE COURT FULL JURISDICTION OVER THE CASE.— [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

[*] "Christian" in some parts of the *rollo* and records.

the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); UNAUTHORIZED SALE OF DANGEROUS DRUGS; ELEMENTS.—** 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.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [I]n 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.

4. **ID.; ID.; UNAUTHORIZED SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE IDENTITY OF THE PROHIBITED DRUG MUST BE PROVED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.—** [T]he 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 drug 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 the drugs are seized up to their presentation in court as evidence of the crime.

5. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; FAILURE TO STRICTLY COMPLY WITH THE PROCEDURE THEREON DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID; CONDITIONS.—** 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. x x x The failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary 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.**

6. ID.; ID.; ID.; THE PROCEDURE ON THE CUSTODY AND DISPOSITION OF SEIZED DRUGS IS A MATTER OF SUBSTANTIVE LAW, AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY.— Considering the police officers' unjustified non-compliance with the prescribed procedure under Section 21, Article II of RA 9165, the integrity and evidentiary value of the seized drugs are seriously put into question. Verily, the procedural lapse committed by the police officers, which was unfortunately unacknowledged and unexplained by the State, militates against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. 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. 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, Guieb's acquittal is perforce in order.

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 Cristhian Kevin Guieb *y* Butay (Guieb) assailing the Decision[2] dated January 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07770, which affirmed the Decision[3] dated August 28, 2015 of the Regional Trial Court of Laoag City, Ilocos Norte, Branch 13 (RTC) in Crim. Case Nos. 15685-13 and 15686-13 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 two (2) Informations filed before the RTC charging Guieb of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

CRIM. CASE NO. 15685-13[5]

That on or about 12:30 o'clock in the afternoon of September 28, 2013, at Brgy. 5 San Silvestre, municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one small heat-sealed

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[1] See Notice of Appeal dated February 7, 2017; *rollo*, pp. 26-28.

[2] *Id.* at 2-25. Penned by Associate Justice Sesinando E. Villon with Associate Justices Rodil V. Zalameda and Pedro B. Corales concurring.

[3] CA *rollo*, pp. 56-75. Penned by Presiding Judge Philip G. Salvador.

[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] Records, pp. 1-2.

transparent plastic sachet containing 0.1033[6] gram of methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, in the amount of Five Hundred Pesos (₱500.00) to police poseur-buyer, without any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.[7]

CRIM. CASE NO. 15686-13[8]

That on or about September 28, 2013 at Brgy. 5 San Silvestre, Municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in his possession, control and custody one (1) small heat-sealed transparent plastic sachet containing 0.0635 gram of methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, without any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.[9]

The prosecution alleged that at around 11:30 in the morning of September 28, 2013 and upon the report of an informant, the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) of the Provincial Police Office of Ilocos Norte organized a buy-bust team operation with the objective of apprehending Guieb, who was verified to be number four (4) in PAIDSOTG, as well as in the Philippine Drug Enforcement Agency's lists of drug personalities. Upon arrival at the *carinderia* where the buy-bust was to be held, the poseur-buyer, Police Officer 2 Richard Rarangol (PO2 Rarangol), and the informant were approached by Guieb. After some preliminaries, PO2 Rarangol gave the marked money to Guieb, who in turn,

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[6] In the CA Decision dated January 17, 2017, the weight of the seized dangerous drug was written as "0.1011 grams" (*rollo*, p. 2).

[7] *Id*. at 1.

[8] CA *rollo*, p. 57.

[9] *Id*.

gave the former a plastic sachet containing a white crystalline substance. When the transaction was consummated, PO2 Rarangol performed the pre-arranged signal, prompting backups Police Officer 2 Jay Arr Agtang and Police Officer 1 Hayden Waga (PO1 Waga) to rush to the scene and arrest Guieb. Upon frisking Guieb, PO1 Waga recovered another sachet containing white crystalline substance, which he gave to PO2 Rarangol. The buy-bust team then brought Guieb and the seized items to the Municipal Police Station of San Nicolas.[10]

Thereat, PO2 Rarangol conducted the marking, inventory, and photography of the seized items in the presence of Guieb and Barangay Captain Francisco Bagay, Sr. (Brgy. Capt. Bagay). Thereafter, PO2 Rarangol brought the seized sachets to the crime laboratory where a qualitative examination of the contents revealed[11] that the same were positive for *methamphetamine hydrochloride* or *shabu*.[12]

In his defense, Guieb denied the allegations against him. He maintained that at around noon of the day when he was arrested, he and his daughter went to a neighbor's house to invite the latter to his child's baptism. After talking to said neighbor, Guieb sought out his daughter who was then playing in front of the *carinderia* where he was arrested.[13] He further maintained that he and his daughter were about to go home when two (2) policemen arrested him and took him to the police station for allegedly running away with the money of another policeman. At the police station, he was made to sit in front of the table where PO2 Rarangol brought out two (2) sachets appearing to contain *shabu*, and placed it on top of the table. PO2 Rarangol also took out a piece of paper with the word "inventory" therein and started filling out the same. Thereafter, PO2 Rarangol asked

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[10] *Id.* at 57-58. See also Joint Affidavit of Poseur-Buyer and Arresting Officer; records, pp. 3-5.

[11] See Initial Laboratory Report, Chemistry Report No. D-112-2013-IN dated September 28, 2013; records, p. 12.

[12] See *id*. at 4. See also *rollo*, p. 4.

[13] CA *rollo*, p. 59.

Brgy. Capt. Bagay to sign the paper, but the latter refused as he did not see how Guieb was arrested.[14]

The RTC Ruling

In a Decision[15] dated August 28, 2015, the RTC found Guieb guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Crim. Case No. 15685-13, Guieb was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (*b*) in Crim Case No. 15686-13, Guieb was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to fourteen (14) years and to pay a fine in the amount of ₱300,000.00.[16]

The RTC found that the prosecution had established the presence of all the elements of the crime charged, as it was shown that: (*a*) Guieb was caught in the act of selling *shabu* through the buy-bust operation conducted against him; and (*b*) after his apprehension, the arresting officers frisked Guieb and discovered another plastic sachet containing *shabu* in his possession.[17] Further, the RTC observed that the integrity and evidentiary value of the *shabu* seized from Guieb were preserved as the police officers complied with the chain of custody rule under the law.[18]

Aggrieved, Guieb appealed[19] to the CA.

The CA Ruling

In a Decision[20] dated January 17, 2017, the CA affirmed *in toto* the RTC ruling, holding that the prosecution had shown

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[14] See *id*. at 59-60.

[15] *Id*. at 56-75.

[16] *Id*. at 75.

[17] See *id*. at 60-68.

[18] See *id*. at 68-74.

[19] See Brief for the Appellee dated August 2, 2016; *id*. at 88-100.

[20] *Rollo*, pp. 2-25.

the presence of all the elements of the crimes charged.[21] It further held that the arresting officers complied with the chain of custody rule, considering that: (*a*) on September 28, 2013, PO2 Rarangol seized the *shabu* from Guieb; (*b*) he conducted the marking and inventory of the same in the presence of Brgy. Capt. Bagay, and thereafter, prepared a request for laboratory examination; (*c*) on even date, PO2 Rarangol himself transmitted the seized items and the necessary paperwork to the crime laboratory, which were received by Senior Police Officer 4 Arnulfo Burbano (SPO4 Burbano); and (*d*) SPO4 Burbano brought the seized items to Forensic Chemist Amiely Ann Luis Navarro, who, after conducting a qualitative examination, confirmed that the seized items were indeed *methamphetamine hydrochloride* or *shabu*.[22]

Hence, this appeal.[23]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Guieb'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.[24] "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."[25]

Guieb was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and

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[21] See *id*. at 13-19 and 21-25.

[22] See *id*. at 19-21.

[23] *Id*. at. 26-28.

[24] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

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.[26] 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.[27]

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 the drugs are seized up to their presentation in court as evidence of the crime.[28]

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.[29] Under the said section, prior to its amendment by RA 10640,[30]

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[26] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[27] *People v. Bio*, 753 Phil. 730, 736 (2015).

[28] 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).

[29] See *People v. Sumili*, *supra* note 26, at 349-350.

[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.

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.[31] In the case of *People v. Mendoza*,[32] the Court stressed that "**[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** 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."[33]

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.[34] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[35] — provide

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[31] See Section 21 (1) and (2), Article II of RA 9165.

[32] 736 Phil. 749 (2014).

[33] *Id.* at 764; emphases and underscoring supplied.

[34] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[35] Section 1 of RA 10640 reads:

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:

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**.[36] 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 ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the

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"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"

[36] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

seized items are properly preserved.[37] In *People v. Almorfe*,[38] **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**.[39] Also, in *People v. De Guzman*,[40] 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.**[41]

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 Guieb.

First, records reveal that while the requisite inventory and photography of the confiscated drugs were indeed conducted, a reading of the Certificate of Inventory[42] shows that only an elected official, *i.e.*, Brgy. Capt. Bagay, was present and that there were no representatives from the DOJ and the media. This mishap was made more apparent by PO2 Rarangol's testimony in direct and cross-examinations, to wit:

DIRECT EXAMINATION:

[Prosecutor Garcia]: Were you able to reach the San Nicolas Police Station?
[PO2 Rarangol]: Yes, sir.

Q: While you were there as you said it will be there where you will wait for the barangay officials, were you able to wait for the barangay officials?
A: Yes, sir.

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[37] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

[38] 631 Phil. 51 (2010).

[39] See *id.* at 60.

[40] 630 Phil. 637 (2010).

[41] *Id.* at 649.

[42] Records, p. 10.

Q: And who were/was the barangay official who come [sic]?
A: The Brgy. Captain of Brgy. 5, sir.

Q: What did you do when the Barangay Captain of Brgy. 5 arrived?
A: I marked the confiscated items, sir.

x x x x x x x x x

Q: How about the Barangay Captain, where was he?
A: He was also there, sir.

x x x x x x x x x

Q: I am showing you Mr. Witness, a document entitled Certificate of Inventory where there are……. There is a list of two (2) plastic sachets containing white crystalline substance, ₱500.00 bill bearing serial number BP103932, one (1) Nokia cellphone, one (1) pack transparent plastic sachet containing plastic, one (1) wallet containing driver's license and one (1) blue lighter previously marked as Exhibit "F" found on page 36 of the record, will you please go over the same and tell to us what is the relation of these to the one you mentioned earlier where you place the listing of the items?
A: This is the one, sir.

Q: There is a signature above the printed name PO1 Richard Rarangol, whose signature is that?
A: Me, sir.

Q: And who wrote this name Barangay Captain Francisco Bagay, Sr., (refuse to sign)?
A: I, sir.

Q: Did you ask him why he refused to sign?
A: Yes, sir.

Q: What was his answer?
A: He said "I was not present when you arrested him".

Q: What was your reply, if any?
A: I told him, sir, only for the marking of the evidence you will witness, I told him, sir.

Q: So, you did not ask him to witness the inventory?
A: I did, sir.

Q: When you asked him to witness the inventory, what did he do?
A: He still did not like to sign, sir.

Q: What else did you do at your police station after the marking and inventory of the items seized?

A: I placed them in a sealed pack, sir.

x x x x x x x x x[43]

CROSS-EXAMINATION

[Atty. Asencion]: This Certificate of Inventory, Mr. Witness, you were the one who accomplished and entered all the entries?
[PO2 Rarangol]: Yes ma'am.

Q: Barangay Captain Francisco Bagay, Sr., he was also present before you left Gudo Carinderia in going to San Nicolas Police Station?
A: He was not there then, ma'am.

Q: He only arrived when you were already at the Investigation Section of PNP San Nicolas?
A: Yes, ma'am.

Q: When you arrived, Mr. Witness, and made to sign this Certificate of Inventory, you were already able to finish the details indicated in the Certificate of Inventory?
A: Not yet, ma'am.

Q: When Barangay Captain Francisco Bagay, Sr. arrived also, that was only the time you marked the said items, Mr. Witness?
A: Yes ma'am.

Q: Nevertheless, he still refused to sign the Certificate of Inventory because his reason was he did not actually see from whom the items came from other than your allegation that it came from the subject person?
A: Yes, ma'am.

x x x x x x x x x[44]

To make matters worse, the prosecution did not proffer a plausible explanation as to why there was a complete absence of an elected official and a representative from the DOJ and the media in order for the saving clause to apply. To reiterate,

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[43] TSN, June 5, 2014, pp. 21-25.

[44] TSN, July 1, 2014, pp. 28-29.

the law requires the presence of the enumerated witnesses — namely, an elected official, as well as a representative from the DOJ and the media — to ensure the establishment of the chain of custody 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, Article II of RA 9165, the integrity and evidentiary value of the seized drugs are seriously put into question.

Verily, the procedural lapse committed by the police officers, which was unfortunately unacknowledged and unexplained by the State, militates against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[45] 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.[46] 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, Guieb'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.

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[45] See *People v. Sumili*, *supra* note 26, at 352.

[46] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

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.[47]

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21, Article II 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 January 17, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07770 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Cristhian Kevin Guieb *y* Butay 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, and *Reyes, Jr., JJ.,* concur.

Caguioa, J., on official business.

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[47] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

SECOND DIVISION

[A.M. No. MTJ-17-1893. February 19, 2018]
(Formerly OCA I.P.I. No. 15-2773-MTJ)

TEODORA ALTOBANO-RUIZ, *complainant, vs.* **HON. RAMSEY DOMINGO G. PICHAY, PRESIDING JUDGE, BRANCH 78, METROPOLITAN TRIAL COURT, PARAÑAQUE CITY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; WHERE FILED.—** Section 17 (a) of Rule 114 of the Rules of Court, as amended by Administrative Circular No. 12-94 which governs the approval of bail bonds for criminal cases pending outside the judge's territorial jurisdiction is instructive x x x. The x x x provision anticipates two (2) situations. *First*, the accused is arrested in the same province, city or municipality where his case is pending. *Second*, the accused is arrested in the province, city or municipality other than where his case is pending. In the first situation, the accused may file bail in the court where his case is pending or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. In the second situation, the accused has two (2) options. First, he may file bail in the court where his case is pending or, second, he may file bail with any regional trial court in the province, city or municipality where he was arrested. When no regional trial court judge is available, he may file bail with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

2. **LEGAL ETHICS; ATTORNEYS; GROSS IGNORANCE OF THE LAW; COMMITTED BY A JUDGE WHO APPROVES A BAIL APPLICATION AND ISSUES CORRESPONDING RELEASE ORDER IN A CASE PENDING IN A COURT OUTSIDE HIS TERRITORIAL JURISDICTION.—** [R]ules of procedure have been formulated and promulgated by this Court to ensure the speedy and efficient administration of justice. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the law. Judges should ensure strict compliance therewith at all times in their respective jurisdictions. Judge Pichay cannot excuse himself from the

consequences of his action by invoking good faith. As a judge, he must have the basic rules at the palm of his hands as he is expected to maintain professional competence at all times. Since Judge Pichay presides over MeTC-Br. 78 in Parañaque City, his territorial jurisdiction is confined therein. Therefore, to approve bail applications and issue corresponding release orders in a case pending in courts outside his territorial jurisdiction, constitute ignorance of the law so gross as to amount to incompetence. x x x [T]he Court has adverted to the solemn obligation of judges to be very zealous in the discharge of their bounden duties. Nonetheless, the earnest efforts of judges to promote a speedy administration of justice must at all times be exercised with due recognition of the boundaries and limits of their jurisdiction or authority. Judge Pichay might have the noble objective to expedite the case and render prompt justice but he cannot do in violation of the rules of procedure.

3. ID.; ID.; ID.; CHARACTERIZED AS A GRAVE OFFENSE; PENALTY IN CASE AT BAR.— Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC characterizes gross ignorance of the law and procedure as a grave offense. The penalties prescribed for such offense are: (1) Dismissal from service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, *provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) Suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. x x x Thus, considering also Judge Pichay's previous administrative infractions, We find it apt to impose the maximum amount of fine upon him.

D E C I S I O N

PERALTA, *J.*:

Before us is the Complaint[1] dated June 22, 2015 of complainant Teodora Altobano-Ruiz (*Ruiz*) against respondent Judge Ramsey

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

Domingo G. Pichay (*Judge Pichay*), Presiding Judge, Metropolitan Trial Court (*MeTC*), Branch 78, Paranaque City for gross ignorance of the law and gross misconduct in connection with the latter's act of granting bail in favor of Francis Eric Paran (*Paran*).

The factual antecedents of the case are as follows.

Complainant Ruiz and Paran are the accused in an adultery case, docketed as Criminal Case No. 2562,[2] which is pending before the Municipal Trial Court in Cities (*MTCC*), Trece Martires City, Cavite, presided by Judge Gonzalo Q. Mapili, Jr. On March 19, 2014, accused Paran was apprehended at his residence in Quezon City by police authorities from Parañaque City by virtue of the Warrant of Arrest[3] dated March 12, 2014 issued by Judge Mapili. He was detained for several days at the Parañaque City Police Station.

On March 22, 2014, accused Paran filed an application for bail before Branch 78, MeTC, Parañaque City, which was promptly approved by respondent Judge Pichay after the accused posted a cash bond of ₱12,000.00, to wit:

> WHEREFORE, the Police Authorities of Parañaque City Police Station, Warrant and Subpoena Unit, Paranaque City is hereby DIRECTED to RELEASE IMMEDIATELY WITHOUT ANY FURTHER DELAY the accused FRANCIS ERIC PARAN unless there are causes or cases warranting his further detention.
>
> The Branch Clerk of Court is hereby DIRECTED to transmit the bond to the Court of origin.
>
> SO ORDERED.[4]

On the other hand, Ruiz voluntarily surrendered before Judge Mapili and was temporarily released on bail upon posting a cash bond of ₱12,000.00.

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[2] *Id*. at 234.

[3] *Id*.

[4] *Id*. at 245.

Ruiz alleged that Judge Pichay had no authority to approve Paran's application for bail since the latter already had a pending criminal case for adultery in another court, and he was actually arrested in Quezon City which was outside Judge Pichay's territorial jurisdiction.

On August 10, 2015, the Office of the Court Administrator (*OCA*) directed Judge Pichay to submit his comment on the complaint against him.[5]

In his Comment[6] dated November 27, 2015, Judge Pichay countered that his assailed Order dated March 22, 2014 was rendered in good faith and in strict adherence to and faithful compliance with his duties mandated under the Constitution and the Rules of Court. He insisted on his court's jurisdiction over accused Paran's application for bail because the latter was detained at the Parañaque City Police Station, as shown in the Certificate of Detention issued by SPO4 Dondie Oliva Aquino. He further averred that he acted on the bail application on the same date that it was filed, which was a Saturday, in order to give effect to the accused's constitutional right to bail. Finally, Judge Pichay asserted that his action was neither tainted with malice nor did he receive financial gain in resolving the application with dispatch.

On January 18, 2017, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter. It further found Judge Pichay guilty of gross ignorance of the law and recommended that he be meted the penalty of a fine in the amount of ₱5,000.00 with stern warning.[7]

We adopt the findings of the OCA, except as to the recommended penalty.

Section 17 (a) of Rule 114 of the Rules of Court, as amended by Administrative Circular No. 12-94 which governs the approval

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[5] *Id*. at 246.

[6] *Id*. at 251-254.

[7] *Id*. at 258-261.

of bail bonds for criminal cases pending outside the judge's territorial jurisdiction is instructive, to wit:

> Section 17. *Bail, where filed.* — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.
>
> x x x x x x x x x

The foregoing provision anticipates two (2) situations. *First*, the accused is arrested in the same province, city or municipality where his case is pending. *Second*, the accused is arrested in the province, city or municipality other than where his case is pending. In the first situation, the accused may file bail in the court where his case is pending or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. In the second situation, the accused has two (2) options. First, he may file bail in the court where his case is pending or, second, he may file bail with any regional trial court in the province, city or municipality where he was arrested. When no regional trial court judge is available, he may file bail with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.[8]

However, in the instant case, the case where Judge Pichay approved Paran's bail bond and issued release order was not pending before his sala. As correctly pointed out by the OCA, although accused Paran was detained at the Station Detention Cell, Parañaque City Police Station, he was nevertheless arrested at his residence in Quezon City. Considering that Paran was arrested in Quezon City, he could also file his bail application before any branch at the Regional Trial Court of Quezon City,

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[8] *Cruz v. Judge Yaneza*, 363 Phil. 629, 639 (1999).

and in the absence of any judge thereat, then before any branch of the Metropolitan Trial Court of Quezon City. Paran could have also filed his bail application before the MTCC, Trece Martires City, where his case was pending.

Indeed, the only circumstance where Judge Pichay can exercise authority to rule on Paran's bail application is if the latter, who was detained in Paranaque City, was not yet charged with a criminal offense in another court, pursuant to Section 17(c),[9] Rule 114 of the Rules of Criminal Procedure. However, in the instant case, there was already a pending criminal case against Paran before the MTCC, Trece Martires, Cavite as shown in the Certificate of Detention[10] attached in Paran's application of bail. In fact, Paran's arrest was by virtue of a warrant of arrest issued by Judge Mapili of the MTCC, Trece Martires City. More importantly, Judge Pichay likewise failed to prove that there was no available judge to act on Paran's application of bail in the said respective courts. Clearly, Judge Pichay's approval of Paran's bail constituted an irregularity arising from his lack of the authority to do so.

In *Judge Español v. Judge Mupas*,[11] the Court held that *judges who approve applications for bail of accused whose cases are pending in other courts are guilty of gross ignorance of the law*. In *Lim v. Judge Dumlao*,[12] the Court held that:

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[9] Section 17. *Bail, where filed*. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

x x x x x x x x x

(c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held.

[10] *Rollo*, p. 243.

[11] 484 Phil. 636, 669 (2004).

[12] 494 Phil. 197 (2005).

x x x The requirements of Section 17(a), Rule 114 x x x **must be complied with before a judge may grant bail.** The Court recognizes that not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, but only in cases within the parameters of tolerable misjudgment. **Where**, however, **the law is straightforward and the facts so evident, not to know it or to act as if one does not know it constitutes gross ignorance of the law**.

Respondent judge undeniably erred in approving the bail and issuing the order of release. **He is expected to know that certain requirements ought to be complied with before he can approve [the accuseds] bail** and issue an order for his release. **The law involved is rudimentary that it leaves little room for error**. x x x[13]

It must be emphasized that rules of procedure have been formulated and promulgated by this Court to ensure the speedy and efficient administration of justice. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the law. Judges should ensure strict compliance therewith at all times in their respective jurisdictions.[14] Judge Pichay cannot excuse himself from the consequences of his action by invoking good faith. As a judge, he must have the basic rules at the palm of his hands as he is expected to maintain professional competence at all times. Since Judge Pichay presides over MeTC-Br. 78 in Parañaque City, his territorial jurisdiction is confined therein. Therefore, to approve bail applications and issue corresponding release orders in a case pending in courts outside his territorial jurisdiction, constitute ignorance of the law so gross as to amount to incompetence.[15]

Time and again, the Court has adverted to the solemn obligation of judges to be very zealous in the discharge of their bounden duties. Nonetheless, the earnest efforts of judges to promote a speedy administration of justice must at all times be exercised with due recognition of the boundaries and limits of

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[13] *Id.* at 203-204. (Emphasis ours; citations omitted)

[14] *Atty. Hilario v. Hon. Ocampo III*, 422 Phil. 593, 604 (2001).

[15] *Cruz v. Yaneza*, *supra* note 8, at 642.

their jurisdiction or authority.[16] Judge Pichay might have the noble objective to expedite the case and render prompt justice but he cannot do in violation of the rules of procedure.

PENALTY

Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC[17] characterizes gross ignorance of the law and procedure as a grave offense. The penalties prescribed for such offense are: (1) Dismissal from service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, *provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) Suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

While We agree with the findings of the OCA, We, however, do not agree with its recommendation in so far as the penalty to be imposed since this is not Judge Pichay's first administrative infraction. In *Spouses Marcelo v. Judge Pichay*,[18] Judge Pichay was found guilty of violating Section 9, Rule 140 of the Rules of Court for undue delay in resolving the pending incidents relative to Civil Case No. 2004-286 and was fined in the amount of ₱12,000.00. In *A.M. No. MTJ-10-1763 (Formerly OCA IPI No. 09-2209-MTJ)*,[19] Judge Pichay was also held administratively liable for the same offense. Thus, considering also Judge Pichay's previous administrative infractions, We find it apt to impose the maximum amount of fine upon him.

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[16] *Judge Mupas v. Judge Español*, 478 Phil. 396, 408-409 (2004).

[17] *En Banc* Resolution dated September 11, 2001 (Re: Proposed Amendment to Rule 140 of the Rules of Court Regarding the Discipline of Justices and Judges).

[18] 729 Phil. 113, 125 (2014).

[19] In the Court's Minute Resolution dated July 19, 2010, Judge Pichay was fined in the amount of ₱5,000.00.

WHEREFORE, premises considered, respondent Judge Ramsey Domingo G. Pichay, Presiding Judge, Branch 78, Metropolitan Trial Court, Paranaque City is found **GUILTY** of **GROSS IGNORANCE OF THE LAW,** and a **FINE** equivalent to the amount of ₱40,000.00 is hereby imposed upon him. He is, likewise, sternly warned that the commission of the same offense or a similar act in the future will be dealt with more severely.

SO ORDERED.

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

Caguioa, J., on official business.

THIRD DIVISION

[G.R. No. 200571. February 19, 2018]

JOSEPHINE A. CASCO, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, SIXTH DIVISION, CAPITOL MEDICAL CENTER and/or THELMA N. CLEMENTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 REVIEW; ONLY QUESTIONS OF LAW MAY BE ENTERTAINED IN REVIEWING THE COURT OF APPEALS' DECISION IN A LABOR CASE; EXCEPTION.— [In reviewing the CA's decision in a labor case,] only questions of law may x x x be entertained by the Court. But the Court, by way of exception, may proceed on an inquiry into the factual issues in order to determine whether or not, as essentially ruled by the CA, the NLRC committed grave abuse of discretion by

grossly misreading the facts and misappreciating the evidence. As such, the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory, which is the case herein.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; NEGLECT OF DUTY; MUST BE BOTH GROSS AND HABITUAL TO BE A GROUND FOR DISMISSAL.— Neglect of duty, as a ground for dismissal, must be both gross and habitual. Gross negligence implies a want or absence of or a failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.

3. ID.; ID.; ID.; THE BURDEN OF PROVING THAT THE DISMISSAL OF THE EMPLOYEES IS FOR A VALID AND AUTHORIZED CAUSE RESTS ON THE EMPLOYER.— In termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer, who show by substantial evidence that the termination of the employment of the employee was validly made; the failure to discharge this duty will mean that the dismissal was not justified and was, therefore, illegal.

4. ID.; ID.; ID.; JUST CAUSES; NEGLECT OF DUTY; NEGLIGENCE; THE LAW CONSIDERS WHAT WOULD BE RECKLESS, BLAMEWORTHY, OR NEGLIGENT IN THE MAN OF ORDINARY INTELLIGENCE AND PRUDENCE, AND DETERMINES LIABILITY BY THAT. — Negligence is "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury." The test of negligence is: *Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation?* The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence, and determines liability by that. The respondents failed to establish that the petitioner had wilfully and deliberately intended to be mindless of her

responsibilities, or that she had been reckless as to be blameworthy for her acts or omissions.

5. ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; PREMISED ON THE FACT THAT THE EMPLOYEE HOLDS A POSITION WHOSE FUNCTIONS MAY ONLY BE PERFORMED BY SOMEONE WHO ENJOYS TRUST AND CONFIDENCE AND THE BETRAYAL OF THE TRUST REPOSED IS THE ESSENCE OF THE LOSS OF TRUST AND CONFIDENCE THAT BECOMES THE BASIS FOR THE EMPLOYEE'S DISMISSAL.— Loss of trust and confidence as a valid ground for dismissal is premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of the management. Such employee bears a greater burden of trustworthiness than ordinary workers, and *the betrayal of the trust reposed is the essence of the loss of trust and confidence* that becomes the basis for the employee's dismissal.

6. ID.; ID.; ID.; ID.; ID.; IN TERMINATING MANAGERIAL EMPLOYEES BASED ON LOSS OF TRUST AND CONFIDENCE, PROOF BEYOND REASONABLE DOUBT IS NOT REQUIRED, BUT THE MERE EXISTENCE OF A BASIS FOR BELIEVING THAT SUCH EMPLOYEE HAS BREACHED THE TRUST OF HIS EMPLOYER SUFFICES.— Managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff. A simple perusal of the job description of Nurse Supervisor indicated that the petitioner was a managerial employee. Being tasked with the daily supervision of other nurses and with the operational management of the operating room, she was clearly discharging a position of trust. x x x In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required, but the mere existence of a basis for believing that such employee has breached the trust of his employer suffices. x x x Herein, the respondents could not simply dismiss the petitioner on account of her position. Although a less stringent degree of proof was required in termination cases involving managerial employees, the employers could not invoke the ground of loss of trust and confidence arbitrarily. There must still be some basis to justify that the

petitioner was somehow responsible for the loss of the equipment, and to show that her participation in the loss rendered her unworthy of the trust and confidence demanded of her position as the Nurse Supervisor.

7. ID.; ID.; ID.; AN ILLEGALLY TERMINATED EMPLOYEE IS ENTITLED TO REINSTATEMENT TO FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND THE PAYMENT OF BACKWAGES.— [T]he petitioner was illegally terminated from her employment. Under Article 294 of the *Labor Code*, she is entitled to reinstatement to her former position without loss of seniority rights; and to the payment of backwages covering the period from the time of her illegal dismissal until her actual reinstatement.

APPEARANCES OF COUNSEL

Samson S. Alcantara for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

This appeal seeks to set aside the decision promulgated on October 12, 2011[1] whereby the Court of Appeals (CA) dismissed the petition for *certiorari* of the petitioner and thereby upheld the decision dated July 22, 2010[2] of the National Labor Relations Commission (NLRC) reversing and setting aside the ruling of the Labor Arbiter that had declared her dismissal to be illegal.[3]

Antecedents

The CA recounted the antecedent facts in its assailed decision, *viz.*:

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[1] *Rollo*, pp. 119-129; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justice Japar B. Dimaampao and Associate Justice Danton Q. Bueser concurring.

[2] *Id.* at 82-90.

[3] *Id.* at 71-78.

Private respondent Capitol Medical Center (hereafter CAPITOL) is a private hospital, with private respondent Dr. Thelma N. Clemente as its President and Chief Executive Officer.

Petitioner Josephine Casco is the Nurse Supervisor of the Operating Room of CAPITOL. She started working for CAPITOL as a Staff Nurse in the Recovery Room on 29 March 1984. She was promoted as Head Nurse of the OB-Gyne Surgical Ward on 16 February 1989 and as Nurse Supervisor of the Surgical Ward on 30 November 1991. Petitioner was finally promoted as Nurse Supervisor of the Operating Room on 3 September 2002.

The job summary of a Nurse Supervisor of the Operating Room are as follows: a.) responsible for the supervision and management of nurses and services at the Operating and Recovery Room; b.) plan all nursing and exercise personnel management within the area, make decisions when problems arise in the unit; c.) accountable for losses, equipment malfunction, breakage, patients and personnel.

On 19 June 2006 and 3 July 2006, petitioner received from CAPITOL various equipment such as vaporizers, patient monitors and Pulse Oximeters for the Operating Room.

On 25 January 2008, a representative of Abbot Laboratories conducted a calibration of the Operating Room's vaporizers. In the course of the calibration, it was discovered that several hospital equipments [sic] in the Operating Room were missing. Petitioner filed Incident Report dated 31 January 2007 stating that several vaporizers were missing inside the Operating Complex, including two (2) Mundray Monitors and two (2) Pulse Oximeter.

On 7 February 2008, CAPITOL issued a *First Notice of Investigation* stating that a complaint for gross negligence in connection with the loss of hospital equipments [sic] has been filed against the petitioner and requiring her to submit a written explanation on the matter.

In her *Explanation* dated 11 February 2008, petitioner alleged the following:

x x x x x x x x x

1.) I've been working for 23 years here at CMC and not one instance that I have neglected my duties and responsibilities;

2.) I suggested verbally before the first incident that we have lost 17 sutures to put surveillance camera to all Operating

Theaters, Central Supply and all important areas in the Operating Room Complex but they have placed two (2) surveillance camera[s] in the OR hallway only;

3.) I started reviewing the surveillance camera but I doubt I could get something out of it. I called up my colleagues in the ORNAP organization who are all connected in the hospitals in Metro Manila to inquire whether they have the same machines as we do and asked them to inform me if somebody inquires/ sell about monitors and vaporizers;

x x x x x x x x x

5.) This incident of theft is beyond my control because everybody has access in (sic) the machine room area and all OP theaters. And Besides we have seven (7) doors, three (3) of which are the exit[s] inside the sterile area that could not be permanently locked.

x x x x x x x x x

On 18 December 2008, CAPITOL issued a *Letter of Termination* to petitioner which reads:

After a careful deliberation of the case filed against you and upon serious consideration of the evidences (sic) presented, the investigation committee hereby finds you of (sic) GROSS NEGLIGENCE resulting to loss of equipments [sic] at the Operating Rooms specifically (2) units PM 600 Mindray (sic) monitors, (2) units Pulse Oximeter; (3) Vaporizers and (1) Endoscopy Camera with a total value of ₱2.9 M. These equipments [sic] have been kept in your area of responsibility but you did not initiate control measures to secure them and the machine room where they are kept has been accessible to everybody until the time that the loss was discovered. The lack of effort in securing the machine room speaks of your negligence, lapses and lack of concern for the equipments [sic] entrusted to your custody. This has caused the Management to lose its trust and confidence in you as Supervisor. The sanction for this offense is DISMISSAL.

x x x x x x x x x[4]

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[4] *Id*. at 120-122.

On February 2, 2009, the petitioner filed her complaint for illegal dismissal and damages against respondents Capitol Medical Center and Thelma N. Clemente in the NLRC.[5]

Labor Arbiter's Ruling

Labor Arbiter (LA) Daniel J. Cajilig rendered a decision on October 14, 2009 disposing as follows:[6]

> WHEREFORE, judgment is hereby rendered ordering the respondent entity to reinstate the complainant to her former position without loss of seniority rights and other privileges and benefits which is immediately executory within ten (10) calendar days from receipt hereof, and to submit a report of compliance thereof pursuant to Paragraph 2, Section 14, Rule V of the 2005 Revised Rules of Procedure of the NLRC.
>
> Respondent entity is hereby likewise ordered to pay complainant the amount of ₱220,298.58, representing her backwages as of the date of this decision.
>
> Other claims are hereby denied for lack of merit.
>
> SO ORDERED.[7]

LA Cajilig pointed out that the records did not show that the petitioner had been habitually neglectful of her duties; that an isolated case of negligence did not justify her termination for gross and habitual negligence; and that Section II, subsection H of the *Manual of Employee Discipline* providing for other forms of neglect of which she was charged did not require the penalty of dismissal.

Respondent employers appealed to the NLRC.[8]

Decision of the NLRC

On July 22, 2010, the NLRC promulgated its decision reversing the LA's ruling, and dismissing the petitioner's

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[5] Docketed as NLRC-NCR Case No. 02-01917-09.

[6] *Rollo*, pp. 71-78.

[7] *Id*. at 78.

[8] *Id*. at 79-81.

complaint for illegal dismissal.[9] The NLRC declared that she had committed a series of negligent acts by failing to perform her duties and responsibilities as the Head Nurse that resulted to the loss of the hospital equipment; and that she had been validly dismissed also on account of loss of trust and confidence because her position as the Head Nurse qualified her as a supervisor or manager in whom the respondents had reposed their trust and confidence.

The petitioner moved for reconsideration,[10] but the NLRC denied her motion on September 17, 2010.[11]

Hence, the petitioner assailed the NLRC's decision on *certiorari*,[12] asserting that the NLRC thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

Decision of the CA

On October 12, 2011, the CA promulgated its decision upholding the decision of the NLRC,[13] and ruling that the petitioner as Nurse Supervisor held a position of trust and confidence by virtue of her being entrusted with the protection, handling and custody of hospital equipment and machines assigned at the Operating Room Complex; and that she had consequently been validly dismissed on the ground of loss of trust and confidence following the loss of the hospital equipment.

The CA concluded that the petitioner was grossly negligent because she only discovered the missing equipment when the vaporizers were scheduled to be calibrated; that if she had been diligent, she would have regularly conducted an inventory of the equipment; and that despite being aware that the operating room was easily accessible to anybody, she did not take any

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[9] *Id*. at 82-90.

[10] *Id*. at 92-98.

[11] *Id*. at 99-101.

[12] *Id*. at 102-117.

[13] *Supra*, note 1.

appropriate measures to secure the equipment and machines to prevent the loss.

The petitioner moved for reconsideration,[14] but the CA denied the same on February 8, 2012.[15]

Issues

In her appeal, the petitioner seeks the reversal of the CA's adverse decision, submitting the following errors on the part of the CA, to wit:

I

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT PUBLIC RESPONDENT DID NOT GRAVELY ABUSE ITS DISCRETION IN FINDING THAT PETITIONER WAS VALIDLY DISMISSED FROM HER EMPLOYMENT BY PRIVATE RESPONDENTS WHICH ARE CONTRARY TO THE FACTS AND LAW

A

THE PUBLIC RESPONDENT DELIBERATELY MISAPPRECIATED THE FACTS WHEN IT FOUND THAT PETITIONER WAS SUPPOSEDLY VALIDLY DISMISSED FROM HER EMPLOYMENT ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE DUE TO PURPORTED GROSS NEGLIGENCE IN THE PERF[OR]MANCE OF DUTIES.

B

THE CARE AND CUSTODY OF THE LOST MACHINERIES/ EQUIPMENT WAS NOT THE CHIEF TASK OF PETITIONER

C

PETITIONER CONDUCTED REGULAR INVENTORIES OF THE MACHINERIES AND EQUIPMENT WITHIN HER AREA, THE LATEST OF WHICH WAS A FEW MONTHS BEFORE THE LOSS WAS DISCOVERED.[16]

The petitioner contends that the care and custody of the equipment and machinery devolved upon the Head Nurse who

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[14] *Rollo*, pp. 130-167.

[15] *Id.* at 128-129.

[16] *Id.* at 14-15.

was specifically tasked to secure and oversee their care and use;[17] that she regularly conducted an inventory of the fixed assets and supplies of the operating room, the latest of which was done a few months prior to the loss of the equipment;[18] that she diligently performed her duties and even advocated the installation of surveillance cameras;[19] that she had rendered loyal, dedicated and efficient service to the respondents' hospital for 25 years;[20] that loss of trust and confidence required willfulness on her part but that was lacking; that she could only be guilty of simple negligence, if at all; and that under Capitol Medical Center's Manual on Employee Regulations, her offense was not punishable with dismissal.[21]

The respondents maintain, however, that the petitioner did not discharge her responsibility by regularly conducting an inventory; that she did not institute control measures to secure the equipment under her custody; that she did not actively pursue the lead as to the possible perpetrator; that the lost equipment was never released to the Head Nurse; that her acts warranting her dismissal were voluntary, willful and blameworthy for having resulted in financial loss to the employer; and that her length of service aggravated instead of mitigated her liability because she had become grossly complacent and careless.[22]

Did the CA err in finding that the NLRC did not gravely abuse its discretion in declaring the petitioner's dismissal as valid on the ground of loss of trust and confidence and gross negligence?

Ruling of the Court

The appeal is meritorious.

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[17] *Id*. at 16.

[18] *Id*.

[19] *Id*. at 17.

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

[21] *Id*. at 18.

[22] *Id*. at 162-165.

I
The Court may review factual issues in a labor case when there are conflicting findings of fact

We restate the legal framework for reviewing the CA's decision in a labor case laid down in *Montoya v. Transmed Manila Corporation*,[23] *viz*:

> x x x In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct**. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[24]

Consequently, only questions of law may now be entertained by the Court. But the Court, by way of exception, may proceed on an inquiry into the factual issues in order to determine whether or not, as essentially ruled by the CA, the NLRC committed grave abuse of discretion by grossly misreading the facts and misappreciating the evidence.[25] As such, the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory,[26] which is the case herein.

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[23] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

[24] *Id.* at 342-343.

[25] *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, G.R. No. 212096, October 14, 2015, 772 SCRA 638, 649.

[26] *Cavite Apparel, Incorporated v. Marquez*, G.R. No. 172044, February 6, 2013, 690 SCRA 48, 55.

II
Petitioner was not liable for gross and habitual negligence

Neglect of duty, as a ground for dismissal, must be both gross and habitual.[27] Gross negligence implies a want or absence of or a failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[28]

In termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer, who show by substantial evidence that the termination of the employment of the employee was validly made; the failure to discharge this duty will mean that the dismissal was not justified and was, therefore, illegal.[29]

Respondent employers did not discharge their burden.

Both the CA and the NLRC concluded that the petitioner had been remiss in her duty to secure the hospital equipment and machineries under her custody. They based their conclusion on her Job Summary that included her being accountable for losses and equipment malfunction, among others.

The conclusion of the CA and the NLRC was erroneous.

Before the petitioner could be held liable for gross and habitual negligence of duty, respondents must clearly show that part of her duty as a Nurse Supervisor was to be the custodian of hospital equipment and machineries within her area of responsibility. Yet, there was no evidence submitted that substantially proved

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[27] *Nissan Motors Phils., Inc. v. Angelo*, G.R. No. 164181, September 14, 2011, 657 SCRA 520, 530.

[28] *School of the Holy Spirit of Quezon City v. Taguiam*, G.R. No. 165565, July 14, 2008, 558 SCRA 223, 229-230.

[29] *Leus v. St. Scholastica's College Westgrove*, G.R. No. 187226, January 28, 2015, 748 SCRA 378, 408.

that the respondents had entrusted to her the custody of such property. Even the job description of a Nurse Supervisor[30] did not include that of being the custodian of hospital equipment and machines, to wit:

Position Title: NURSE SUPERVISOR – OPERATING/RECOVERY ROOM

x x x x x x x x x

Job Summary
Responsible in the supervision and management of nurses and services at the Operating and Recovery Room. Plan all nursing activities and exercise personnel management within the area, make decisions when problem arises in the unit. Accountable for losses, equipment malfunction, breakage, patients and personnel.

x x x x x x x x x

Details of Duties and Responsibilities
1. Supervision of Patient Care

x x x x x x x x x

2. Personnel Management:

x x x x x x x x x

3. Others:
3.1. Accepts schedule of operation and ensure easy flow of cases daily
3.2. Consistently monitor the use of supplies
3.3. Check proper endorsement of supplies, equipment, machines and report immediately the malfunction of equipment and machines
3.4. Receives newly purchased instruments and equipment
3.5. Conducts inventory of fixed assets and supplies
3.6. Prepares annual budget, reports (monthly and annually)

Based on the petitioner's job description, she would be accountable for losses, equipment malfunction and breakages. Her other duties included, among others, the consistent monitoring of the use of supplies; checking proper endorsement of supplies, equipment and machines; reporting of any

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[30] *Rollo*, pp. 45-46.

malfunction thereof; receiving newly purchased instruments and equipment; and conducting inventory of fixed assets and supplies. Her job description nowhere vested her with the task of taking care, handling and keeping of hospital property. Clearly, her job description did not include her acting as the custodian of hospital property and equipment. Her being held accountable for losses and equipment malfunction did not automatically make her the custodian thereof. For one, there was no mention at all of what kind of loss she would be liable for. As for equipment malfunction, that liability was clearly upon her because part of her specific responsibilities was that of promptly reporting such malfunction; yet, that liability did not necessarily mean that she was the custodian of the equipment.

Even assuming that the petitioner was made the custodian of hospital property, she could not be found to have been grossly and habitually negligent of her duty.

Negligence is "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury."[31] The test of negligence is: *Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation*? The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence, and determines liability by that.[32]

The respondents failed to establish that the petitioner had wilfully and deliberately intended to be mindless of her responsibilities, or that she had been reckless as to be blameworthy for her acts or omissions. She could not be responsible for conducting the annual inventory if there was

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[31] *R. Transport Corporation v. Yu,* G.R. No. 174161, February 18, 2015, 750 SCRA 696, 703-704.

[32] *Gutierrez v. Commission on Audit,* G.R. No. 200628, January 13, 2015, 745 SCRA 435, 457.

no standard laid down by the respondents as the employers. Neither should the blame for failing to secure the equipment fall upon her if access to the operating room was not under her control, but that of the management to which security of the premises from unauthorized and undesirable personalities was of utmost importance. Likewise, the responsibility of taking the lead in investigating the loss could not be expected from her considering that any actions against the supposed perpetrator should be initiated by the respondents themselves. Under the circumstances, she could not be validly dismissed on the ground of gross negligence.

II
The petitioner could not be dismissed for loss of trust and confidence

Loss of trust and confidence as a valid ground for dismissal is premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of the management. Such employee bears a greater burden of trustworthiness than ordinary workers, and *the betrayal of the trust reposed is the essence of the loss of trust and confidence* that becomes the basis for the employee's dismissal.[33]

In *Bristol Myers Squibb (Phils.), Inc. v. Baban*,[34] the Court laid down the requisites for a valid dismissal on the ground of loss of trust and confidence, to wit:

> The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Verily, We must first determine if respondent holds such a position.
>
> There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire,

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[33] *P.J. Lhuillier, Inc. v. Velayo*, G.R. No. 198620, November 12, 2014, 740 SCRA 147, 162.

[34] G.R. No. 167449, December 17, 2008, 574 SCRA 198, 574 SCRA 198.

transfer suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[35]

Managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff.[36] A simple perusal of the job description of Nurse Supervisor indicated that the petitioner was a managerial employee. Being tasked with the daily supervision of other nurses and with the operational management of the operating room, she was clearly discharging a position of trust.

Did the respondents validly dismiss the petitioner as a managerial employee on the ground of loss of trust and confidence?

We answer in the negative.

In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required, but the mere existence of a basis for believing that such employee has breached the trust of his employer suffices.[37] In *Lima Land v. Cuevas,*[38] we distinguished between managerial employees and rank-and-file personnel insofar as terminating them on the basis of loss of trust and confidence, thus:

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised

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[35] *Id.* at 205-206.

[36] *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 603; *Peñaranda v. Baganga Plywood Corporation*, G.R. No. 159577, May 3, 2006, 489 SCRA 94, 102-103.

[37] *Alaska Milk Corporation v. Ponce,* G.R. No. 228412, July 26, 2017; *Grand Asian Shipping Lines, Inc. v. Galvez,* G.R. No. 178184, January 29, 2014, 715 SCRA 1, 27.

[38] G.R. No. 169523, June 16, 2010, 621 SCRA 37.

on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized.

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. **But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.**

On the other hand, **loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.** Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.[39] (Boldscoring supplied for emphasis)

Herein, the respondents could not simply dismiss the petitioner on account of her position. Although a less stringent degree of proof was required in termination cases involving managerial

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[39] G.R. No. 169523, June 16, 2010, 621 SCRA 37, 46-47.

employees, the employers could not invoke the ground of loss of trust and confidence arbitrarily.[40] There must still be some basis to justify that the petitioner was somehow responsible for the loss of the equipment, and to show that her participation in the loss rendered her unworthy of the trust and confidence demanded of her position as the Nurse Supervisor. As already discussed, however, she could not be made accountable for the missing property for several reasons. Firstly, she was not vested with the responsibility of safekeeping of the hospital equipment and machines. And, secondly, the respondents did not adduce evidence showing that she had committed wilful and deliberate acts that led to the loss. As such, her dismissal based on loss of trust and confidence should not be upheld.

The misdeed attributed to the employee must be a genuine and serious breach of established expectations required by the exigencies of the position regardless of its designation, and not out of a mere distaste, apathy, or petty misunderstanding. It cannot be overemphasized that the employee's reputation and good name are currency in their chosen profession, and their livelihood, at the very least, is what is at stake. Employment and tenure cannot be bargained away for the convenience of attaching blame and holding one accountable when no such accountability exists.

In fine, the petitioner was illegally terminated from her employment. Under Article 294[41] of the *Labor Code*, she is entitled to reinstatement to her former position without loss of seniority rights; and to the payment of backwages covering the period from the time of her illegal dismissal until her actual reinstatement.

ACCORDINGLY, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** the decision promulgated on October 12, 2011 by the Court of Appeals; **REINSTATES** the decision

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[40] *Bravo v. Urios College (now Father Saturnino Urios University),* G.R. No. 198066, June 7, 2017, citing *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, June 16, 2010, 621 SCRA 37.

[41] Formerly Article 279. See DOLE Department Order No. 1, series of 2015.

of the Labor Arbiter dated October 14, 2009; and **ORDERS** respondents Capitol Medical Center and Thelma N. Clemente to pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 204735. February 19, 2018]

SPOUSES CIPRIANO PAMPLONA and BIBIANA INTAC, *petitioners, vs.* **SPOUSES LILIA I. CUETO and VEDASTO CUETO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT CANNOT DELVE INTO QUESTIONS OF FACT ON APPEAL; EXCEPTIONS.— Generally, the Court cannot delve into questions of fact on appeal because it is not a trier of facts. Yet, this rule has not been iron-clad and rigid in view of several jurisprudentially recognized instances wherein the Court has opted to settle factual disputes duly raised by the parties. These instances include situations: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings

of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (j) when the findings of fact of the CA are premised on the absence of evidence but the premise is contradicted by the evidence on record.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; REQUIRED IN PROVING AN ALLEGATION IN A CIVIL CASE.— [T]he Court reiterates the general proposition that is true in all civil litigations that the burden of proof lies in the party who asserts, not in the party who denies because the latter, by the nature of things, cannot produce any proof of the assertion denied. Equally true is the dictum that mere allegations cannot take the place of evidence. The party making an allegation in a civil case has the burden of proving the allegation by preponderance of evidence. In this connection, preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence."

3. ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; ADMISSION BY SILENCE; REQUIREMENTS.— It is basic that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. *Res inter alios acta alteri nocere non debet.* As an exception to the rule, the act or declaration made in the presence and within the hearing or observation of a party who does or says nothing may be admitted as evidence against a party who fails to refute or reject it. This is known as admission by silence, and is covered by Section 32, Rule 130 of the *Rules of Court* x x x. For an act or declaration to be admissible against a party as an admission by silence, the following requirements must be present, namely: (a) the party must have heard or observed the act or declaration of the other person; (b) he must have had the opportunity to deny it; (c) he must have understood the act or declaration; (d) he must have an interest to object as he would naturally have done if the act or declaration was not true; (e) the facts are within his knowledge; and

(f) the fact admitted or the inference to be drawn from his silence is material to the issue.

4. ID.; ID.; ID.; ID.; ID.; THE RULE ON ADMISSION BY SILENCE APPLIES TO ADVERSE STATEMENTS IN WRITING ONLY WHEN THE PARTY TO BE THEREBY BOUND WAS CARRYING ON A MUTUAL CORRESPONDENCE WITH THE DECLARANT.— [Lilia] was not shown to have heard or seen the admissions by Vedasto and Roilan that were in writing because she was then abroad. Also, she was not shown to have had the opportunity to deny their written admissions simply because she was not a party to the written admissions. The rule on admission by silence applies to adverse statements in writing only when the party to be thereby bound was carrying on a mutual correspondence with the declarant. Without such mutual correspondence, the rule is relaxed on the theory that although the party would have immediately reacted had the statements been orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.

APPEARANCES OF COUNSEL

Kathryn T. Elemen for petitioners.
De Mesa & De Mesa Law Office for respondents.

D E C I S I O N

BERSAMIN, *J.*:

This case involves conflicting claims between the parties involving their transaction over a parcel of land and its improvements, with the respondents claiming, on the one hand, that they had purchased the property on installment pursuant to an oral contract to sell, and the petitioners insisting, on the other, that the amounts paid by the respondents to them were in payment of the latter's indebtedness for a previous loan. The trial court sided with the petitioners but the appellate court reversed the trial court and ruled in favor of the respondents.

The Case

Under review is the decision promulgated on December 3, 2012,[1] whereby the Court of Appeals (CA) reversed the decision issued on June 21, 2011 by the Regional Trial Court (RTC), Branch 8, in Batangas City dismissing the respondents' complaint in Civil Case No. 5120, and ordering the petitioners instead to execute a deed of sale on the property in favor of the respondents upon the release of the consigned amount.[2]

The CA further ordered the Register of Deeds of Batangas City to cancel the transfer certificate of title of the petitioners, and to issue a new one in favor of the respondents.

Antecedents

The CA rendered the following factual and procedural antecedents:

> An Amended Complaint dated 20 November 1998 was filed by plaintiffs Sps. Lilia I. Cueto ("Lilia", for brevity) and Vedasto Cueto ("Vedasto", for brevity) against defendants Sps. Cipriano Pamplona and Bibiana Intac ("Bibiana", for brevity) for specific performance, conveyance, consignation and damages before the Regional Trial Court of Batangas City, docketed as *Civil Case No. 5120.*
>
> It was alleged, *inter alia*, that: defendants are the registered owners of Lot No. 1419-C (LRC) Psd-66901 of the Cad. Survey of Batangas, Cadastral Case No. 41, LRC Cad. Record No. 1706, with improvements thereon (subject property), situated in Batangas City, containing an area of 476 sq. m., more or less, covered by Transfer Certificate of Title No. RT-1504 (34558) of the land records of Batangas City; on 10 January 1989, plaintiff Lilia and defendants mutually agreed that the former would buy and the latter would sell on installment, the aforementioned immovable including the house standing thereon for the total sum of US$25,000.00 payable on a monthly installment of US$300.00; the agreement was verbal considering that Lilia and

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[1] *Rollo*, pp. 39-55; penned by Associate Justice Celia C. Librea-Leagogo and concurred by Associate Justice Elihu A. Ybanez and Associate Justice Melchor Quirino C. Sadang.

[2] *Id*. at 240-249; penned by Presiding Judge Ernesto L. Marajas.

defendants are sisters and brother-in-law, respectively, and completely trusted each other; however, a notebook with the personal inscription of defendant Bibiana was sent to Lilia at the latter's address in Italy, affirming their oral agreement and wherein the list of all the remittances would be entered; on even date, defendants voluntarily transferred the peaceful possession of the subject property to Lilia and from the date of the agreement, the latter had remitted to the former her monthly instalments through registered mail, with a total payment of US$14,000.00 to date, leaving a balance of US$11,000.00; since January 1989, Lilia allowed her son Rolando (or Roilan) Cueto ("Rolando" or "Roilan", for brevity) to reside at the subject property as Lilia had to leave for abroad due to her employment in Italy; since January 1989, Lilia through her son, has religiously paid the annual realty taxes on the premises, including electric and water bills; on 13 August 1997, defendants filed before the Municipal Trial Court in Cities, Batangas City, with malicious intent and to the prejudice of plaintiffs' rights, a case for unlawful detainer, docketed as *Civil Case No. 3429* against plaintiff's son Rolando and his wife Liza Cueto ("Liza", for brevity); being indigent, spouses Rolando and Liza failed to defend themselves resulting in a judgment by default and they were finally evicted in January 1998; Lilia learned of the eviction case in June 1998 when she returned home from Italy; she executed an Affidavit of Adverse Claim dated 15 June 1998, and registered the same with the land records of Batangas City; on 17 June 1998, through Lilia's lawyer, a written tender of payment of US$11,000.00 was sent to defendants by registered mail and received by Bibiana on 30 June 1998; earnest efforts were resorted to compromise the present controversy between members of the same family as shown by the final demand letter dated 11 August 1998, sent by registered mail, to defendants; as a consequence of the latter's unreasonable refusal to recognize plaintiffs' just and valid demand, they were constrained to consign the US$11,000.00 or its equivalent in Philippine currency, as final payment to defendants; after plaintiff's compliance with her contractual obligation, she demanded from defendants to immediately execute the necessary deed of conveyance and delivery of the owner's copy of TCT No. T-34558; due to defendants' act and omission, Lilia suffered actual damages for the reimbursement of her travelling expenses and loss of revenue due her from foreign job abandonment during the length of the proceeding; and plaintiffs are entitled to the payment of damages, attorney's fees and litigation expenses.

In their Answer with Counterclaim dated 25 August 2000, defendants alleged, *inter alia*, that: it was plaintiff Lilia who is indebted to her sister defendant Bibiana, as it was the latter whom she approached for money to be used in applying for a job in Italy; as promised by Lilia, she would pay Bibiana and remit the amount in instalment to the residence of defendants in the United States; but only few dollars were sent to them by Lilia, and as could be gleaned from the self-serving notations thereon, there exists no agreement duly signed by defendants, as in truth and in fact they never sold the said property to the plaintiffs; Article 1405 of the New Civil Code mandates that irrespective of who the parties are to agreement, if it involves more than Php500.00, it should be reduced into writing, mutually agreed upon by the parties thereto; plaintiff Vedasto, and Rolando married to Liza, were allowed by defendants to stay in the said house, by mere tolerance, subject to the condition that they would pay their electric and water consumption bills thereon, but realty tax payments were sent to them by defendants for payment to the Batangas City government; Vedasto, husband of Lilia, as early as 24 October 1996, had recognized the defendants' right of ownership over the property in question, when he undertook to vacate the same; they never sold the subject property to the plaintiffs' if the plaintiffs incurred expenses or suffer pecuniary damages including attorney's fees, they themselves are to be blamed and not defendants, for instituting a baseless and unfounded complaint.

Defendants filed their Manifestation and Urgent Motion for Inhibition dated 13 March 2001, to which plaintiffs filed their Counter-Manifestation dated 29 March 2001. On 05 April 2001, Judge Teodoro Tapia Riel inhibited himself. The case was re-raffled to Branch 8.

Intervenor Redima Baytown Development Corporation ("Redima", for brevity) filed its Manifestation and simultaneous filing of Answer-in-Intervention with attached Answer-in-Intervention dated 24 June 2001, and Manifestation and Urgent Motion to Admit Attached Answer-in-Intervention dated 25 July 2001. Plaintiffs filed their "Negation" dated 10 August 2001. On 31 March 2004, the trial court admitted the Answer-in-Intervention. Plaintiffs filed their Motion for Reconsideration dated 23 April 2004, which was denied by the trial court on 30 July 2004.

In the meantime, petitioners therein (herein plaintiffs) filed a Petition for *Certiorari* dated 20 September 2004 before this Court, docketed as *CA-G.R. No. 86541*. This Court (Seventeenth Division) rendered a Decision dated 28 June 2005, granting the Petition for *Certiorari,*

reversing and setting aside the trial court's Orders dated 31 March 2004 and 30 July 2004, and entering a new one denying the Answer-in-Intervention. Private respondent Redima filed its Motion for Reconsideration *etc*. dated 19 July 2005, which was denied by this Court (Former Seventeenth Division) in its Resolution dated 03 November 2005. Redima filed with the Supreme Court a Petition for Review on *Certiorari* dated 19 December 2005, docketed as *G.R. No. 170315*. In a Resolution dated 16 January 2006, the Supreme Court (First Division) denied the Petition for Review on *Certiorari*. Redima filed its Motion for Reconsideration dated 24 February 2006, but the same was denied in the Supreme Court's Resolution dated 16 January 2006, which became final and executory and was recorded in the Book of Entries of Judgments.

Pre-trial was held and the trial court issued an Order dated 25 April 2005.

Trial on the merits ensued. Plaintiff Lilia, Roilan and Emma Intac were presented as witnesses.

Lilia Cueto testified, *inter alia*, that: she started working in Italy in 1987 up to the present; Bibiana is her sister and Cipriano Pamplona is her brother-in-law who have been residing in the U.S.A. for 35 years; she bought the subject property in Kumintang Ibaba, Batangas City, covered by TCT No. RT-1504 from Sps. Pamplona on 10 January 1998; Bibiana called her by telephone and told her that she (Lilia) would pay by installment every month for US$300.00; the total amount of said subject property is $25,000.00; they agreed to the proposal and Bibiana sent her a booklet wherein she could write her payments and there was also a note above in the booklet before Bibiana sent the same; her sister has inscriptions on the front cover of Exhibit "B"; the figures 1-10-89 is the date of her first payment; US$25,000.00 is the amount of the subject property she bought from defendants; US$300.00 is her monthly payment; all in all, she sent Bibiana US$14,000.00; her thirty-one (31) return cards show that she sent money to Bibiana; usually she sent Bibiana cash in US dollars; possession of the subject property was entrusted to her and her son Roilan resided in the said property since 10 January 1989; she paid realty taxes on the subject property as shown in the four (4) official receipts dated 22 November 1996, for the years 1991 to 1996; Roilan was ejected by Bibiana in November 1997 in relation to the complaint for unlawful detainer in *Civil Case No. 3429*; when she talked with Bibiana in the Philippines on 07 June 1998, she did not have with her the full payment for the balance amounting to US$11,000.00

because she lost her job at that time; after she and Bibiana talked on 07 June 1998, they agreed that she would come back to the Philippines in order to pay the latter; she came back to the Philippines on 27 September 1999 and she had the money with her, but Bibiana already left for the USA; and Bibiana did not accept her tender of payment of US$11,000.00. On cross-examination, she testified that: she and Bibiana verbally agreed that she was going to pay; Bibiana told her that after she has settled the payment, that would be the time that they would execute a deed of sale; her husband knew that she bought said property; and the yellow paper shows what was agreed upon by her and Bibiana.

Roilan Cueto testified, *inter alia*, that: his mother Lilia has been working in Italy since 1987; Sps. Pamplona are his uncle and aunt; Bibiana and Lilia are sisters; Lilia started paying defendants US$300.00 a month since 10 January 1989; his parents authorized him to reside on the said property; since 10 January 1989, he occupied the house and paid the electric and water bills; he paid the taxes of the subject property, but it was his mother who sent money for the payment; he was ejected from the house because he was charged with unlawful detainer by his aunt; after the promulgation of the decision in the unlawful detainer case, he left the house; he did not inform his mother, and just waited for her to come home, because he did not want to give her a problem; and from the time he occupied the subject property on 10 January 1989 and up to the time he was ejected by the Court, he did not pay any rent. On cross-examination, he testified that: his father Vedasto is a co-plaintiff in this case; he thinks that his father was forced to sign the undertaking "*Pangako ng Pag-alis*" because his mother and father had a quarrel during that time and they were made to understand that it was a form of separation of property, which is why, they made that document; he did not appeal the Decision of Judge Francisco D. Sulit ("Sulit", for brevity); and he just left because his mother was still abroad and they did not have the financial capacity to hire the services of counsel. On redirect examination, he testified, that he informed his mother who was in Italy about the ejectment case filed against him by the Sps. Pamplona during the time when they were made to vacate by Sps. Pamplona.

Emma Intac testified, *inter alia*, that Lilia and Bibiana are her sisters; and that Lilia is the mother of Rolando who is the owner of the house.

Plaintiffs filed their Formal Offer dated 02 February 2009, to which defendants filed their "Legal & Factual Objections *etc*." dated 27

March 2009. On 20 April 2009, the trial court admitted plaintiffs' Exhibits "A" to "T" with submarkings.

Wilfredo M. Panaligan and Atty. Dimayacyac testified for the defense.

Wilfredo M. Panaligan, testified, *inter alia*, that: he was a member of the Batangas City Police Station in 1997, and he was assigned at the Intelligence Division, under Col. Pablo Panaligan; he and PO2 Hoberto Bagsit ("Bagsit", for brevity) were called by their Chief of Police for police assistance to Brgy. Kumintang Ibaba, Batangas City; he was told to get in touch with Sps. Pamplona for peace and order situation thereat; in his (Panaligan) presence, Roilan signed his written undertaking in relation to their manifestation to vacate the premises regarding the decision of Judge Sulit; Vedasto signed the "*Pangako ng Pag-alis*"; and he and Bagsit were present when Vedasto signed said specific undertaking; they were assisted by the sheriff of the court; there were typographical errors in the undertaking of Vedasto considering 24 October 1996 should be 1997, and 21 October 1996 should be 21 October 1997; he read the document marked at Exhibit "4-A" before affixing his signature thereon; and he was not able to call the attention of the court personnel or Vedasto regarding the discrepancy of the date stated on the document, as he just signed as a witness.

Atty. **Reynaldo P. Dimayacyac, Sr**., defendants' counsel, filed his Judicial Affidavit dated 26 August 2010 (Exhibit "AA") and affirmed the same. He testified, *inter alia*, that: when the property was offered to him before and being well acquainted of the fact that as early as 1997, his assistance was solicited in conjunction with the assistance provided by the Batangas City PNP for the enforcement of the decision of Judge Sulit, ejecting Roilan or Rolando and Liza, the son and daughter-in-law of the plaintiffs, he was already aware of the legality of the ownership of Sps. Pamplona; he went to the trial court and made researches on the pleadings pending as well as the record of the proceedings, for that purpose; he realized that the case instituted by Sps. Cueto against Sps. Pamplona had no legal basis; and he noticed with respect to the other arguments advanced by Atty. Eugenio Mendoza, counsel of Sps. Pamplona therein, that the basis of the allegations in favor of Lilia, which has been denied by Sps. Pamplona, was that there was no document of sale which had been signed and they were not in possession because they were ejected, aside from the fact no appeal has been instituted by either Lilia or Vedasto; he was not the counsel of the defendants in the ejectment case decided by Judge Sulit; he examined the annotation

on TCT No. RT-1504(34558) at the land records of Batangas City; he is not aware of the *lis pendens* per entry Entry No. 105392 that was annotated thereon in September 1998 because he never went to the Register of Deeds; he just depended on his copy of a clean title; he and his family corporation have never been disturbed in their possession; he is aware that when Redima executed the Memorandum of Agreement and Contract to Sell on 15 March 2001, there is a pending litigation between plaintiffs and defendants in this case; and Redima took possession of the property in litigation immediately after the execution of the Memorandum of Agreement and Contract to Sell; the permission of the trial court was not needed when they took possession of the property; and he participated by filing the necessary intervention.

Defendants filed their Motion to Admit attached Formal Offer of Evidence dated 10 January 2011, to which plaintiffs filed an Opposition dated 08 February 2011. On 28 March 2011, the trial court admitted Exhibit "AA" which was remarked by defendants' counsel as Exhibit "20". Plaintiffs filed their Memorandum dated 19 April 2011, to which defendants filed their Counter-Argument *etc*. dated 27 April 2011 x x x.[3]

Judgment of the RTC

As stated, the RTC, holding that the respondents did not prove the existence of the partially executed contract to sell involving the property; that neither documentary nor object evidence confirmed the supposed partially executed contract to sell; and that the respondents accordingly failed to support their cause of action by preponderance of evidence, disposed:

Wherefore, the complaint filed against Spouses Cipriano Pamplona and Bibiana Intac for specific performance, reconveyance consignation and damages is **hereby dismissed for failure of the Plaintiff to present preponderance of evidence to substantiate the theory of the case**. In like manner This Court will not award any damages in favor of the Defendants; however the cost of the suit is chargeable against the Plaintiff.

SO ORDERED.[4]

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

[4] *Id*. at 249.

Decision of the CA

On appeal, the CA reversed the RTC, and declared that the respondents presented sufficient evidence to establish that petitioner Bibiana and her sister, respondent Lilia, had entered into an oral contract to sell; that their oral contract, being partially executed by virtue of Lilia's partial payments to Bibiana, removed the contract from the application of the Statute of Frauds; that the transfer of the property in favor of Redima, represented by the petitioners' counsel, Atty. Dimayacyac, by virtue of the deed of transfer of rights, was null and void for being violative of Article 1491 of the *Civil Code*.

The *fallo* of the decision of the CA reads:

> **WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision dated 21 June 2011 of the Regional Trial Court, Fourth Judicial Region, Branch 8, Batangas City in *Civil Case* No. 5120 is **REVERSED** and **SET ASIDE**. Accordingly, plaintiff-appellant Lilia I. Cueto is recognized to have the right of ownership over subject property covered by Transfer Certificate of Title No. RT-1504 (34558) of the Registry of Deeds for Batangas City registered in the names of defendants-appellees Spouses Cipriano Pamplona and Babiana Intac. The Registrar of Deeds of Batangas City is hereby **ORDERED** to cancel said TCT No. RT-1504 (34558) and to issue a new one in the name of plaintiff-appellant Lilia I. Cueto. The judicially consigned amount of Php436,700.00 under Official Receipt No. 8789368 dated 24 November 1998, representing the full payment by plaintiff-appellant Lilia I. Cueto of the remaining balance of the subject property's purchase price, is **ORDERED** release[d] to defendants-appellees. Defendants-appellees are hereby **ORDERED** to immediately execute a Deed of Absolute Sale over the subject property in favor of plaintiff-appellant Lilia I. Cueto. Costs against defendants-appellees.
>
> **SO ORDERED.**[5]

Issues

The petitioners now assail the decision of the CA by stressing that the admissions of Lilia's son, Roilan, and of her husband,

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[5] *Id*. at 54.

petitioner Vedasto, to the effect that the petitioners were the true owners of the property were contrary to the conclusions of the CA; that the CA's finding that there had been a partially executed contract to sell was unwarranted because nothing in the records established the same; that the decision of the MTCC of Batangas City against Roilan in the unlawful detainer case indicated that they were the true owners of the property; that the CA should not have nullified the deed of transfer of rights between Redima and the petitioners on the strength of Article 1491 of the *Civil Code* because it was Redima, the corporation, that acquired the property instead of Atty. Dimayacyac; and that there was no violation of Article 1491 because of the separate juridical personalities between the corporation and its shareholders.

On their part, the respondents object to the authority of Atty. Dimayacyac to sign the verification and certification against forum shopping for the petitioners, stating that the fact that the written authority for that purpose had been notarized before a notary public of the State of Washington did not convert the document into a public document in the context of the Philippine law; that the factual findings of the CA, being more consistent with the facts and the law of the case, should be respected; that the CA correctly voided the transfer of the property from the petitioners to Redima and Atty. Dimayacyac for having been in violation of Article 1491 of the *Civil Code*; and that although it may have appeared that it was Redima, it was really Atty. Dimayacyac who had purchased the property after piercing the corporate veil, which indicated that the transfer was both legally and ethically abhorrent.

In their reply, petitioners counter that the general power of authority was duly authenticated within the Consulate General of the Philippines in San Francisco, California, and was submitted to the RTC as Exhibit 5-b; and that any objection to the validity of the verification and certification against forum shopping would be misplaced.

Based on the foregoing, the issues to be resolved are: (a) whether or not there was sufficient evidence to show the existence of

a partially executed contract to sell; and (b) whether or not the deed of transfer of rights from the respondents to Redima violated Article 1491 of the *Civil Code*.

Ruling of the Court

The appeal lacks merit.

Generally, the Court cannot delve into questions of fact on appeal because it is not a trier of facts. Yet, this rule has not been iron-clad and rigid in view of several jurisprudentially recognized instances wherein the Court has opted to settle factual disputes duly raised by the parties. These instances include situations: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (j) when the findings of fact of the CA are premised on the absence of evidence but the premise is contradicted by the evidence on record.[6]

The conflict in the factual findings and conclusions drawn by the RTC and the CA demands that the Court sift the records in order to settle the dispute between the parties.

At the start, the Court reiterates the general proposition that is true in all civil litigations that the burden of proof lies in the party who asserts, not in the party who denies because the latter, by the nature of things, cannot produce any proof of the assertion

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[6] *Cosmos Bottling Corporation v. Nagrama, Jr.,* G.R. No. 164403, March 4, 2008, 547 SCRA 571, 585.

denied.[7] Equally true is the dictum that mere allegations cannot take the place of evidence.[8] The party making an allegation in a civil case has the burden of proving the allegation by preponderance of evidence.[9] In this connection, preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence."[10]

A careful review of the records calls for us to affirm the CA. In our view, the existence of the partially executed contract to sell between Bibiana and Lilia was sufficiently established.

It is uncontested that Lilia sent money to Bibiana. The latter did not deny her receipt of the money. Moreover, the records showed that the parties further agreed for Vedasto and Roilan to occupy the property during the period when Lilia was remitting money to Bibiana; and that Lilia immediately took steps to protect her interests in the property once the petitioners started to deny the existence of the oral contract to sell by annotating her adverse claim on the petitioners' title and instituting this action against the latter. We concur with the CA's holding that the respondents adduced enough evidence to establish the existence of the partially executed contract to sell between Lilia and Bibiana.

The petitioners have contended that the sums of money received from Lilia were payments of the latter's obligations incurred in the past; that the admission by Roilan and his wife that the petitioners owned the property negated the absence of the contract to sell; and that the admission by Vedasto that the

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[7] *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009, 608 SCRA 521, 533.

[8] *Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012, 666 SCRA 119, 133.

[9] *Salas, Jr. v. Aguila*, G.R. No. 202370, September 23, 2013, 706 SCRA 252, 259.

[10] *Ogawa v. Menigishi*, G.R. No. 193089, July 9, 2012, 676 SCRA 14, 22.

petitioners owned the property was an admission against interest that likewise belied the contract to sell between Lilia and Bibiana.

The contentions of the petitioners are factually and legally unwarranted.

To start with, it was incumbent upon Bibiana to prove her allegation in the answer that the money sent to her by Lilia was in payment of past debts. This conforms to the principle that each party must prove her affirmative allegations.[11] Yet, the petitioners presented nothing to establish the allegation. They ought to be reminded that allegations could not substitute for evidence. Without proof of the allegation, therefore, the inference to be properly drawn from Bibiana's receipt of the sums of money was that the sums of money were for the purchase of the property, as claimed by the respondents.

Secondly, the admissions by Roilan and Vedasto of the petitioners' ownership of the property could not be appreciated in favor of the petitioners. That Bibiana and Lilia had entered into a contract to sell instead of a contract of sale must be well-noted. The distinctions between these kinds of contracts are settled. In *Serrano v. Caguiat*,[12] the Court has explained:

> A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. **The suspensive condition is commonly full payment of the purchase price**.
>
> The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, in *Sing Yee v. Santos*, we held that:
>
> > x x x [a] distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell x x x where by agreement the ownership

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[11] *G & M (Phils.) Inc. v. Cruz*, G.R. No. 140495, April 15, 2004, 456 SCRA 215, 221.

[12] G.R. No. 139173, February 28, 2007, 517 SCRA 57, 64-65.

> is reserved in the seller and is not to pass until the full payment, of the purchase price is made. In the first case, non-payment of the price is a negative resolutory condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.
>
> In other words, in a contract to sell, ownership is retained by the seller and is not to pass to the buyer until full payment of the price. x x x

The distinctions delineate why the admissions by Roilan and Vedasto were consistent with the existence of the oral contract to sell between Lilia and Bibiana. Under the oral contract to sell, the ownership had yet to pass to Lilia, and Bibiana retained ownership pending the full payment of the purchase price agreed upon.

Thirdly, the failure of Roilan to raise as a defense in the unlawful detainer suit against him the existence of the contract to sell between Bibiana and Lilia could not be properly construed as an admission by silence on the part of Lilia. It is basic that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.[13] *Res inter alios acta alteri nocere non debet*. As an exception to the rule, the act or declaration made in the presence and within the hearing or observation of a party who does or says nothing may be admitted as evidence against a party who fails to refute or reject it. This is known as admission by silence, and is covered by Section 32, Rule 130 of the *Rules of Court*, which provides:

> Section 32. *Admission by silence*. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally

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[13] Section 28, Rule 130 of the *Rules of Court*.

to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

For an act or declaration to be admissible against a party as an admission by silence, the following requirements must be present, namely: (a) the party must have heard or observed the act or declaration of the other person; (b) he must have had the opportunity to deny it; (c) he must have understood the act or declaration; (d) he must have an interest to object as he would naturally have done if the act or declaration was not true; (e) the facts are within his knowledge; and (f) the fact admitted or the inference to be drawn from his silence is material to the issue.[14]

The first two requirements are lacking in the case of Lilia. She was not shown to have heard or seen the admissions by Vedasto and Roilan that were in writing because she was then abroad. Also, she was not shown to have had the opportunity to deny their written admissions simply because she was not a party to the written admissions. The rule on admission by silence applies to adverse statements in writing only when the party to be thereby bound was carrying on a mutual correspondence with the declarant. Without such mutual correspondence, the rule is relaxed on the theory that although the party would have immediately reacted had the statements been orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.[15]

In the context of the norms set by jurisprudence for the application of the rule on admission by silence, Lilia could not be properly held to have admitted by her silence her lack of interest in the property. On the contrary, the records reveal otherwise. Upon her return to the country, she communicated with Bibiana on the terms of payment, and immediately took

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[14] *People v. Ciobal*, G.R. No. 86220, April 20, 1990, 184 SCRA 464, 471.

[15] *Villanueva v. Balaguer*, G.R. No. 180197, June 23, 2009, 590 SCRA 661, 672.

steps to preserve her interest in the property by annotating the adverse claim in the land records, and by commencing this suit against the petitioners. Such affirmative acts definitively belied any claim of her being silent in the face of the assault to her interest.

The Court avoids discussing and resolving the issue regarding the validity of the deed of transfer of interest between Redima and the petitioners because this case would not be the proper occasion to do so without violating the right to due process of Redima and Atty. Dimayacyac. We note that Redima's attempt to intervene herein in order to protect its right was earlier denied.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on December 3, 2012; and **ORDERS** the petitioners to pay the cost of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 219591. February 19, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GENERALDO M. CONDINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS ACCORD THE HIGHEST RESPECT TO THE ASSESSMENT MADE BY THE TRIAL COURT BECAUSE OF THE TRIAL JUDGE'S UNIQUE OPPORTUNITY TO OBSERVE THE WITNESSES FIRSTHAND AND TO NOTE THEIR DEMEANOR,

CONDUCT AND ATTITUDE UNDER GRUELING EXAMINATION.— In resolving issues involving the credibility of witnesses, the Court adheres to the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination." Thus, in *Reyes, Jr. v. Court of Appeals*, the Court explained: Also, the issue hinges on credibility of witnesses, We have consistently adhered to the rule that **where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect**. These findings will not be ordinarily disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. It is the trial court that had the opportunity to observe 'the witnesses' manner of testifying, their furtive glances, calmness, sighs or their scant or full realization of their oaths.' It had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. **Inconsistencies or contradictions in the testimony of the victim do not affect the veracity of the testimony if inconsistencies do not pertain to material points.**

2. **ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONIES OF THE PROSECUTION'S WITNESSES WHICH PERTAIN TO MINOR DETAILS AND COLLATERAL MATTERS DO NOT AFFECT THE SUBSTANCE OF THEIR DECLARATIONS AND THE VERACITY OF THEIR STATEMENTS.—** In this case, the alleged inconsistencies in the testimonies of the prosecution's witnesses pertained to *minor details* and *collateral matters* which did not affect the substance of their declarations and the veracity of their statements. In fact, the records show that the prosecution's witnesses never wavered in their testimonies as to the actual stabbing incident x x x. Note, too, that the RTC found the testimonies of Delos Santos and Canales to be "clear, certain, spontaneous and straightforward," and "worthy of full faith and credit." The CA, in turn, affirmed the factual findings of the RTC, as it was not shown that the trial court had "overlooked, misunderstood or misapplied some facts or circumstances of

weight and substance that would have affected the result of the case x x x."

3. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; THERE IS TREACHERY WHEN THE OFFENDER EMPLOYS MEANS, METHODS OR FORMS IN THE EXECUTION OF ANY OF THE CRIMES AGAINST PERSONS THAT TEND DIRECTLY AND ESPECIALLY TO ENSURE ITS EXECUTION WITHOUT RISK TO HIMSELF ARISING FROM THE DEFENSE WHICH THE OFFENDED PARTY MIGHT MAKE. —** As for the issue on the presence of the qualifying circumstance of treachery, we agree with the CA's conclusion that "[t]he attack was executed in a manner that [the victim] was rendered defenseless and unable to retaliate." "There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make." In this case, appellant, coming from *behind* the victim, suddenly held the latter's neck using his left hand, and with his right hand, stabbed the victim three to four times using a yellowish pointed metal. Clearly, the attack was attended by treachery, considering that: a) the means of execution of the attack gave the victim *no opportunity to defend himself* or to retaliate; and b) said means of execution was *deliberately* adopted by appellant. Given these circumstances, we find no cogent reason to disturb the factual findings of the lower courts, as said findings are duly supported by the evidence on record.

4. **ID.; ID.; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** x x x [T]he amount of damages awarded must be modified in conformity with prevailing jurisprudence. Thus, the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱75,000.00 each while the award of actual damages is deleted and in lieu thereof, temperate damages is awarded in the amount of ₱50,000.00.

APPEARANCES OF COUNSEL

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

RESOLUTION

DEL CASTILLO, *J.*:

Assailed in this appeal is the October 21, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 01565 which affirmed with modification the May 10, 2011 Decision[2] of the Regional Trial Court (RTC), Branch 61, Dakit, Bogo, Cebu, finding Generaldo M. Condino (appellant) guilty beyond reasonable doubt of the crime of murder.

The Antecedent Facts

Appellant was charged with the crime of murder in an Information[3] dated November 19, 2002 which reads:

> That on September 23, 2002 at around 2:30 in the afternoon, at Barangay Lanao, Daanbantayan, Cebu, Philippines and within the jurisdiction of this Honorable Court, said accused, with intent to kill, with evident premeditation and treachery did then and there willfully, unlawfully and feloniously stab several times one ISAB[E]LO D. ARRABIS with the use of [a] yellowish pointed metal, hitting the latter on the different parts of his body thereby causing his instantaneous death.
>
> CONTRARY TO LAW.

During his arraignment on April 24, 2003, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incident as summarized by the Office of the Solicitor General is as follows:

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[1] *Rollo*, pp. 4-25; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando and Marie Christine Azcarraga-Jacob.

[2] Records, pp. 84-94; penned by Executive Judge Antonio D. Marigomen.

[3] *Id*. at 1.

[4] *Id*. at 27.

On September 23, 2002, at around 2:30 p.m., appellant appeared before the *Lupon Tagapamayapa* at the *Barangay* Hall of *Barangay* Lanao, Daanbantayan, Cebu, in a hearing for the alleged destruction of a plastic chair owned by the *barangay*.[5]

Also present during the hearing was the victim, Isabelo D. Arrabis (Arrabis), who was then the first councilor of the *barangay*.[6]

After the hearing, the victim, together with other *barangay* officials went out of the hall and sat down on a nearby bamboo bench for a chat.[7] While they were talking, appellant, who was just outside the gate of the *Barangay* Hall, calmly walked toward the group, and with his left hand, grabbed the victim's neck from behind and stabbed the latter three to four times using a yellowish pointed metal, hitting a portion just below the victim's left breast.[8]

The victim was taken to the Daanbantayan District Hospital but he was pronounced dead on arrival.[9] The cause of death, as listed in the victim's Certificate of Death,[10] is cardio-respiratory arrest secondary to multiple stab wounds.

Version of the Defense

The defense presented appellant as its lone witness who testified that:

After the hearing on September 23, 2002, as appellant was exiting the *Barangay* Hall, Arrabis, who was then armed with a knife, suddenly blocked his path. Appellant struggled to get the knife from Arrabis which resulted in the two of them falling hard on the ground. The next thing appellant saw was Arrabis' chest already bleeding.[11]

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

[6] *Id*. at 61-62.

[7] *Id*. at 62.

[8] *Rollo*, p. 6.

[9] *Id*.

[10] Records, p. 11.

[11] *Rollo*, p. 7.

Shocked by the events of the day, appellant went home and then travelled to Masbate. Five days later, his father fetched him from Masbate and asked him to surrender. He was persuaded to surrender, but before proceeding to the police station, he stopped by the house of retired Colonel Virgilio Ynot and the latter accompanied him to the station.[12]

Ruling of the Regional Trial Court

In its Decision dated May 10, 2011, the RTC found appellant guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code.

The RTC gave full faith and credence to the testimonies of the prosecution's witnesses who testified clearly, spontaneously and in a straightforward manner that appellant perpetrated the crime against the victim.[13] It also noted that the victim's killing was attended by the qualifying circumstances of treachery, since the victim was given no opportunity to defend himself with the attack having been sudden and unsuspected,[14] and evident premeditation, which was manifested by appellant's act of bringing a pointed metal in attending the hearing.[15]

Accordingly, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua.* It likewise ordered appellant to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱100,000 as moral damages, ₱175,000.00 as actual damages, and ₱30,000.00 as attorney's fees.

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

In its Decision dated October 21, 2014, the CA affirmed with modification the assailed RTC Decision as follows: a) ₱30,000.00

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[12] *Id*.

[13] Records, p. 93.

[14] *Id*. at 92.

[15] *Id*. at 93.

was awarded to the heirs of the victim as exemplary damages; and b) the amounts of moral and actual damages were reduced to ₱50,000.00 and ₱25,000.00, respectively.[16]

The CA rejected appellant's claim of self-defense. It found that appellant was unable to discharge his burden of proving unlawful aggression, as his "version of the events was uncorroborated, and his testimony was found to be less credible by the RTC. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself."[17]

In addition, the CA held that the prosecution was able to establish the elements of murder beyond reasonable doubt, given that: *first*, the victim was killed; *second*, appellant judicially admitted to the killing of the victim;[18] *third*, the victim's killing was attended by treachery; and *fourth*, the killing was not parricide or infanticide.[19]

The CA pointed out that "the attack on Arrabis was unexpected and without the slightest provocation on the part of the unarmed victim considering that he was casually talking to [Eufemio] delos Santos and [Victoriano] Canales with no inkling that an attack was forthcoming."[20] It thus concluded that "[t]he attack was executed in a manner that Arrabis was rendered defenseless and unable to retaliate."[21]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether the prosecution was able to prove his guilt beyond reasonable doubt, considering that "the testimonies of

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[16] *Rollo*, p. 24.

[17] *Id.* at 14.

[18] *Id.* at 15.

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

[20] *Id.* at 19.

[21] *Id.*

the prosecution witnesses were replete with inconsistencies and contradictions in material points directly going to their perception and recollection of the stabbing incident."[22]

And *second,* whether the victim's stabbing was attended by treachery.

The Court's Ruling

The appeal is unmeritorious.

In resolving issues involving the credibility of witnesses, the Court adheres to the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination."[23]

Thus, in *Reyes, Jr. v. Court of Appeals*,[24] the Court explained:

> Also, the issue hinges on credibility of witnesses. We have consistently adhered to the rule that **where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect**. These findings will not be ordinarily disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. It is the trial court that had the opportunity to observe 'the witnesses' manner of testifying, their furtive glances, calmness, sighs or their scant or full realization of their oaths.' It had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. **Inconsistencies or contradictions in the testimony of the victim do not affect the veracity of the testimony if inconsistencies do not pertain to material points**. (Emphasis supplied)

In this case, the alleged inconsistencies in the testimonies of the prosecution's witnesses pertained to *minor details* and

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[22] CA *rollo*, p. 27.

[23] *People v. Aquino*, 396 Phil. 303, 306-307 (2000).

[24] 424 Phil. 829, 836 (2002).

collateral matters which did not affect the substance of their declarations and the veracity of their statements.[25] In fact, the records show that the prosecution's witnesses *never* wavered in their testimonies as to the actual stabbing incident:

Testimony of Eufemio delos Santos

ATTY. ARRIOLA:

Q: You noticed that the accused got hold of the neck of Isabelo Arrabis, do you confirm that?
A: Yes.

Q: Will you kindly demonstrate how the accused got hold of the neck of Isabelo Arrabis?
A: Like this. (Witness demonstrating by placing left hand on the neck.)

Q: You noticed the accused holding the neck of Isabelo Arrabis. What did you notice after that?
A: **He stabbed him.**

Q: Where did the accused stabbed [sic] Isabelo Arrabis?
A: Below the nipple on the left breast.

Q: How many times did the accused stabbed [sic] Isabelo Arrabis?
A: **Maybe 3 or 4 times.**[26] (Emphasis supplied)

Testimony of Victoriano Canales

ATTY. ARRIOLA

Q: Then what happened after that while you were sitting in [sic] the bamboo [bed] (*lantay*)?
A: **I saw Isabelo Arrabis being stabbed by Geraldino Condino**.

x x x x x x x x x

Q: How many times did Geraldino Condino stab Isabelo Arrabis?
A: I cannot recall if how many times but **it was made several times**.[27] (Emphasis supplied)

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[25] See *People v. Harovilla*, 436 Phil. 287, 292 (2002).

[26] TSN, July 4, 2005, pp. 5-6.

[27] TSN, March 29, 2006, pp. 5-6.

Note, too, that the RTC found the testimonies of Delos Santos and Canales to be "clear, certain, spontaneous and straightforward," and "worthy of full faith and credit."[28] The CA, in turn, affirmed the factual findings of the RTC, as it was not shown that the trial court had "overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case x x x."[29]

As for the issue on the presence of the qualifying circumstance of treachery, we agree with the CA's conclusion that "[t]he attack was executed in a manner that [the victim] was rendered defenseless and unable to retaliate."[30]

"There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make."[31]

In this case, appellant, coming from *behind* the victim, suddenly held the latter's neck using his left hand, and with his right hand, stabbed the victim three to four times using a yellowish pointed metal.[32] Clearly, the attack was attended by treachery, considering that: a) the means of execution of the attack gave the victim *no opportunity to defend himself* or to retaliate; and b) said means of execution was *deliberately* adopted by appellant.[33]

Given these circumstances, we find no cogent reason to disturb the factual findings of the lower courts, as said findings are duly supported by the evidence on record.

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[28] Records, p. 93.

[29] *Rollo*, p. 21.

[30] *Id.* at 19.

[31] *People v. Alajay*, 456 Phil. 83, 92 (2003).

[32] *Rollo*, p. 6.

[33] See *People v. Alajay*, *supra*.

However, the amount of damages awarded must be modified in conformity with prevailing jurisprudence.[34] Thus, the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱75,000.00 each[35] while the award of actual damages is deleted and in lieu thereof, temperate damages is awarded in the amount of ₱50,000.00.[36]

WHEREFORE, the appeal is **DISMISSED**. The assailed October 21, 2014 Decision of the Court of Appeals in CA-G.R. CEB CR-HC No. 01565 is hereby **AFFIRMED with MODIFICATIONS** that the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱75,000.00 each; the award of actual damages is deleted and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded; and all damages awarded shall earn interest at the rate of 6% *per annum* from finality of this Resolution until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 222428. February 19, 2018]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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

[35] *Id.* at 382.

[36] *Id.* at 388.

* Designated as additional member per November 29, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; SECTION 229; INAPPLICABLE TO CLAIMS FOR THE RECOVERY OF UNUTILIZED INPUT VALUE-ADDED TAX.—** Petitioner, in advancing its claim for refund or tax credit, cannot rely on Section 229 of the 1997 NIRC, as amended. Time and again, the Court had consistently ruled on the inapplicability of Section 229 to claims for the recovery of unutilized input VAT. In *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque),* the Court explained that input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected, the amount paid is correct and proper. If said input VAT is in fact "excessively" collected as understood under Section 229, then it is the person legally liable to pay the input VAT, and not the person to whom the tax is passed on and who is applying the input VAT as credit for his own output VAT, who can file the judicial claim for refund or credit outside the VAT system.

2. **ID.; ID.; SECTIONS 110 (B) AND 112 (A); PROVIDE THAT IF AND WHEN THE INPUT TAX EXCEEDS THE OUTPUT TAX, THE EXCESS SHALL BE CARRIED OVER TO THE SUCCEEDING QUARTER OR QUARTERS.—** [N]either can petitioner advance its claim for refund or tax credit under Sections 110 (B) and 112 (A) of the 1997 NIRC. x x x A plain and simple reading of the x x x provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.

3. **POLITICAL LAW; STATUTES; THERE IS ONLY ROOM FOR APPLICATION WHEN THE LAW IS CLEAR AND FREE FROM ANY DOUBT OR AMBIGUITY.—** [W]hen the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; there is only room for application. Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.

Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent. It is the first and fundamental duty of the Court to apply the law in such a way that in the course of such 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. The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose.

4. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FINDINGS OF THE COURT OF TAX APPEALS ARE ACCORDED THE HIGHEST RESPECT BECAUSE OF ITS EXPERTISE ON THE SUBJECT OF TAXATION.—** [T]he Court accords findings and conclusions of the CTA with the highest respect. As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation. Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court. Upon careful review of the instant case, the Court finds no cogent reason to reverse or modify the findings of the CTA Division, as affirmed by the CTA *En Banc*.

5. **ID.; ID.; ID.; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; LIMITED ONLY TO REVIEW OF QUESTIONS OF LAW.—** Petitioner's assertion x x x in its petition, that its claim deserves a greater weight of evidence for the same necessitates only a preponderance of evidence must certainly fail. It cannot be allowed, at this stage of the proceedings, to seek a review by the Court of the factual findings of the CTA Division, as affirmed by the CTA *En Banc*, as well as a re-examination of the evidence it presented, taking into account the quantum of proof required in the instant case.

Settled is the rule that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial. It is not this Court's function to analyze or weight all over again the evidence already considered in the proceedings below. In a petition for review on *certiorari* under Rule 45 of the Rules of Court, moreover, only questions of law may be raised, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. Thus, the Court shall not undertake the re-examination of the evidence presented by petitioner especially since the findings of facts of the CTA Division are affirmed by the CTA *En Banc*.

6. TAXATION; TAX REFUND OR CREDIT; CONSIDERED IN THE NATURE OF A CLAIM FOR EXEMPTION AND THE BURDEN IS ON THE TAXPAYER TO SHOW THAT HE HAS STRICTLY COMPLIED WITH THE CONDITIONS FOR THE GRANT OF THE TAX REFUND OR CREDIT.—[A]ctions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.

APPEARANCES OF COUNSEL

A.M. Sison, Jr. & Partners for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside

the Resolution[1] dated January 14, 2016 and Decision[2] dated August 12, 2015 of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 1111, which affirmed the Decision[3] dated September 16, 2013 and Resolution[4] dated December 4, 2013 of the CTA Division in CTA Case No. 8099 denying petitioner's claim for refund or issuance of tax credit.

The antecedent facts are as follows:

On April 24, 2008, petitioner Coca-Cola Bottlers Philippines, Inc., a Value-Added Tax (*VAT*)-registered, domestic corporation engaged in the business of manufacturing and selling beverages, filed its Quarterly VAT Return for the period of January 1, 2008 to March 31, 2008 and amended the same a few times thereafter.[5] On May 27, 2009, the Bureau of Internal Revenue (*BIR*) issued a Letter of Authority to examine petitioner's books of accounts for all internal revenue taxes for the period January 1, 2008 to December 31, 2008. Subsequently, on April 20, 2010, petitioner filed with the BIR's Large Taxpayers Service an administrative claim for refund or tax credit of its alleged over/erroneous payment of VAT for the quarter ended March 31, 2008 in the total amount of ₱123,459,647.70.[6] Three (3) days

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Roman G. Del Rosario (with Separate Concurring Opinion), Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen Ringpis-Liban, concurring; *rollo*, pp. 35-38.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Roman G. Del Rosario (with Separate Concurring Opinion), Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen Ringpis-Liban, concurring; *id*. at 8-27.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Erlinda P. Uy, concurring; *id*. at 152-168.

[4] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Erlinda P. Uy, concurring; *id*. at 136-138.

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

[6] *Id*. at 10.

thereafter, or on April 23, 2010, petitioner filed with the CTA a judicial claim for refund or issuance of tax credit certificate presenting its financial employees as witnesses in support of its case. According to the witnesses, all of petitioner's records and documents, including invoices and official receipts for the period January 1 to March 31, 2008 subject of the instant claim were completely destroyed. They were, however, able to determine petitioner's input and output VAT through its computerized accounting system.[7]

In a Decision dated September 16, 2013 and Resolution dated December 4, 2013, the CTA Division denied petitioner's claim for lack of merit.[8] Subsequently, the CTA *En Banc* affirmed the ruling of the CTA Division in its Decision dated August 12, 2015. According to the CTA *En Banc*, Section 110 (B)[9] of the 1997 National Internal Revenue Code (*NIRC*), as amended, is clear that when input tax exceeds the output tax, the excess shall be carried over to the succeeding quarters. But when input tax, attributable to zero-rated sales, exceeds the output tax, it may be refunded or credited.[10] Section 112[11] is also categorical that there are only two (2) instances when excess input taxes

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[7] *Id*. at 11-12.

[8] *Id*. at 14.

[9] Section 110 (B) of the 1997 National Internal Revenue Code, as amended, provides:

SEC. 110. *Tax Credits*. —

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(B) Excess Output or Input Tax. [69] — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. *Provided*, however, That any input tax attributable to zero-rated sales by a VAT-registered person may, at his option, be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

[10] *Rollo* p. 19.

[11] Section 112 (A) and (B) of the 1997 National Internal Revenue Code, as amended, provides:

may be claimed for refund and/or issuance of tax credit certificate: (1) when the claimant is a VAT-registered person, whose sales are zero-rated or effectively zero-rated under Section 112(A); and (2) when the VAT registration of the claimant has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 112(B). But since the amount sought to be credited or refunded in the instant case essentially represents undeclared input taxes for the first quarter of 2008, and not erroneously paid VAT or understatement of VAT overpayment, then it does not fall under the instances enumerated in Section 112 which pertain to excess taxes only.[12]

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided,* however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided*, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided*, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

[12] *Rollo*, p. 19.

In addition, the CTA *En Banc* also cited jurisprudence which provide that Sections 204(C)[13] and 229[14] of the NIRC similarly

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[13] Section 204 (C) of the 1997 National Internal Revenue Code, as amended, provides:

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* —

The Commissioner may —

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided*, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided*, further, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: *Provided*, That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the Government is not unduly deprived of revenues.

[14] Section 229 of the 1997 National Internal Revenue Code, as amended, provides:

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or

apply only to instances of erroneous payment or illegal collection of internal revenue taxes. In claims for refund or credit of excess input VAT under Sections 110(B) and 112 (A), the input VAT is not "excessively" collected as understood under Section 229. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due.[15] Section 229, therefore, is inapplicable to the instant claim for refund or credit.

The CTA *En Banc* further held that for input taxes to be available as tax credits, they must be substantiated and reported in the VAT Return of the taxpayer.[16] Petitioner, being well-aware of the law allowing the amendment of a VAT Return within three (3) years from its filing provided that an LOA has not yet been served on the taxpayer, was not prompt enough to include the alleged omitted input VAT in this case.[17] Moreover, even if the substantiated input taxes were declared in the VAT Return for the first (1st) quarter of 2008, the same would still be not enough to offset petitioner's output tax liabilities for the same period leaving no balance that may be refunded.[18]

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illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided,* however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[15] *Rollo*, p. 22.

[16] *Id*. at 24.

[17] *Id*. at 23.

[18] *Id*. at 25.

When the CTA *En Banc* denied its Motion for Reconsideration in a Resolution dated January 14, 2016, petitioner filed the instant petition invoking the following arguments:

I.
THE CTA *EN BANC* GRAVELY ERRED IN RULING THAT PETITIONER'S CLAIM FOR REFUND/TAX CREDIT DOES NOT FALL WITHIN THE PURVIEW OF SECTION 229 OF THE NIRC OF 1997, AS AMENDED, IN RELATION TO SECTION 204(C) OF THE SAME CODE.

II.
THE CTA *EN BANC* GRAVELY ERRED IN RULING THAT THE UNDECLARED INPUT VAT IN THE AMOUNT OF ₱123,459,674.70 FOR THE QUARTER ENDED MARCH 31, 2008 IS REQUIRED TO BE REPORTED IN THE QUARTERLY VAT RETURN AS A REQUISITE FOR PETITIONER'S CLAIM FOR REFUND OF TAX UNDER SECTION 229 OF THE NIRC OF 1997, AS AMENDED, IN RELATION TO SECTION 204(C) OF THE SAME CODE.

III.
THE CTA *EN BANC* GRAVELY ERRED IN FAILING TO CONSIDER THAT PETITIONER'S CLAIM FOR REFUND SHALL NOT BE CONSTRUED IN *STRICTISSIMI JURIS* AGAINST THE PETITIONER.

IV.
THE CTA *EN BANC* GRAVELY ERRED IN FAILING TO CONSIDER THAT THE OMITTED INPUT VAT IN THE AMOUNT OF ₱123,459,674.70 MAY BE INCLUDED IN THE CURRENT AND AVAILABLE INPUT VAT OF THE PETITIONER FOR THE QUARTER ENDED MARCH 31, 2008 IN ORDER TO PREVENT UNJUST ENRICHMENT OF THE GOVERNMENT TO THE DETRIMENT OF HEREIN PETITIONER.

Petitioner posits that its claim for refund/tax credit is hinged not on the basis of "excess" input tax *per se* but on the basis of the inadvertence of applying the undeclared input tax against the output VAT. It asserts that through relevant evidence, it has substantially proven that due to its employees' inadvertence, the input tax amounting to ₱123,459,674.70 was not credited against the corresponding output tax during the quarter. Thus,

by virtue of Section 229 of the 1997 NIRC, petitioner may claim for refund/tax credit of its erroneous payment of output VAT due to its failure to apply the ₱123,459,674.70 input VAT in the computation of its excess allowable input VAT.[19]

Petitioner also avers that since it is already barred from amending its VAT Return due to the fact that the BIR had already issued an LOA, it is left with no other recourse but to apply for a claim for refund for the undeclared input VAT, still, under Section 229. But contrary to the CTA *En Banc*, its claim for refund or issuance of tax credit under Sections 229 and 204(C) of the NIRC only requires that the same be in writing and filed with the Commissioner within two (2) years after the payment of tax or penalty, and that the claim must categorically demand for reimbursement and show proof of payment of the tax.[20] Nowhere is it provided in said provisions a mandatory requirement that a VAT Return must show the undeclared input tax in order to claim a refund.[21] In support of its assertion, petitioner cites the ruling in *Fort Bonifacio Development Corporation v. CIR*[22] which adopts the principle that input taxes not reported in the VAT Return may still be credited against output tax due for as long as the same were properly substantiated.[23]

Furthermore, petitioner maintains that its claim for refund, being based on erroneous payment of output VAT, should not be construed against it and, in fact, necessitates only a preponderance of evidence for its approbation like any other ordinary civil case.[24] In the end, it is only just and proper to allow petitioner's claim for refund so as not to violate the principle of unjust enrichment as enshrined in our laws.[25]

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

[20] *Id.* at 54.

[21] *Id.* at 55.

[22] 694 Phil. 7 (2012).

[23] *Rollo*, p. 55.

[24] *Id.* at 58-59.

[25] *Id.* at 61.

The petition is devoid of merit.

Petitioner, in advancing its claim for refund or tax credit, cannot rely on Section 229 of the 1997 NIRC, as amended. Time and again, the Court had consistently ruled on the inapplicability of Section 229 to claims for the recovery of unutilized input VAT.[26] In *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque),*[27] the Court explained that input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected, the amount paid is correct and proper. If said input VAT is in fact "excessively" collected as understood under Section 229, then it is the person legally liable to pay the input VAT, and not the person to whom the tax is passed on and who is applying the input VAT as credit for his own output VAT, who can file the judicial claim for refund or credit outside the VAT system. The Court, in *San Roque*, explained as follows:

III. **"Excess" Input VAT and "Excessively" Collected Tax**

The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. **If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as**

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[26] *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*, 723 Phil. 433, 439 (2013); *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, 724 Phil. 534, 548 (2014).

[27] *Commissioner of Internal Revenue v. San Roque Power Corporation,* 703 Phil. 300, 365 (2013).

an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. **Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due.** The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. **Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.**

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x x x Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.

x x x x x x x x x

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Erroneous or wrongful payment

includes excessive payment because **they all refer to payment of taxes not legally due**. **Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it**.[28]

Thus, the CTA *En Banc* and CTA Division are correct in holding that, based on the *San Roque* doctrine above, Section 229 of the 1997 NIRC is inapplicable to the instant claim for refund or issuance of tax credit. In addition, neither can petitioner advance its claim for refund or tax credit under Sections 110 (B) and 112 (A) of the 1997 NIRC. For clarity and reference, said Sections are reproduced below:

SEC. 110. *Tax Credits*. —

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(B) Excess Output or Input Tax. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters.** Provided, however, That **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.**

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SEC. 112. *Refunds or Tax Credits of Input Tax*. —

(A) Zero-rated or Effectively Zero-rated Sales. — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a**

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[28] *Id*. at 365-369. (Emphases ours; citations omitted)

tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated rateably between his zero-rated and non-zero-rated sales.[29]

A plain and simple reading of the aforequoted provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Such is the clear import of the Court's ruling in *San Roque,* to wit*:*

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. **Thus, a non zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. He can only carry-over and apply his "excess" input VAT against his future output VAT**. **If such "excess" input VAT is an "excessively" collected tax, the**

[29] Emphases ours.

taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.[30]

It is clear, based on the foregoing, that neither the law nor jurisprudence authorize petitioner's claim for refund or issuance of tax credit. In asserting its alleged right to said claim, petitioner unfortunately failed to convince the Court that it is entitled to the refund or credit of input VAT in the amount of ₱123,459,647.70 it inadvertently failed to include in its VAT Return. This is because as shown above, petitioner's claim is not governed by Section 229 as an ordinary refund or credit outside of the VAT System as the same does not involve a tax that is "erroneously, illegally, excessively, or in any manner wrongfully collected." Neither is said claim authorized under Sections 110(B) and 112(A) as the same does not seek to refund or credit input tax due or paid attributable to zero-rated or effectively zero-rated sales.

On this score, the Court notes that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; there is only room for application.[31] Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being

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[30] *Id.* (Emphases ours)

[31] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, 706 Phil. 442, 450 (2013); citing *Rizal Commercial Banking Corporation v. Intermediate Appellate Court and BF Homes, Inc.,* 378 Phil. 10, 22 (1999).

understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent.[32] It is the first and fundamental duty of the Court to apply the law in such a way that in the course of such 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.[33] The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose.[34]

Even assuming, for argument's sake, that petitioner's application for refund or issuance of tax credit is permitted under case law as well as the provisions of the tax code, said claim must nonetheless fail in view of petitioner's failure to properly substantiate the same. Because of said failure, moreover, the issue of whether input taxes must first be reported in a taxpayer's VAT Return before they can be refunded or credited becomes irrelevant to petitioner's plight. As petitioner itself asserted, input taxes not reported in the VAT Return may still be credited against output tax due *for as long as the same were properly substantiated*. But as duly found by both the CTA *En Banc* and CTA Division, the substantiated amount is not even enough to offset petitioner's output tax liabilities leaving no balance that may be refunded. In this regard, the CTA *En Banc* held:

In this case, only ₱48,509,474.01 was properly supported by official receipts (ORs) out of the claimed ₱123,459,647.70. The said amount was also recorded in petitioner's books of accounts but was not reported in its VAT Return due to alleged inadvertence. In the assailed Decision, the CTA Division made a pronouncement that

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[32] *Id*.

[33] *Corpuz v. People of the Philippines,* 734 Phil. 353, 416 (2014).

[34] *Id*.

even if the substantiated input taxes were declared in the VAT Return for the First (1st) Quarter of 2008, still it would not be enough to offset the output taxes payable for the same taxable period. Pertinent portions of the assailed Decision are reiterated with approval, as follows:

> Petitioner's Quarterly VAT Return for the first quarter of 2008 shows the following output taxes due in the amount of ₱1,269,933,934.95. **Had Petitioner declared the substantiated input taxes of ₱48,509,474.01 in its Quarterly VAT Return for the first quarter of 2008, considering its output taxes and substantiated input taxes for the first quarter of 2008 per ICPA examination, it would not have had enough input taxes to offset against its output taxes for the same taxable periods.**
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> x x x x x x x x x
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> In this case, We emphasize that **"the substantiated amount is not even enough to offset petitioner's output tax liabilities for the same period leaving no balance that may be refunded."** Consequently, petitioner's claim for its alleged understatement of overpayment of VAT (excess input taxes) due to undeclared input taxes for the first quarter of 2008 is denied.[35]

In fact, such was the conclusion likewise reached by CTA Justice Roman G. Del Rosario, in his separate concurring opinion often cited by petitioner, which stated that as found by the Independent CPA and the Court in Division, petitioner's substantiated input VAT is not enough to offset its output VAT liability. Considering that petitioner did not pay any VAT for the 1st quarter of 2008, it did not overpay its taxes due for the 1st quarter of 2008. Thus, there is no basis for petitioner to ask for refund of erroneously paid output VAT.[36]

It bears stressing that the Court accords findings and conclusions of the CTA with the highest respect.[37] As a specialized court

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[35] *Rollo*, p. 25. (Emphases ours; citations omitted)

[36] *Id.* at 32.

[37] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017.

dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation. Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court.[38] Upon careful review of the instant case, the Court finds no cogent reason to reverse or modify the findings of the CTA Division, as affirmed by the CTA *En Banc*.

Petitioner's assertion, therefore, in its petition, that its claim deserves a greater weight of evidence for the same necessitates only a preponderance of evidence must certainly fail. It cannot be allowed, at this stage of the proceedings, to seek a review by the Court of the factual findings of the CTA Division, as affirmed by the CTA *En Banc,* as well as a re-examination of the evidence it presented, taking into account the quantum of proof required in the instant case. Settled is the rule that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial.[39] It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below.[40] In a petition for review on *certiorari* under Rule 45 of the Rules of Court, moreover, only questions of law may be raised, the Court's jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.[41] Thus, the Court shall not undertake the re-examination of the evidence presented by petitioner especially since the findings of facts of the CTA Division are affirmed by the CTA *En Banc*.

On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the

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[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*, 735 Phil. 125, 132 (2014).

nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[42] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[43] Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[44] Thus, in view of petitioner's failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of tax credit of input VAT in the amount of ₱123,459,647.70 it inadvertently failed to include in its VAT Return, the Court deems it necessary to deny the same.

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Resolution dated January 14, 2016 and Decision dated August 12, 2015 of the Court of Tax Appeals *En Banc* in CTA EB No. 1111, which affirmed the Decision dated September 16, 2013 and Resolution dated December 4, 2013 of the CTA Division denying petitioner's claim for refund or issuance of tax credit, are **AFFIRMED**.

SO ORDERED.

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

Caguioa, J., on official business.

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[42] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* 569 Phil. 483, 496 (2008).

[43] *Commissioner of Internal Revenue v. San Roque Power Corporation*, *supra* note 27, at 357.

[44] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* 746 Phil. 139, 153 (2014); *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc., supra* note 26, at 443.

FIRST DIVISION

[G.R. No. 223113. February 19, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AUGUSTO GONZALES, ESMENIO PADER, JR., and MARCELO ANTONIO,** *accused,* **MARCELO ANTONIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— The prosecution satisfactorily established the elements of the crime of rape under Article 266-A(1)(a) of the RPC, namely: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— "It is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity." Both the trial court and the CA held that "AAA" was a credible witness.

3. ID.; ID.; ID.; QUESTIONS THEREON SHOULD BE ADDRESSED TO THE TRIAL COURT BECAUSE OF ITS UNIQUE POSITION TO OBSERVE THE WITNESSES' DEPORTMENT ON THE STAND WHILE TESTIFYING.— There is no cogent reason to depart from x x x [the] uniform findings. "Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts."

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; PHYSICAL RESISTANCE IS NOT THE SOLE TEST TO

DETERMINE WHETHER A WOMAN INVOLUNTARILY SUCCUMBED TO THE LUST OF AN ACCUSED.— Appellant's argument that "AAA's" failure to resist the sexual assault militated against her claim that she was raped deserves scant consideration. It has been held that the failure of a victim to shout for help does not negate rape. There is no specific behavior that can be expected of a person being raped. "[P]hysical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused; it is not an essential element of rape."

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY DISCREPANCIES ON MINOR DETAILS THAT DO NOT CONSTITUTE MATERIAL FACTS.— Appellant x x x attempts to discredit the testimony of "AAA" pointing to inconsistencies and variations with the testimony of other witnesses. The Court, however, finds that the discrepancies involved minor matters that do not constitute material facts. x x x [T]he trial court and the CA both held that "AAA's" testimony passed the test of credibility. Appellant may even be convicted based solely on the testimony of the victim.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

On appeal is the March 13, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04791 finding appellant Marcelo Antonio (appellant) guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

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[1] CA *rollo*, pp. 96-104; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion.

Factual Antecedents

Appellant, along with accused Augusto Gonzales (Augusto) and Esmenio Pader, Jr. (Esmenio), was charged with rape in an Information which reads:

> That on or about the 13th day of December 1999, at about 8:00 o'clock in the evening, x x x Province of Zambales, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with lewd design and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one "AAA,"[2] a minor of 15 years old, against her will and consent, to the damage and prejudice of the latter.
>
> CONTRARY TO LAW.[3]

The case was docketed as Criminal Case No. 395-2000 and raffled to the Regional Trial Court (RTC), Branch 73, Olongapo City.

Upon arraignment, appellant pleaded not guilty. Augusto and Esmenio were at large.

The prosecution presented five witnesses namely: AAA, Lorna Pascua, *Barangay Kagawad* Eduardo Escobar (*Barangay Kagawad* Eduardo), Dr. Nida Fabunan (Dr. Fabunan), and Marlon Cajobe (Marlon).

The prosecution's evidence, as summarized by the appellate court, is as follows:

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[2] "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).

[3] CA *rollo*, p. 97.

x x x "AAA" was born on 01 March 1984, per the Certificate of Live Birth; on 13 December 1999, at around 8:00 p.m., "AAA" was on her way home [when she] met [appellant, Augusto, Esmenio], and Marlon on the road[.] [Augusto] asked "AAA" to go with them to Uncle Viano's house; "AAA" refused, so [appellant, Augusto, and Esmenio] dragged "AAA" to the sandpile; Marlon watched as [Augusto] removed "AAA's" clothes, and [appellant and Esmenio] pinned "AAA" down by holding "AAA's" hands and feet; [Augusto and appellant] punched "AAA" on the face and body; [appellant] kissed "AAA" on the lips and on the body, and inserted his penis in "AAA's" vagina[.] ["AAA"] felt pain; later, [Augusto] inserted his penis into "AAA's" vagina, and told "AAA" not to tell her parents about what happened; subsequently, [Esmenio] inserted his penis into "AAA's" vagina, and "AAA" cried; Lorna heard "AAA's" cries, and called *Barangay Kagawad* Eduardo [who] chased [appellant, Augusto, Esmenio], and Marlon, but *Barangay Kagawad* Eduardo was able to apprehend only the [appellant]; "AAA," accompanied by her mother, went to the San Marcelino Hospital for a physical examination; Dr. Fabunan physically examined "AAA," and issued the Medico-Legal Certificate dated 14 December 1999, indicating her findings (*i.e.*, "multiple lacerations surrounding the hymen," bleeding," and presence of spermatozoa).[4]

The defense, on the other hand, presented appellant and his sister, Lorna Antonio Sison (Lorna). Appellant denied the accusations against him. His sister, Lorna, took the witness stand admitting that she pleaded with "AAA" and her parents to spare her brother. She was, however, unsuccessful unlike Marlon (prosecution's witness) who was eventually discharged by "AAA."

The defense's version of the incident, as summarized by the appellate court, is as follows:

x x x [O]n 13 December 1999, while [appellant] was on [his] way to Uncle Viano's house [together] with [Augusto, Esmenio], and Marlon, [appellant] saw "AAA" following them, so [Augusto] invited "AAA" to go with them to Uncle Viano's house; [Augusto] and "AAA" disappeared, and later [appellant] discovered [Augusto] on top of

[4] CA *rollo,* pp. 97-98.

"AAA" on the sandpile; an unidentified person hit and poked a knife at [appellant's] neck, causing [appellant] to lose consciousness; upon regaining consciousness, [appellant] heard [Augusto] telling [Esmenio] and Marlon, "*Sige! Itumba ninyo na yan baka magsumbong pa si Antonio*;" then [Augusto] stabbed [appellant's] left hand with a knife; the *barangay* officials arrived, and chased [Augusto, Esmenio], and Marlon; the *barangay* officials apprehended, mauled, and forced [appellant] to confess to the rape of "AAA."[5]

Ruling of the Regional Trial Court

In its August 23, 2006 Decision,[6] the RTC accorded full faith and credence to the evidence of the prosecution, particularly the testimony of "AAA" regarding how the incident happened, the specific participation of the three accused who conspired to commit the crime against her, and the positive identification of appellant. The RTC did not accord credence to appellant's bare denials in view of the categorical and positive identification of appellant as one of the perpetrators of the crime. Based thereon, the RTC ruled as follows:

WHEREFORE, premises considered, the Court finds accused Marcelo Antonio *GUILTY* beyond reasonable doubt of the crime of Rape as defined and penalized under Republic Act 8353 and hereby sentences him to suffer a straight penalty of *"reclusion perpetua"*. He is also ordered to indemnify the victim "AAA" the sum of ₱50,000.00 as civil damages and another ₱50,000.00 as moral damages.

Insofar as accused Augusto Gonzales and Esmenio Pader are concerned, the Court shall deal with them after they shall have been arrested. Meantime, issue alias warrant for their arrest, send the records to the archives.

SO ORDERED.[7]

Aggrieved, appellant appealed before the CA.

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[5] *Id*. at 98.

[6] *Id*. at 15-22; penned by Judge Renato J. Dilag.

[7] *Id*. at 22.

Ruling of the Court of Appeals

In his Brief,[8] appellant argued that "AAA's" testimony had serious flaws and loopholes. In her narration of the incident, "AAA" did not show resistance to the alleged attack and thus militated against her assertion that the sexual intercourse with the accused was not consensual. Then, *Barangay Kagawad* Eduardo testified that he did not see "AAA" at the place of incident when he arrived. According to appellant, "AAA's" failure to resist the attack, as well as her conduct after the incident, cast doubt on her credibility and the veracity of her assertions. Appellant also pointed out inconsistencies and inaccuracies in the testimonies of the prosecution's witnesses, *i.e.*, 1) on direct examination, "AAA" testified that the sandpile was near her house, but on cross-examination, "AAA" testified that the sandpile was far from her house; 2) "AAA" testified that appellant punched her in the face and Augusto punched her in the body, but Marlon testified that appellant punched "AAA" on the body or stomach; 3) "AAA" testified that Augusto asked her to accompany him to Uncle Viano's house, but Marlon testified that appellant called "AAA"; and 4) "AAA" testified that Augusto removed her dress, but later retracted her statement. Appellant thus posited that the RTC erred in finding him guilty beyond reasonable doubt of the crime of rape. Moreover, appellant claimed that the trial judge, by his actuations, failed to show impartiality in trying the case.

The Office of the Solicitor General (OSG), on the other hand, argued that the guilt of appellant was proven beyond reasonable doubt. The testimony of "AAA" showed the truthful account of the crime committed by appellant and corroborated by the prosecution's witnesses. Besides, the inconsistencies pointed out by appellant were minor and inconsequential which did not negate appellant's culpability.

Like the trial court, the CA found that all the elements of rape under Article 266-A(1) of the Revised Penal Code (RPC),

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[8] *Id*. at 33-47.

as amended by Republic Act No. 8353, were established beyond reasonable doubt. The CA held that "AAA's" alleged failure to resist the attack against her cannot be taken as voluntariness or consent to the sexual assault. It ruled further that while there may be inconsistencies in the testimonies of the prosecution's witnesses, it did not negate the commission of rape for these were merely trivial, immaterial and could not discredit "AAA's" claim of rape. The CA, hence, dismissed appellant's appeal as his guilt was proven beyond reasonable doubt.

The dispositive portion of the CA Decision reads as follows:

> In sum, accused-appellant Marcelo's guilt for the crime of rape was proved beyond reasonable doubt.
>
> We DISMISS the appeal.
>
> IT IS SO ORDERED.[9]

Still insisting on his innocence, appellant filed the present appeal. On May 30, 2016, the Court required both parties to file their respective supplemental briefs.[10] Both parties, however, opted not to file the same.[11]

Our Ruling

After careful review of the records of the case, we find the appeal to be devoid of merit. The Court finds no reason to reverse the CA in affirming the ruling of the RTC, finding appellant guilty beyond reasonable doubt of the crime of rape.

The prosecution satisfactorily established the elements of the crime of rape under Article 266-A(1)(a) of the RPC, namely: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation. When "AAA" testified, she positively identified appellant as one of her rapists and candidly narrated her ordeal. "It is settled jurisprudence that testimonies of child victims are given full

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[9] *Id*. at 103.

[10] *Rollo,* pp. 16-17.

[11] *Id*. at 18-20 and 23-27.

weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity."[12] Both the trial court and the CA held that "AAA" was a credible witness. The CA further held that there was greater reason to believe the veracity of "AAA's" statements since her testimony was corroborated by the testimony of Dr. Fabunan, who examined her after the commission of the rape, and the Medico-Legal Certificate she issued which showed that "AAA" sustained hymenal lacerations and bleeding and the presence of spermatozoa in her genitals. There is no cogent reason to depart from these uniform findings. "Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts."[13]

Appellant's argument that "AAA's" failure to resist the sexual assault militated against her claim that she was raped deserves scant consideration. It has been held that the failure of a victim to shout for help does not negate rape.[14] There is no specific behavior that can be expected of a person being raped.[15] "[P]hysical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused; it is not an essential element of rape."[16]

Appellant further attempts to discredit the testimony of "AAA" pointing to inconsistencies and variations with the testimony of other witnesses. The Court, however, finds that the discrepancies involved minor matters that do not constitute

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[12] *People v. Vergara,* 724 Phil. 702, 709 (2014).

[13] *People v. Barcela,* 734 Phil. 332, 342 (2014).

[14] *People v. Pareja,* 724 Phil. 759, 778 (2014).

[15] *Id.* at 778-779.

[16] *People v. Barberan,* G.R. No. 208759, June 22, 2016, 794 SCRA 348, 358.

material facts. As already mentioned, the trial court and the CA both held that "AAA's" testimony passed the test of credibility. Appellant may even be convicted based solely on the testimony of the victim.[17]

In view of the foregoing, we therefore affirm the conviction of appellant for the crime of rape under Article 266-A(1) of the RPC. The trial court, thus, correctly imposed upon appellant, as affirmed by the CA, the penalty of *reclusion perpetua.* However, there is a need to modify the amounts of damages awarded. To conform with prevailing jurisprudence, the awards of civil indemnity and moral damages are increased to ₱75,000.00 each.[18] Appellant should also be ordered to pay ₱75,000.00 as exemplary damages.[19] In addition, the civil indemnity, moral damages, and exemplary damages payable by appellant are subject to interest at the rate of 6% *per annum* from the finality of this Resolution until fully paid.[20]

WHEREFORE, the appeal is **DISMISSED**. The assailed March 13, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04791, finding appellant Marcelo Antonio **GUILTY** beyond reasonable doubt of the crime of rape under Article 266-A(1) of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua*, is **AFFIRMED with MODIFICATIONS** that appellant is directed to pay the victim "AAA" civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each and all damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

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[17] *People v. Linsie,* 722 Phil. 374, 382-383 (2013).

[18] *People v. Jugueta,* G.R. No. 202124, April 5, 2016, 788 SCRA 331, 383.

[19] *Id*.

[20] *Nacar v. Gallery Frames,* 716 Phil. 267, 282 (2013).

[*] Designated as additional member per November 8, 2016 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

THIRD DIVISION

[G.R. No. 226130. February 19, 2018]

LILIA S. DUQUE and HEIRS OF MATEO DUQUE, namely: LILIA S. DUQUE, ALMA D. BALBONA, PERPETUA D. HATA, MARIA NENITA D. DIENER, GINA D. YBAÑEZ, and GERVACIO S. DUQUE, *petitioners, vs.* **SPOUSES BARTOLOME D. YU and JULIET O. YU and DELIA DUQUE CAPACIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ADMISSION BY ADVERSE PARTY; REQUEST FOR ADMISSION; THE PARTY TO WHOM SUCH REQUEST IS SERVED HAS FIFTEEN DAYS WITHIN WHICH TO FILE A SWORN STATEMENT ANSWERING IT, AND IN CASE OF FAILURE TO DO SO, EACH OF THE MATTERS OF WHICH ADMISSION IS REQUESTED SHALL BE DEEMED ADMITTED; EXCEPTION.— The scope of a request for admission under Rule 26 of the Rules of Court and a party's failure to comply thereto are respectively detailed in Sections 1 and 2 thereof x x x. Clearly, once a party serves a request for admission as to the truth of any material and relevant matter of fact, the party to whom such request is served has 15 days within which to file a sworn statement answering it. **In case of failure to do so, each of the matters of which admission is requested shall be deemed admitted**. This rule, however, admits of an exception, that is, **when the party to whom such request for admission is served had already controverted the matters subject of such request in an earlier pleading.** Otherwise stated, if the matters in a request for admission have already been admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. **In turn, the requesting party cannot reasonably expect a response to the request and, thereafter, assume or even demand the application of the implied admission rule in Section 2, Rule 26.** The rationale is that "admissions by an adverse party as a mode of discovery contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in a pleading, and does not

refer to a mere reiteration of what has already been alleged in the pleadings; or else, it constitutes an utter redundancy and will be a useless, pointless process which petitioner should not be subjected to."

2. ID.; ID.; DEMURRER TO EVIDENCE; EFFECTS.— [T]he demurrer to evidence was anchored on the alleged implied admission of the Deed of Donation's genuineness and authenticity. x x x But in view of this Court's findings that there was no implied admission to speak of, the demurrer to evidence must, therefore, be denied and the Orders granting it shall be considered void. Section 1, Rule 33 of the Rules of Court provides for the consequences of a reversal on appeal of a demurrer to evidence x x x. [D]efendants who present a demurrer to the plaintiffs' evidence retain the right to present their own evidence, if the trial court disagrees with them; if it agrees with them, but on appeal, the appellate court disagrees and reverses the dismissal order, the defendants lose the right to present their own evidence. The appellate court shall, in addition, resolve the case and render judgment on the merits, inasmuch as a demurrer aims to discourage prolonged litigations.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; VOID CONTRACTS; A FALSIFIED DEED OF DONATION IS VOID AND INEXISTENT, AND IT CANNOT BE THE SOURCE OF A PARTY'S TRANSFERABLE RIGHT OVER A PROPERTY.— Here, it would appear from the trial court's January 5, 2011 Order that the evidence for the petitioners consists mainly of the testimony of the handwriting expert witness and the Answer of respondent Capacio, which both confirmed that the signature in the Deed of Donation was, indeed, falsified. With these pieces of evidence and nothing more, this Court is inclined to grant the petitioners' Complaint. Being a falsified document, the Deed of Donation is void and inexistent. As such, it cannot be the source of respondent Capacio's transferable right over a portion of the subject property. Being a patent nullity, respondent Capacio could not validly transfer a portion of the subject property in favor of respondents Spouses Yu under the principle of "*Nemo dat quod non habet,*" which means "one cannot give what one does not have." As a consequence, the subsequent Deed of Absolute Sale executed by respondent Capacio in favor of respondents Spouses Yu has no force and effect as the former is not the owner of the property subject of the sale contract.

APPEARANCES OF COUNSEL

Padlan Sutton Mendoza & Associates for petitioners.
Bartolome D. Yu, Pro se and counsel for Juliet Yu.

D E C I S I O N

VELASCO, JR., *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] and the Resolution[2] dated September 30, 2014 and July 14, 2016, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 04197.

The facts are undisputed.

The herein petitioner Lilia S. Duque and her late husband, Mateo Duque (Spouses Duque), were the lawful owners of a 7,000-square meter lot in Lambug, Badian, Cebu, covered by Tax Declaration (TD) No. 05616 (subject property). On August 28, 1995, Spouses Duque allegedly executed a Deed of Donation over the subject property in favor of their daughter, herein respondent Delia D. Capacio (Capacio), who, in turn, sold a portion thereof, *i.e.*, 2,745 square meters, to her herein co-respondents Spouses Bartolome D. Yu and Juliet O. Yu (Spouses Yu).[3]

With that, Spouses Duque lodged a **Verified Complaint for Declaration of Non-Existence and Nullity of a Deed of Donation and Deed of Absolute Sale and Cancellation of TD** (Complaint) against the respondents before the Regional Trial Court (RTC) of Barili, Cebu, docketed as Civil Case No. CEB-BAR-469, claiming that the signature in the Deed of Donation was forged. Spouses Duque then prayed (1) to declare

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[1] Penned by Associate Justice Marie Christine Azcarraga-Jacob with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla, concurring, *rollo*, pp. 47-54.

[2] Penned by Associate Justice Gabriel T. Ingles with Associate Justices Edward B. Contreras and Gabriel T. Robeniol, concurring, *id*. at 57-60.

[3] *Id*. at 48.

the Deeds of Donation and of Absolute Sale null and void; (2) to cancel TD No. 01-07-05886 in the name of respondent Juliet Yu (married to respondent Bartolome Yu); and (3) to revive TD No. 05616 in the name Mateo Duque (married to petitioner Lilia Duque).[4]

In her Answer, respondent Capacio admitted that the signature in the Deed of Donation was, indeed, falsified but she did not know the author thereof. Respondents Spouses Yu, for their part, refuted Spouses Duque's personality to question the genuineness of the Deed of Absolute Sale for it was their daughter who forged the Deed of Donation. They even averred that Spouses Duque's action was already barred by prescription.[5]

On September 26, 2008, a Motion for Admission by Adverse Party under Rule 26 of the Rules of Court (Motion for Admission) was filed by respondents Spouses Yu requesting the admission of these documents: (1) Real Estate Mortgage (REM); (2) **Deed of Donation**; (3) Contract of Lease; (4) TD No. 07-05616; (5) TD No. 14002-A; (6) **Deed of Absolute Sale**; and (7) **TD No. 01-07-05886**. In an Order dated October 3, 2008,[6] Spouses Duque were directed to comment thereon but they failed to do so. By their silence, the trial court, in an Order dated November 24, 2008,[7] pronounced that they were deemed to have admitted the same.[8]

Thus, during trial, instead of presenting their evidence, respondents Spouses Yu moved for demurrer of evidence in view of the aforesaid pronouncement. Spouses Duque vehemently opposed such motion. In an Order dated January 5, 2011,[9] the trial court granted the demurrer to evidence and, thereby,

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[4] *Id., id.* at 20.

[5] *Id*. at 48-49.

[6] Penned by Presiding Judge Leopoldo V. Cañete, *id*. at 119.

[7] *Id*. at 120.

[8] *Id*. at 49.

[9] *Id*. at 121-124.

dismissed the Complaint. Spouses Duque sought reconsideration, which was denied in an Order dated September 21, 2011.[10]

On appeal, the CA, in its now assailed Decision dated September 30, 2014, affirmed *in toto* the aforesaid Orders. It agreed with the trial court that Spouses Duque's non-compliance with the October 3, 2008 Order resulted in the implied admission of the Deed of Donation's authenticity, among other documents. Notably, Spouses Duque did not even seek reconsideration thereof. With such admission, the trial court ruled that Spouses Duque have nothing more to prove or disprove and their entire evidence has been rendered worthless.[11] Spouses Duque moved for reconsideration but was denied for lack of merit in the questioned CA Resolution dated July 14, 2016. Meanwhile, in view of Mateo Duque's demise, his heirs substituted for him as petitioners in this case.

Hence, this petition imputing errors on the part of the CA (1) in holding that petitioners' failure to reply to the request for admission is tantamount to an implied admission of the authenticity and genuineness of the documents subject thereof; and (2) in not ruling that the dismissal of the petitioners' Complaint based on an improper application of the rule on implied admission will result in unjust enrichment at the latter's expense.[12]

The petition is impressed with merit.

The scope of a request for admission under Rule 26 of the Rules of Court and a party's failure to comply thereto are respectively detailed in Sections 1 and 2 thereof, which read:

SEC. 1. *Request for admission.* — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set

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[10] *Id.*

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

[12] *Id.* at 24-25.

forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

SEC. 2. *Implied admission.* — Each of the matters of which an admission is requested **shall be deemed admitted unless**, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, **the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters**.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (Emphases supplied.)

Clearly, once a party serves a request for admission as to the truth of any material and relevant matter of fact, the party to whom such request is served has 15 days within which to file a sworn statement answering it. **In case of failure to do so, each of the matters of which admission is requested shall be deemed admitted**. This rule, however, admits of an exception, that is, **when the party to whom such request for admission is served had already controverted the matters subject of such request in an earlier pleading**. Otherwise stated, if the matters in a request for admission have already been admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. **In turn, the requesting party cannot reasonably expect a response to the request and, thereafter, assume or even demand the application of the implied admission rule in Section 2, Rule 26**.[13] The rationale is that "admissions by an adverse party as a mode of discovery contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations

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[13] *Metro Manila Shopping Mecca Corp. v. Toledo*, G.R. No. 190818, June 5, 2013, 697 SCRA 425.

in a pleading, and does not refer to a mere reiteration of what has already been alleged in the pleadings; or else, it constitutes an utter redundancy and will be a useless, pointless process which petitioner should not be subjected to."[14]

Here, the respondents served the request for admission on the petitioners to admit the genuineness and authenticity of the Deed of Donation, among other documents. But as pointed out by petitioners, the matters and documents being requested to be admitted have already been denied and controverted in the previous pleading, that is, Verified Complaint for Declaration of Non-Existence and Nullity of a Deed of Donation and Deed of Absolute Sale and Cancellation of TD. In fact, the forgery committed in the Deed of Donation was the very essence of that Complaint, where it was alleged that being a forged document, the same is invalid and without force and legal effect. Petitioners, therefore, need not reply to the request for admission. Consequently, they cannot be deemed to have admitted the Deed of Donation's genuineness and authenticity for their failure to respond thereto.

Moreover, in respondents Spouses Yu's criminal case for estafa[15] against respondent Capacio, which they filed immediately upon receipt of a summon in relation to the Complaint of Spouses Duque, one of the allegations therein was the forgery committed in the very same Deed of Donation, which authenticity and genuineness they want petitioners to admit in their request for admission. In support thereof, respondents Spouses Yu even utilized the questioned document report of the Philippine National Police (PNP) Regional Crime Laboratory Office certifying that the signature in the Deed of Donation is a forgery. Thus, it is then safe to conclude that their request for admission is a sham.

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[14] *Id*., citing *CIR v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, which cited *Concrete Aggregates Corporation v. CA*, 334 Phil. 77 (1997).

[15] Respondents Spouses Yu won in this case. Respondent Capacio was convicted of estafa. She was sentenced to a prison term of 2 months, as minimum, to 4 months, as maximum, and was made to pay a fine of ₱50,000. She was further ordered to pay respondents Spouses Yu the amount of ₱250,000, representing the purchase price of a portion of the subject property.

Having said that there was no implied admission of the genuineness and authenticity of the Deed of Donation, this Court, thus, holds that it was also an error for the trial court to grant the demurrer to evidence.

To recapitulate, the demurrer to evidence was anchored on the alleged implied admission of the Deed of Donation's genuineness and authenticity. The trial court granted the demurrer holding that with the said implied admission, respondents Spouses Yu's claim became undisputed and Spouses Duque have nothing more to prove or disprove. This is despite its own findings that the opinion of the handwriting expert and the Answer of respondent Capacio, both confirmed the fact of forgery. The trial court easily disregarded this on account of the said implied admission. The CA, on appeal, affirmed the trial court.

But in view of this Court's findings that there was no implied admission to speak of, the demurrer to evidence must, therefore, be denied and the Orders granting it shall be considered void.

Section 1, Rule 33 of the Rules of Court provides for the consequences of a reversal on appeal of a demurrer to evidence, thus:

> SECTION 1. *Demurrer to evidence.* After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

Citing *Generoso Villanueva Transit Co., Inc. v. Javellana*,[16] this Court in *Radiowealth Finance Company v. Spouses Del Rosario*[17] explained the consequences of a demurrer to evidence in this wise:

> The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence

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[16] No. L-29467, June 30, 1970, 33 SCRA 755, 761-762.

[17] G.R. No. 138739, July 6, 2000, 335 SCRA 288.

in the event that his motion is not granted, to move for a dismissal (*i.e.*, demur to the plaintiffs evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court *denies* the dismissal motion, *i.e.*, finds that plaintiffs evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendants evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. The doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proffered evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurrer is *granted* by the trial court, and the order of dismissal is *reversed on appeal*, the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiffs case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiffs evidence. (Underscoring in the original, italics partly in the original and partly supplied.)

In short, defendants who present a demurrer to the plaintiffs' evidence retain the right to present their own evidence, if the trial court disagrees with them; if it agrees with them, but on appeal, the appellate court disagrees and reverses the dismissal order, the defendants lose the right to present their own evidence. The appellate court shall, in addition, resolve the case and render judgment on the merits, inasmuch as a demurrer aims to discourage prolonged litigations.[18]

With this Court's denial of the demurrer to evidence, it will now proceed to rule on the merits of the Complaint solely on the basis of the petitioners' evidence on record.

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[18] *Id*.

Here, it would appear from the trial court's January 5, 2011 Order that the evidence for the petitioners consists mainly of the testimony of the handwriting expert witness and the Answer of respondent Capacio, which both confirmed that the signature in the Deed of Donation was, indeed, falsified. With these pieces of evidence and nothing more, this Court is inclined to grant the petitioners' Complaint. Being a falsified document, the Deed of Donation is void and inexistent. As such, it cannot be the source of respondent Capacio's transferable right over a portion of the subject property. Being a patent nullity, respondent Capacio could not validly transfer a portion of the subject property in favor of respondents Spouses Yu under the principle of "*Nemo dat quod non habet*," which means "one cannot give what one does not have."[19] As a consequence, the subsequent Deed of Absolute Sale executed by respondent Capacio in favor of respondents Spouses Yu has no force and effect as the former is not the owner of the property subject of the sale contract. In effect, the tax declarations in the respective names of respondents Capacio and Juliet O. Yu are hereby ordered cancelled and the tax declaration in the name of Mateo Duque, *et al*. is ordered restored.

WHEREFORE, premises considered, the petition is **GRANTED**. The CA Decision and Resolution dated September 30, 2014 and July 14, 2016, respectively, in CA-G.R. CV No. 04197 are hereby **REVERSED** and **SET ASIDE** and a new judgment is hereby rendered as follows: (1) the petitioners' Complaint is hereby **GRANTED**; (2) both the Deeds of Donation and of Absolute Sale are declared **VOID**; (3) Tax Declaration Nos. 14002-A and 01-07-05886 in the names of respondents Capacio and Juliet O. Yu, respectively, are hereby **CANCELLED**; and (4) Tax Declaration No. 05616 in the name of Mateo Duque, *et al*. is hereby **RESTORED**.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

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[19] *Cavite Development Bank, et al. v. Spouses Lim, et al.*, G.R. No. 131679, February 1, 2000.

THIRD DIVISION

[G.R. No. 229420. February 19, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ROGER DOMINGUEZ *y* SANTOS, RAYMOND DOMINGUEZ *y* SANTOS, JAYSON MIRANDA *y* NACPIL, ROLANDO TALBAN *y* MENDOZA, and JOEL JACINTO *y* CELESTINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DISCHARGE OF ACCUSED TO BE STATE WITNESS; THE TESTIMONY OF THE WITNESS DURING THE DISCHARGE PROCEEDING WILL ONLY BE INADMISSIBLE IF THE COURT DENIES THE MOTION TO DISCHARGE THE ACCUSED AS A STATE WITNESS.— Section 17 of Rule 119 of the Rules of Court x x x is explicit that the testimony of the witness during the discharge proceeding will only be inadmissible if the court *denies* the motion to discharge the accused as a state witness. However, the motion hearing in this case had already concluded and the motion for discharge, approved. Thus, whatever transpired during the hearing is already automatically deemed part of the records of Criminal Case No. Q-11-168431 and admissible in evidence pursuant to the rule.

2. ID.; ID.; ID.; ID.; THE ACCUSED IS REQUIRED TO TESTIFY AGAIN DURING TRIAL PROPER AFTER HE QUALIFIES AS A STATE WITNESS, BUT NON-COMPLIANCE THEREWITH WOULD ONLY PREVENT THE ORDER OF DISCHARGE FROM OPERATING AS AN ACQUITTAL AND DOES NOT RENDER ALL THE TESTIMONIES OF THE STATE WITNESS DURING THE DISCHARGE PROCEEDING INADMISSIBLE.— Section 18, Rule 119 of the Rules of Court makes it mandatory that the state witness be presented during trial proper and that, otherwise, his failure to do so would render his testimony inadmissible. x x x [T]he provision requires the accused to testify again during trial proper after he qualifies as a state witness. However, non-compliance therewith would only prevent the order of discharge

from operating as an acquittal; it does not speak of any penalty to the effect of rendering all the testimonies of the state witness during the discharge proceeding inadmissible. On the contrary, the testimonies and admissions of a state witness during the discharge proceedings may be admitted as evidence to impute criminal liability against him should he fail or refuse to testify in accordance with his sworn statement constituting the basis for the discharge, militating against the claim of inadmissibility.

3. ID.; ID.; ID.; ID.; THAT THE TESTIMONY OF THE ACCUSED IS OFFERED FOR THE LIMITED PURPOSE OF QUALIFYING HIM AS A STATE WITNESS DOES NOT AUTOMATICALLY RENDER HIS STATEMENT AS TO THE SPECIFICS ON THE COMMISSION OF THE OFFENSE INADMISSIBLE.— That the testimony of Mendiola was offered for the limited purpose of qualifying him as a state witness does not automatically render his statements as to the specifics on the commission of the offense inadmissible. x x x [O]ne of the requirements under Section 17, Rule 119 is to establish that the erstwhile respondent does not appear to be the most guilty among him and his cohorts. Thus, it is quite understandable that, during the discharge proceeding, Mendiola narrated in graphic detail his entire knowledge of the crime and the extent of the participation of each of the accused x x x. We cannot subscribe to Miranda's postulation that the x x x narration is extraneous to the purpose of qualifying Mendiola as a state witness. On the contrary, they were essential in establishing that he is not the main perpetrator of the murder of Venson Evangelista, rendering him eligible as a state witness under Sec. 17 of Rule 119 of the Rules of Court.

4. ID.; ID.; RIGHTS OF THE ACCUSED; RIGHT TO CONFRONT THE WITNESSES; SUBSUMED UNDER THE RIGHT OF CONFRONTATION IS THE RIGHT TO CROSS-EXAMINE THE WITNESSES FOR THE PROSECUTION, AND THE RIGHT, THOUGH FUNDAMENTAL, MAY BE WAIVED EXPRESSLY OR IMPLIEDLY BY CONDUCT AMOUNTING TO A RENUNCIATION OF THE SAME.— One of the most basic rights of an accused person under our justice system is the right to confront the witnesses against him face to face. Subsumed under this right of confrontation is the right to cross-examine the witnesses for the prosecution. And as the Court has elucidated

> in *People v. Seneris (Seneris)*, the right, though fundamental, may be waived expressly or impliedly by conduct amounting to a renunciation of the same. x x x Here, respondents have to realize that their option to not ask for a continuance and reserve the right to continue with their line of questioning for trial proper instead carried inherent risks, including their present predicament. Respondents ought to have been aware that their decision would pave the way not only for the termination of the discharge proceedings, but also for the eventual application of the last paragraph of Section 17, Rule 119 of the Rules of Court should the RTC resolve to discharge Mendiola as a state witness, as it in fact did. The assumption of the risk, to Our mind, amounted to a waiver of any objection as to the admissibility of Mendiola's testimony during the discharge hearing.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Public Attorney's Office for Rolando Talban and Joel C. Jacinto.
Marc Terry C. Perez for respondent Jayson Miranda.
Raro Trinidad & Cudia for Roger Dominguez.
CG & G Law Firm for Raymond Dominguez.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

For consideration is the Petition for Review under Rule 45 of the Rules of Court, filed by the Office of the Solicitor General (OSG), seeking to nullify the May 27, 2016 Decision[1] and January 18, 2017 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 139255. The challenged rulings affirmed the January 10, 2014 Order[2] of the Regional Trial Court (RTC), Branch

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[1] Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Edwin D. Sorongon and Eduardo B. Peralta, Jr.

[2] Penned by Acting Presiding Judge Wilfredy L. Maynigo.

215 in Quezon City directing that the testimony of the deceased state witness Alfred Mendiola (Mendiola) be stricken off the records of Criminal Case No. Q-11-168431.

The Facts

On January 13, 2011, Venson Evangelista, a car salesman, was abducted in Cubao, Quezon City by a group of men later pinpointed as the respondents herein. Evangelista's charred remains were discovered the following day in Cabanatuan City, Nueva Ecija.

In connection with the incident, Mendiola and Ferdinand Parulan (Parulan) voluntarily surrendered to the Philippine National Police (PNP) and executed extrajudicial confessions identifying respondents Roger and Raymond Dominguez (Dominguez Brothers) as the masterminds behind the killing. This led to the filing before the Quezon City RTC of an Information against Mendiola and the respondents for Carnapping with Homicide under Section 14 of Republic Act No. 6539,[3] otherwise known as the Anti-Carnapping Act, docketed as Criminal Case No. Q-11-168431. The accusatory portion of the Information reads:

That on or about the 13th day of January 2011, in Quezon City, Philippines, the above-named accused, and other persons who are at large and whose identities and whereabouts are still to be determined, conspiring and confederating together and helping each other, with intent to gain and to kill and by means of violence against and intimidation of person, did then and there wilfully, unlawfully, and

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[3] **Section 14.** *Penalty for Carnapping.* Any person who is found guilty of carnapping, as this term is defined in Section two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of life imprisonment to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed in the commission of the carnapping.

feloniously take and carry away one (1) charcoal gray Toyota Land Cruiser model 2009 with Plate No. NAI-316, Engine No. 1VD-0049539 and Chassis No. JTMHV05J804031334, worth Php3,400,000.00, Philippine Currency, then driven by VENSON EVANGELISTA Y VELARO and registered in the name of Future Trade International, Inc. but already sold to Arsenio Evangelista per Deed of Sale dated December 13, 2010, to the damage and prejudice of the owner.

That during the commission of the said offense, or by reason thereof, the said accused, in conspiracy with one another and with intent to kill, carefully planned the execution of their acts and with the attendant circumstances of evident premeditation, treachery, and abuse of superior strength, cruelty, and by means of fire, attack (sic) and assaulted VENSON EVANGELISTA Y VALERO (sic) by shooting him on the head, mutilated his body, and set the same on fire thereby inflicting upon him fatal injuries which were the proximate cause of his untimely death, to the damage and prejudice of the heirs of the late VENSON EVANGELISTA Y VELARO.

Accused and their other unidentified cohorts committed the above attendant circumstances in the killing of their victim because they deliberately planned the commission of the offense consciously adopting the means and methods of attack done suddenly and unexpectedly, taking advantage of their numbers and strength to ensure its commission without risk to themselves arising from the defense which the victim might make, accompanied by fraud, deceit, disguise, cruelty and by abuse of superior strength by deliberately and inhumanly augmenting the suffering of the victim or outraging or scoffing at his person or corpse.

CONTRARY TO LAW.[4]

Of the respondents, Rolando Talban (Talban) and Joel Jacinto (Jacinto) remained at large. Only the Dominguez brothers and Miranda were apprehended. And during arraignment on April 11, 2011, the three arrested respondents pleaded not guilty to the offense.

On June 27, 2011, a hearing was conducted on the prosecution's motion[5] that Mendiola be discharged as an accused

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[4] *Rollo*, pp. 130-131.

[5] Dated March 18, 2011.

to become a state witness. On the said date, Mendiola gave his testimony and was cross-examined by the counsel for the defense. Nevertheless, the defense manifested that the cross-examination was limited only to the incident of discharge, and that their party reserved the right to a more lengthy cross-examination during the prosecution's presentation of the evidence in chief.

On September 29, 2011, the RTC Branch 215, before which Criminal Case No. Q-11-168431 is pending, issued an Order granting the motion to discharge Mendiola as an accused to become a state witness. The Order further states:

> WHEREFORE, premises considered, the Court resolves to GRANT the motion to discharge accused ALFRED MENDIOLA y RAMOS from the Information to become a state witness.
>
> Accordingly, his testimonies given on June 27, July 8 and July 11, 2011 and all the evidence adduced in support of the discharge hereby form part of the trial of this case.
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> x x x x x x x x x
>
> SO ORDERED.[6]

Thereafter, by a surprise turn of events, Mendiola was found dead on May 6, 2012. The RTC then required the parties to submit their respective position papers on whether or not Mendiola's testimony during the discharge proceeding should be admitted as part of the prosecution's evidence in chief despite his failure to testify during the trial proper prior to his death.[7]

Ruling of the Regional Trial Court

On January 10, 2014, the RTC issued the assailed Order directing that the testimony of Mendiola be stricken off the records of Criminal Case No.Q-11-168431. The decretal portion of the Order reads:

WHEREFORE, the testimony of **ALFRED MENDIOLA y RAMOS** given on June 27, 2011 for purposes of his discharge as a

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[6] *Rollo*, p. 177.

[7] Order dated March 31, 2013; *id.* at 205.

state witness is **HEREBY ORDERED STRICKEN OFF THE RECORD** of this case. With respect to the documents and other evidence authenticated by Mendiola as a discharge witness, this Court will rule upon their admissibility when the same are formally offered in evidence.

SO ORDERED.[8]

According to the trial court, Mendiola's testimony on June 27, 2011 was offered only for the purpose of substantiating the motion for him to be discharged as a state witness, and does not yet constitute evidence in chief. Thus, the defense counsel limited his questions during cross-examination to only those matters relating to Mendiola's qualifications to become a state witness and expressly reserved the right to continue the cross-examination during trial proper. As ratiocinated by the RTC:

> There is no question that when Mendiola was cross-examined, such cross-examination was limited by the purpose of the hearing, that is, whether the court would be satisfied of the absolute necessity of his testimony"; that "there is no other direct evidence available for the proper prosecution"; that his "testimony could be substantially corroborated in its material points"; that he "does not appear to be the most guilty"; and he "has not been convicted, at any time, of any offense involving moral turpitude". In short, these are the purposes for the discharge hearings.[9] x x x

The trial court likewise cited Section 18, Rule 119 of the Rules of Court,[10] noting that there is a requirement that Mendiola must testify again as a regular witness during trial proper to secure his acquittal. Non-compliance with this requirement, according to the RTC, amounted to the deprivation of respondents

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[8] *Id*. at 230.

[9] *Id*. at 227.

[10] **Section 18.** *Discharge of accused operates as acquittal*. — The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge.

of their constitutional right to due process, and of their right to confront the witnesses against them.

Ruling of the Court of Appeals

The issue was elevated to the Court of Appeals via petition for certiorari under Rule 65, but the appellate court found no grave abuse of discretion on the part of the trial court. It thus dismissed the petition in its assailed May 27, 2016 Decision in the following wise:

> **WHEREFORE**, in view of the foregoing, the Petition is **DENIED**. Accordingly, the Orders dated 10 January 2014 and 1 December 2014 issued by public respondent Judge Wildredo L. Maynigo in Criminal case no. Q-11-168431, pending before Branch 215 of the Regional Trial Court of Quezon City are hereby **AFFIRMED**.
>
> **SO ORDERED.**[11]

The CA denied petitioner's motion for reconsideration therefrom through its January 18, 2017 Resolution. Hence, the instant recourse.

The Issue

The primordial issue to be resolved in this case is whether or not the testimony of Mendiola should be stricken off the records of Criminal Case No. Q-11-168431.

Petitioner posits that the right afforded to an accused to confront and cross-examine the witnesses against him is not an absolute right. Hence, when respondents failed to avail themselves of the constitutional guarantee when Mendiola gave his testimony on June 27, 2011, they have effectively forfeited their right thereto.

The Court directed respondents to file their respective comments within fifteen (15) days from notice. Respondent Jayson Miranda *y* Nacpil, in his Comment,[12] argues that the

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[11] *Rollo*, p. 62.

[12] *Id.* at 331-337.

testimony of Mendiola was offered in the discharge proceeding for the limited purpose of qualifying the latter as a state witness, and Section 18, Rule 119 of the Rules of Court requires for the state witness to be presented again during trial proper. Failure of the prosecution to again offer the testimony of the state witness, as part of their evidence-in-chief, unlawfully deprived the respondents of the opportunity to conduct a full and exhaustive cross-examination. For even though Mendiola was cross-examined during the discharge proceedings, respondents nevertheless intimated to the trial court that they were reserving the right to propound further questions when Mendiola is again to take the witness stand. Miranda adds that the respondents are just as without fault that Mendiola died without completing his testimony.

Miranda adds that at the time Mendiola testified during the discharge proceedings, his co-respondents Rolando M. Talban (Talban) and Joel C. Jacinto (Jacinto) were not yet arrested. Thus, to allow the testimony of Mendiola to remain on record would be tantamount to a denial of their right to cross-examine the witness against them.

On the other hand, it appears that Atty. Oscar Raro, the counsel of record for respondent Roger Dominguez, failed to inform this Court that he has changed his office address. Service upon counsel was therefore not actually effected. Nevertheless, We have held time and again that notices to counsel should properly be sent to his or her address of record in the absence of due notice to the court of a change of address. Thus, respondent Roger Dominguez is deemed to have received the order to comment by fiction of law and has, consequently, waived his right to counter the allegations in the petition after fifteen (15) days from the date of his constructive receipt thereof. Meanwhile, Atty. Jose M. Cruz, who represents Raymond Dominguez, has likewise not filed a Comment in behalf of his client herein. The Court resolves, however, to dispense with the same.

The Court's Ruling

The petition is meritorious.

The death of the state witness prior to trial proper will not automatically render his testimony during the discharge proceeding inadmissible

Section 17 of Rule 119 of the Rules of Court pertinently provides:

Section 17. *Discharge of accused to be state witness.* — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) The is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. (emphasis added)

The rule is explicit that the testimony of the witness during the discharge proceeding will only be inadmissible if the court *denies* the motion to discharge the accused as a state witness. However, the motion hearing in this case had already concluded and the motion for discharge, approved. Thus, whatever transpired during the hearing is already automatically deemed part of the records of Criminal Case No. Q-11-168431 and admissible in evidence pursuant to the rule.

Mendiola's testimony was not incomplete, contrary to how Miranda paints it to be. The contents of his lengthy narration were more than sufficient to establish his possession of all the necessary qualifications, and none of the disqualifications, under Section 17, Rule 119 of the Rules of Court to be eligible as a state witness. The argument of incompleteness even contradicts respondent Miranda's own position since he does not contest here the RTC's Order granting Mendiola's motion to be a state witness, only the admissibility of his testimony following his demise.

Respondent raised that Section 18, Rule 119 of the Rules of Court makes it mandatory that the state witness be presented during trial proper and that, otherwise, his failure to do so would render his testimony inadmissible. On this point, Miranda, the RTC and the CA are mistaken in their interpretation of the rule, which pertinently provides:

> **Section 18.** ***Discharge of accused operates as acquittal***. — The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, **unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge.** (emphasis added)

While respondent Miranda is correct that the motion hearing is different from the presentation of evidence in chief, it is precisely because of this distinction and separability that the validity of the discharge proceeding should remain untouched despite the non-presentation of Mendiola during trial on the merits. True, the provision requires the accused to testify again during trial proper after he qualifies as a state witness. However, non-compliance therewith would only prevent the order of discharge from operating as an acquittal; it does not speak of any penalty to the effect of rendering all the testimonies of the state witness during the discharge proceeding inadmissible. On the contrary, the testimonies and admissions of a state witness during the discharge proceedings may be admitted as evidence to impute criminal liability against him should he fail or refuse to testify in accordance with his sworn statement constituting

the basis for the discharge, militating against the claim of inadmissibility.

To qualify as a state witness, the respondent must testify on the details of the commission of the crime

That the testimony of Mendiola was offered for the limited purpose of qualifying him as a state witness does not automatically render his statements as to the specifics on the commission of the offense inadmissible. To recall, one of the requirements under Section 17, Rule 119 is to establish that the erstwhile respondent does not appear to be the most guilty among him and his cohorts. Thus, it is quite understandable that, during the discharge proceeding, Mendiola narrated in graphic detail his entire knowledge of the crime and the extent of the participation of each of the accused, to wit:

Q: Mr. Witness, are you the same Alfred Mendiola[,] one of the persons being indicted in this instant crime of Carnapping with Homicide?
A: Yes, ma'am.

Q: Do you know the other accused in this case, Mr. Witness, namely, I will enumerate[:] Roger Dominguez, Raymond Dominguez, Jayson Miranda[,] alias Soy, Rolando Talban[,] a.k.a. Eduardo Fernandez[,] a.k.a. Rolly and one named alias Joel?
A: Yes, ma'am.

Q: Why do you know them, Mr. Witness?
A: I've been with them[,] with the group that I joined which is carnapping.

Q: In the said carnapping group that you mentioned, Mr. Witness, what is your role?
A: I served as the buyer or as poseur buyer of the vehicle that we were supposed to buy but actually we will carnap.

Q: What about the other named accused, No. 1 Roger and No. 2 Raymond, what are their roles?
A: We treat them as our leader because they are the ones planning the operations, they are the ones funding the operation, they are the ones providing us the money every time we have the operation.

x x x x x x x x x

Court: What was your last statement? Can you repeat[?]
A: They are the ones who [are] also giving us our salary or payment for ever[y] successful operation.

Q: What about Jayson Miranda[,] alias Soy, what is his role in your group?
A: I came to know Jayson Miranda as the right hand of Roger Dominguez and he serve[d] as my driver for four times wherein I was involved in carnapping.

Q: What about this Joel, what is his role, Mr. Witness?
A: Joel [was] introduced to me and will also be my companion who will pose as a mechanic and will directly assist us if ever we are successful in test driving the said vehicle.

x x x x x x x x x

Q: What about Rolly or Rolando Talban[,] also known as Eduardo Fernandez y Lopez, what is his role in your group?
A: I was only introduced once to Rolly and I also know him as a member of the group and he was assigned to help us on a certain operation.

x x x x x x x x x

Q: Now Mr. Witness, you previously mentioned that you are a member of a group headed by Dominguez brothers. How did your group operate or what was your modus operandi?
A: The first time I met Roger Dominguez[,] he was able to tell me that theirs system of carnapping is by poking. But after that[,] he narrated some more regarding other systems of carnapping.

Q: And what are these other systems that were given to you or were relayed to you?
A: One strategy is they will look for sellers of vehicles through newspapers, magazines and internet then they will get the contact numbers of the person selling the vehicle.

Q: And what did they do with the contact numbers given to them by the owners of the vehicles?
A: Once contacted[,] they will schedule a meeting place of the poseur buyer and the seller.

Q: And what else are the modus operandi of your group?
A: And if the seller agrees on the road test[,] that is the time the group of the poseur buyer will poke and carnap the said vehicle.

Q: You continuously mentioned about, pagtutok, can you elaborate that, what, do you mean [by] pagtutok?
A: In my experience[,] every time we are successful in convincing a seller[,] it will be Joel who in the middle of the road testing will draw his gun and poke it to the seller.

x x x x x x x x x

Q: Now Mr. Witness, you mentioned about this Toyota Land Cruiser, let's go to that, when for the first time did you hear about this Toyota Land Cruiser?
A: The first time I heard them talking about this Toyota Land Cruiser was January 12 during night time.

Q: What year?
A: 2011, ma'am.

Q: And what did you hear about this Toyota Land Cruiser?
A: We were in Greenville Subdivision over dinner with Roger Dominguez, Ann, Katrina Paula then Raymond Dominguez[,] together with Rolly[,] arrived.

Q: Who was the one who mentioned this Land Cruiser?
A: According to them[,] since it was night time when they say the vehicle[,] the owner did not agree for them to road test the said vehicle.

Q: What else did Raymond Dominguez tell you?
A: After that when the owner did not agree for the road test[,] they went to a gasoline station in Quezon City.

x x x x x x x x x

Q: What happened next, Mr. Witness?
A: When Raymond Dominguez arrived[,] he gave me a number and asked me to contact that said number claiming the owner was selling a Toyota Land Cruiser.

Q: How did Raymond Dominguez give to you that number, how?
A: From his cellphone[,] he jotted down the number on a piece of paper[,] he gave it to me and asked me to call it if the Toyota Land Cruiser is still for sale.

Q: Upon receiving the instructions of Raymond Dominguez[,] what did you do with that number?
A: Before I dialed the number[,] I asked him what to tell the owner in case he answers the call.

Q: What did Raymond Dominguez tell you?
A: I was asked to ask the owner if the Toyota Land Cruiser is still for sale and if yes[,] then I should schedule a meeting.

x x x x x x x x x

Q: During the telephone conversation with as you mentioned with Boy Evangelista[,] what did you talk about?
A: He said that it's still available, it [is] still for sale.

Q: So what was your response, Mr. Witness?
A: I asked him where and when can I see the vehicle.

Q: What did Mr. Evangelista tell you?
A: He answered within the day, the vehicle is available.

Q: Mr. Witness, while you were talking to Mr. Boy Evangelista over the phone, where [we]re Raymond, Roger, Jayson Miranda and the rest of the accused, where were they?
A: In the sala of the house in Greenville Subdivision, ma'am.

x x x x x x x x x

Q: How did you end your transaction or your telephone conversation with Mr. Boy Evangelista?
A: When I asked the person on the other line if I can see the vehicle within the day[,] Raymond signaled me to schedule a meeting around three to four that afternoon.

x x x x x x x x x

Q: x x x After you were able to set up a meeting with Mr. Boy Evangelista over the telephone regarding the Land Cruiser, what happened thereafter?
A: He texted me the address where I can meet him.

Q: What were these instructions?
A: The first thing he told me was that he will be the first to leave the subdivision onboard a white Expedition and that he instructed me to act as a poseur buyer and to test drive the said vehicle since I will be giving it as a gift.

Q: What else did Raymond tell you?
A: He also told me that I will be with Jayson who will act as the driver of Pajero which we will use in going to that place. And Joel was also with us to act as merchant and Rolly will act as a back up for us in case the owner will agree to a road test.

Q: While Raymond was giving all these instructions to you, who were present at that time?
A: Roger Dominguez, Ann, Napoleon Salamat, Rolly, Jayson Miranda alias Soy.

x x x x x x x x x

Q: So when Raymond was giving you all these instructions and these persons [we]re present, we [sic] first go to Roger[,] what was his reaction, what was his reply?
A: Roger told me "Hoy Bakla, kung hindi mo mapapapayag na i-road test yang sasakyan na iyan wag mong pilitin ha."

x x x x x x x x x

Q: So when Roger Dominguez made his statement[,] what happened thereafter?
A: Raymond answered[,] "[s]ige kung hindi mo kaya ako na ang bahala, pero hindi ako aalis sa area na iyon na hindi ko tangay ang Toyota Land Cruiser".

Q: With all these statements, Mr. Witness, what happened thereafter?
A: Rolly just interrupted, "Boss, kung saka-sakaling mapapapayag natin ang may-ari ng Toyota Land Cruiser na ipa-road test at kung sino man ang sasama itumba na natin dahil baka makilala pa niyan pag pinakita ng QCPD yung picture gallery ng mga carnappers dahil galing [sic] na tayo diyan noong gabing 'yon January 13."

x x x x x x x x x

Q: So after you were already specifically assigned of [sic] your roles in the carnapping of the Land Cruiser as well as to how to execute and realize this, how did you go about this plan?
A: Raymond was the first one who left the subdivision onboard the said Ford Expedition.

Q: Would you recall what time was that?
A: Around 1:00 o'clock or past 1:00 o'clock.

Q: Of what date?
A: January 13, 2011.

Q: How about you, Mr. Witness, and the rest of the group[,] what time did you leave the apartment?
A: After Raymond left[,] we prepared and we left the subdivision at around 2:00 o'clock in the afternoon onboard a green Pajero together with Jayson and Rolly.

Q: You mentioned that you were onboard this Pajero together with Jayson and Rolly, but previously in your statement you said that Joel was also given a role by Raymond Dominguez, so where was this Joel at that time?
A: We fetched Joel at SM, San Fernando, he alighted from [a] gray van before he transferred to our vehicle.

Q: How about Roger[,] how come he did not come with your group?
A: Roger, Napoleon Salamat and Ann were left in the apartment but we were told [to] give updates to them if we were able to convince the seller.

Q: You previously mentioned that you left the apartment at around 2:00 o'clock onboard a green Pajero bound to Cubao, Quezon City, what time did you arrive at that area?
A: Past 3:00 o'clock in the afternoon when we arrived at the area.

Q: What was this area again, Mr. Witness?
A: No. 47 Sgt. Catolos St., Cubao, Quezon City.

Q: So upon arriving at No. 47 Sgt. Catolos St., Cubao, Quezon City[,] what happened?
A: While we were at the front of the said residence[,] Jayson received a call from Raymond.

x x x x x x x x x

Q: So when you asked Jayson about the instructions, what did Jayson tell you?
A: According to him[,] he was instructed by Raymond to go around on the place and look for a wider street wherein we can test drive the said vehicle.

Q: So what did you do with the instructions of Raymond Dominguez relayed to Jayson?
A: We went around the said area.

x x x x x x x x x

Q: So after complying or following the instructions of Raymond of going around the area and looking for wider roads[,] what happened next?
A: We went back at the front of the house.

Q: Why did you go back in front of the house?
A: We were waiting for the go signal from Raymond for me to go down and check the vehicle.

Q: What is this go signal, Mr. Witness?
A: He texted go.

Q: When you say nagtext siya, whom are you referring to?
A: Raymond Dominguez, ma 'am.

x x x x x x x x x

Q: Upon these instructions[,] what did you do?
A: Joel and I alighted and Jayson, Rolly parked the vehicle.

Q: So upon alighting from this green Pajero together with Joel[,] what did you do?
A: After that[,] we pressed the door bell of the said house and then a small man, who appeared to be the boy, open[ed] the gate for us.

Q: What did you tell this boy?
A: I immediately asked him the person of Boy Evangelista.

x x x x x x x x x

Q: So what happened thereafter when you were ushered inside the area?
A: This boy, the small one, called someone a person with a long hair.

Q: Would you know who this person is?
A: No, ma'am, he just introduced himself as the son of Boy Evangelista and was tasked to talk with me.

x x x x x x x x x

Q: Okay, Mr. Witness, when you came face to face with this person whom you described as one tall person with fair complexion and with long hair, what did you talk about?
A: I asked him if the Land Cruiser I was looking at in the garage was still for sale.

Q: What was his reply?
A: He said yes.

Q: So what was your counter reply?
A: I asked how much. x x x

[Q]: And how did you reply to such price quotation of 3.4 Million[?]
[A]: I asked if it is still negotiable. x x x

Q: While you were talking with this fair complexion, tall and long hair, where was Joel?
A: He was just checking the said vehicle, the tires and the engine.

Q: After talking about the price, what else did you talk about regarding this vehicle?
A: Joel approached us and said the vehicle was okay and the long hair said if I buy it then it is as if I bought a brand new.

x x x x x x x x x

Q: After you were assured by this person with long hair and that it was recommended to[o] by your mechanic Joel, what was your decision then about the vehicle?
A: I asked the long hair if we could roadtest the vehicle that he was selling.

Q: And what was his reply?
A: He said that they don't agree with road testing especially the father.

Q: And what was your response?
A: So on my part posting as a buyer[,] I answered in a sarcastic way, "[a]no ba naman kayong nagbebenta ng sasakyan na ganyan 3.4 Million is 3.4 Million tapos hindi nyo papayagang i-road test, maglalabas ako ng pera."

Q: And can you tell us what was the reaction of this person whom you were talking to when you made the sarcastic words?
A: I noticed that he was irritated by my remark and he ordered the boy, the small one, to get the key, cellphone and his wallet.

x x x x x x x x x

Q: And when this person whom you described boarded the vehicle, what were you doing then?
A: I was still at the garage and he was the one who signal us to board on said vehicle and he said "let's go".

Q: And where did you position yourself?
A: I positioned myself at the back of the driver.

Q: How about Joel?
A: At the right passenger seat, ma'am, beside the driver.

Q: Upon boarding this vehicle, you, Joel, and this person that you described[,] where did you go?
A: We went around the said area but the green Pajero was following us wherein Rolly and Jayson Miranda alias Soy were there.

Q: Why do you say that this Pajero was following you then?

A: I know that they were following us because Rolly even uttered a joke "[s]inusundan yata tayo ng father mo ah, ayan yung Pajerong green".

Q: Why did Joel made that statement as far as you know?
A: That's a part of our strategy because the long hair might be the person to notice that someone is following us.

x x x x x x x x x

Q: So after circling the road as you mentioned[,] what happened next?
A: When Joel noticed that we were near the house of the owner[,] he immediately pulled out his gun and poked it to the person and asking [sic] to give him the vehicle.

Q: And what did this long hair do with that threat of Joel?
A: The long hair was able to stop the vehicle probably a house away from their house.

Q: And what was the reaction of this person whom you said was poked by a gun?
A: He raised his gun and said "[m]aawa na po kayo sa akin[,] may pamilya po ako."

x x x x x x x x x

Q: And at that time, where was Joel and Rolly whom you previously said was following the Land Cruiser?
A: Joel remained at the vehicle poking his gun while Rolly suddenly alighted from the Pajero and boarded the Land Cruiser and sat on the driver seat and pushed the long hair at the back portion of the said vehicle.

Q: After Rolly boarded the Land Cruiser and pushed this person with long hair at the back[,] what happened next?
A: Rolly went inside the vehicle through the driver side and after pushing the long hair, he also followed him, so we were all at the back, me the long hair and Rolly.

Q: While you were inside the vehicle[,] what were you doing at the time?
A: While I was seated at the back of the driver seat I was texting Roger and informing him that the vehicle and the owner were already taken. And Rolly was trying to put up packaging tape on the eyes and mouth of the long hair and also his hands were tied behind his

back with the packaging tape. After he was tied with packaging tape[,] he was asked to lie facing down at the back and he was covered with a blanket which he took from his back pack.

x x x x x x x x x

Q: Now Mr. Witness, while Rolly was doing this to the long hair whom you just described[,] what was Joel doing?
A: Joel was the one driving the Land Cruiser away from the area.

x x x x x x x x x

COURT. How about you[,] what were you doing then when Rolly was putting a packaging tape to the long hair?
A: I was sending text messages to Roger that we were able to take the vehicle.

x x x x x x x x x

Q: Now, from Cubao, Quezon City, where did you go, where did you proceed then?
A: After we passed through the NLEX, what happened was the green Pajero was ahead of us and we were following it and the Expedition was following us.

Q: In that period of time that you were traveling[,] what happened inside the Land Cruiser while you were with this long hair, Joel and Rolly, what happened?
A: Rolly took the wallet of the long hair and gave it to me and the cellphone was handed to Joel, the necklace, bracelet and the money were taken by Rolly.

Q: You said that this wallet was handed to you by Rolly, what did you do with the wallet?
A: I opened the wallet and it contained Eight Thousand Pesos (₱8,000.00) case [sic], Driver's License and that is where I saw that the name of the long hair was Venson Evangelista. . .

Q: From NLEX[,] where did you go thereafter?
A: Joel called someone, I don't know who among the Dominguez brothers he was talking to, but he was given instruction that we should proceed to a safe house in Mabalacat, Pampanga.

x x x x x x x x x

Q: So what time did you arrive at [sic] Mabalacat, Pampanga?
A: Past 5:00, ma'am.

Q: Upon reaching that safe house[,] what happened there?
A: When we arrived there[,] Roger Dominguez was standing at the gate of the safe house and a green Lancer car was parked there.

x x x x x x x x x

Q: What happened to the safe house after you arrived and when you saw Roger and Ann?
A: When I saw Roger and his girlfriend Ann, I alighted from the Land Cruiser.

x x x x x x x x x

Q: What about Venson Evangelista, the long hair, where was he?
A: He was still with Rolly lying face down inside the vehicle.

x x x x x x x x x

Q: So when you approached Roger Dominguez, what happened then?
A: He told me that Ann will bring me to SM San Fernando and to wait for his text or call if ever he will fetch me.

x x x x x x x x x

Q: So when you were given instructions by Roger[,] what did you do thereafter?
A: When I was approaching the Lancer where Ann was there[,] Roger whistled at me.

Q: So when Roger whistled at you[,] what did you do?
A: I approached the brothers.

Q: And when you approached[,] what happened?
A: He ordered me to place used tires and a gallon of gasoline at the green Pajero.

x x x x x x x x x

Q: And what vehicle did they use in fetching you at SM San Fernando?
A: The Land Cruiser we used before I was brought to SM San Fernando.

x x x x x x x x x

Q: Would you know who is the owner of the vehicle, the Land Cruiser?
A: That was the vehicle that we took on that day from the long hair.

x x x x x x x x x

Q: After you were fetched by Roger and Ann using that Land Cruiser[,] where did you go?

A: We went to Kapalangan, Calumpit, Bulacan.

x x x x x x x x x

Q: Upon arriving at the Greenville Subdivision[,] what did you observe?
A: We were the only ones who were there. After we alighted from the vehicle[,] Roger immediately replaced the plate number of the vehicle with the plate number we took from the person when we were at the Kalapangan.

x x x x x x x x x

Q: Now we go back, Mr. Witness, to this long hair. Would you know, Mr. Witness, as to what happened to the gagged and hog-tied long hair after you last saw him hours earlier stay inside the Land Cruiser before you left for SM?
A: Roger Dominguez, Ann and I were having dinner already, Roger Dominguez received a call from Jayson and the reason why I know it came from Soy [is] because Roger answered "Soy".

Q: And what did you hear?
A: I heard that Roger Dominguez was asking Soy "[s]igurado kang patay na, sigurado kang sunog na, sigurado kang hindi na makikita yan?"

x x x x x x x x x

Q: So when Jayson Miranda informed you what is his present to you[,] what was his response?
A: I asked him "kanino yan" and he said it's with the long hair and when I asked him the whereabouts[,] he said "patay na, sunog na".

Q: What did he tell you as to how Venson Evangelista was killed? x x x
A: He narrated it, he said that he was first shot and his body was inserted inside two used tires after that they poured gasoline and he was burned in a rice field somewhere in Nueva Ecija.[13]

We cannot subscribe to Miranda's postulation that the above narration is extraneous to the purpose of qualifying Mendiola as a state witness. On the contrary, they were essential in establishing that he is not the main perpetrator of the murder of Venson Evangelista, rendering him eligible as a state witness under Sec. 17 of Rule 119 of the Rules of Court.

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[13] *Id*. at 27-40.

In any event, even assuming *arguendo* that the foregoing details are not germane to the purpose for which the testimony of Mendiola was offered, it was nevertheless incumbent upon respondents to have timely objected against the line of questioning for irrelevance. As prescribed by Section 36, Rule 132 of the Rules of Court:

> **Section 36.** *Objection*. — Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

Noteworthy is that Miranda never raised in his Comment that he and his co-respondents have timely raised an objection when Mendiola delved into the particulars of the crime in his testimony. They are, thus, precluded from belatedly questioning the relevance of the said details.

Respondents had the opportunity to cross-examine Mendiola

What is more, embedded in Section 1, Rule 115 of the Rules of Court is the guideline for perpetuating the testimony of a deceased witness during criminal trial, *viz*:

> **RULE 115**
> **Rights of Accused**
>
> **Section 1.** *Rights of accused at the trial*. — In all criminal prosecutions, the accused shall be entitled to the following rights:
>
> x x x x x x x x x
>
> (f) To confront and cross-examine the witnesses against him at the trial. **Either party may utilize as part of its evidence the testimony of a witness who is deceased**, out of or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, **involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.** (emphasis added)

Verily, the sole condition imposed for the utilization of the testimony of a deceased witness is that the opposing party had

the opportunity to cross-examine the same. In this regard, respondents lament that they were deprived of the opportunity to cross-examine Mendiola upon his passing prior to being presented as a witness during trial proper. Hence, they argue that Mendiola's testimony ought to be stricken off the records.

We are not persuaded.

One of the most basic rights of an accused person under our justice system is the right to confront the witnesses against him face to face.[14] Subsumed under this right of confrontation is the right to cross-examine the witnesses for the prosecution. And as the Court has elucidated in *People v. Seneris (Seneris)*,[15] the right, though fundamental, may be waived expressly or impliedly by conduct amounting to a renunciation of the same. As the case instructs:

> The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principles underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone. **Thus, where a party has had the opportunity to cross-examine an opposing witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record**. (emphasis added, citations omitted)

Here, respondents have to realize that their option to not ask for a continuance and reserve the right to continue with their

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[14] CONSTITUTION, Art. III, Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[15] No. L-48883, August 6, 1980, 99 SCRA 92.

line of questioning for trial proper instead carried inherent risks, including their present predicament. Respondents ought to have been aware that their decision would pave the way not only for the termination of the discharge proceedings, but also for the eventual application of the last paragraph of Section 17, Rule 119 of the Rules of Court should the RTC resolve to discharge Mendiola as a state witness, as it in fact did. The assumption of the risk, to Our mind, amounted to a waiver of any objection as to the admissibility of Mendiola's testimony during the discharge hearing.

Furthermore, *Seneris* elucidates that the testimony of the deceased prosecution witness shall not be expunged from the records if the defense was able to conduct a rigorous and extensive cross-examination prior to the witness' demise. As held:

> Because **the cross-examination made by the counsel of private respondent of the deceased witness was extensive and already covered the subject matter of his direct testimony as state witness relating to the essential elements of the crime of parricide**, and what remained for further cross-examination is the matter of price or reward allegedly paid by private respondent for the commission of the crime, which is merely an aggravating circumstance and does not affect the existence of the offense charged, the **respondent judge gravely abused his discretion in declaring as entirely inadmissible the testimony of the state witness who died through no fault of any of the parties before his cross-examination could be finished**. (emphasis added)

In the case at bar, the records disclose that Mendiola was cross-examined at length for his testimony by the counsels of Miranda and the Dominguez brothers. More, such cross-examination already covered the details of the commission of the offense, to wit:

> ATTY. PEREZ for JAYSON MIRANDA
>
> Q: You admitted in your Sinumpaang Salaysay dated January 20, 2011 that before the alleged carnapping and slaying of Mr. Venson Evangelista, you called Mr. Boy Evangelista over the cellphone, did you recall saying this, Mr. Witness? x x x
> A: Yes, sir.

Q: So, it is a fact that you arranged in [sic] meeting with the Evangelistas before the alleged carjacking and slaying of Mr. Venson Evangelista?
A: Yes, sir.

x x x x x x x x x

Q: And when Venson Evangelista told you that the Land Cruiser is still available, you asked him if you could road test the vehicle, is that correct?
A: Yes, sir.

Q: And is it not a fact, that Mr. Venson Evangelista initially refused to have the vehicle road tested, is that correct?
A: Yes, sir.

Q: And this is now the point, Mr. Witness, when you uttered the following remarks: "3.4 million yang sasakyang binibenta mo, hindi mo ipaparoad test", do you recall saying that?
A: Yes, sir.

x x x x x x x x x

Q: If not for your remark, the remark which I have said a while ago, Venson Evangelista would not have agreed to the road test?
A: That was the reason why I went there and it was my job to convince the owner to have the vehicle road tested so, I have to do my part, sir.

x x x x x x x x x

Q: It was when you are about to go back to the residence of Mr. Venson Evangelista, it was at that point when Joel allegedly poked his gun against a [sic] person of Mr. Venson Evangelista, do you recall saying this?
A: Yes, sir.

Q: So, after allegedly seizing the vehicle and the person of Mr. Venson Evangelista, you proceeded to Mabida, Mabalacat, Pampanga?
A: Yes, sir.

x x x x x x x x x

Q: During the 50-minute travel, never did it occur to you to object to the alleged plan to kill Mr. Venson Evangelista?
A: When I first saw that the victim was being half-tied [sic] and placed packaging tape on his mouth and hands and eyes, I was not able to say a word because as far as I know, I was hired only to sell total wrecked, flooded and carnapped vehicles and I never thought that I would be part of the group that would kill, sir.

ATTY. OSCAR RARO for the Dominguez Brothers

Q: Now what time did you arrive at Sgt. Catolos Street, 3:00 o'clock?
A: Around 4:00 o'clock in the afternoon, sir.

Q: And how long did it take you to convince Venson to road test the vehicle?
A: 10 to 20 minutes, sir.

Q: And after that you went around that place, twice and then you proceeded to NLEX?
A: After convincing him, we directly go out to road test the vehicle twice and go around the area of Sgt. Catolos Street in Cubao then after which we stopped near their house then we proceeded directly to NLEX[,] sir.

x x x x x x x x x

Q: What time did you arrive at Mabalacat, Pampanga?
A: Almost 6:00 in the evening, sir.

x x x x x x x x x

Q: You stated on page 17 of the transcript of stenographic notes on June 27, 2011 that the Dominguez brothers are the ones planning the operation and funding it, you stated that?
A: Yes, sir.

Q: But aside from your statement, do you have any other proof or witness that can corroborate this?
A: Probably what I can say is that the things that I saw, I had experienced and the orders that I have received from them, that's the reason why I am saying that they are the ones funding and planning all these things because all the orders that I followed came from the two (2) brothers, sir.

x x x x x x x x x

Q: And you also stated and I was fascinated by this story on your direct that before you leave for SM, you were ask[ed] to find used tires and a gallon of gasoline and load it at the green pajero while at Mabalacat?
A: I did not say that I was asked to look for used tires because there are so many scattered tires in that safe house. I was just asked to pick up used tires and get one (1) gallon of gasoline and bring them inside the green pajero, sir.

Q: How many people were there at the time you were ask[ed] to bring these tires to the green pajero?
A: Me, Raymond Dominguez and Roger Dominguez were there. Ann was inside the gray lancer. Inside the land cruiser were Joel, Rolly and the long hair who was covered with a blanket and Jayson Miranda was inside the pajero while I was loading the said items, sir.

COURT: But you were the only one who loaded the two (2) used tires and a gallon of gasoline inside the vehicle?
A: Yes, your Honor.

Q: Without anybody helped [sic] you?
A: Yes, your Honor.[16]

Respondents' reservation for trial proper of the right to further cross-examine Mendiola did not diminish the sufficiency of the opportunity that they were given to confront the adverse witnesses. Notwithstanding the said reservation, Mendiola's testimonies and admissions as regards the particulars of the crime already formed part of the records of the case when the RTC granted his motion to be declared a state witness. Respondents' constitutional rights were not violated since the fair hearing envisaged by criminal due process had been complied with when the counsels for the respondents conducted a rigorous and exhaustive cross-examination of the deceased witness during the discharge hearing.

WHEREFORE, in view of the foregoing, the instant petition is **GRANTED**. The May 27, 2016 Decision and January 18, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 139255 are hereby **REVERSED** and **SET ASIDE**. The testimony of Alfred Mendiola in Criminal Case No. Q-11-168431 pending before the Regional Trial Court, Branch 215 in Quezon City is hereby **REINSTATED**. With respect to the documents and other evidence authenticated by Mendiola during the discharge proceeding, the RTC shall rule upon their admissibility when the same are formally offered in evidence.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

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[16] *Rollo*, pp. 41-44.

EN BANC

[A.M. No. P-18-3792. February 20, 2018]
(Formerly OCA IPI No. 16-4579-P)

RUTH NADIA N. DE LOS SANTOS, *complainant, vs.* **JOSE RENE C. VASQUEZ, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 41, BACOLOD CITY, NEGROS OCCIDENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; THE IMAGE OF THE COURT IS MIRRORED BY THE CONDUCT, OFFICIAL OR OTHERWISE, OF ITS PERSONNEL FROM THE JUDGE TO THE LOWEST OF ITS RANK AND FILE.— [E]mployees of the Judiciary should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve the good name and standing of the courts in the community at all times. Indeed, the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel from the judge to the lowest of its rank and file who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions. They are expected to accord respect to the person and the rights of another; and their every act and word should be characterized by prudence, restraint, courtesy and dignity.

2. ID.; ID.; ID.; ID.; CONDUCT UNBECOMING OF AN EMPLOYEE; ANY SCANDALOUS BEHAVIOR OR ANY ACT THAT MAY ERODE THE PEOPLE'S ESTEEM FOR THE JUDICIARY IS UNBECOMING OF AN EMPLOYEE, AND TANTAMOUNT TO SIMPLE MISCONDUCT.— In the present case, respondent's act of slapping the shoulder of complainant, and his use of improper and intemperate words and his threat against her should not be countenanced. Without a doubt, such acts tarnished not only the image and integrity of the public office but also the public perception of the very image of the Judiciary of which he was a part of. x x x [T]his Court has reminded all employees that discourtesy and disrespect have no place in the Judiciary. Boorishness and overbearing

behavior can only bring their office to disrepute and erode public respect. x x x [P]rofessionalism, respect for the rights of others, good manners and right conduct are expected from all judicial officers and employees at all times as the image of the Judiciary is necessarily mirrored in their actions. Thus, any scandalous behavior or any act that may erode the people's esteem for the Judiciary is unbecoming of an employee, and tantamount to simple misconduct.

3. ID.; ID.; ID.; SIMPLE MISCONDUCT; PENALTY IN CASE AT BAR.— Under Section 52 (B), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. The Court notes that this is not the first time that respondent has been administratively charged. In A.M. No. P-07-2313, respondent was found guilty of conduct unbecoming of a government employee for deliberately bumping and hitting the left breast of complainant therein. He was suspended for a period of two (2) months and was sternly warned that a repetition of the same or similar act would be dealt with more severely. Despite such warning, respondent repeated the same act. Hence, the ultimate penalty of dismissal should be imposed.

D E C I S I O N

***PER CURIAM*:**

Before the Court is the Letter-Complaint[1] filed by complainant Ruth Nadia N. De Los Santos *(complainant)* against respondent Jose Rene C. Vasquez *(respondent)*, Sheriff IV, Regional Trial Court *(RTC)* of Bacolod City, Negros Occidental, Branch 41, before the Office of the Court Administrator *(OCA)*, for inhuman and unruly behavior, dishonesty and threat.

The Complaint

In her Affidavit-Complaint,[2] complainant alleged that on July 27, 2015 at around 4:00 o'clock in the afternoon, while she

[1] *Rollo*, p. 1.

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

was doing her groceries at MJ Store in Barangay Mansilingan, Bacolod City, she met respondent's wife, Beverly Vasquez *(Beverly)*, who owed her a sum of money; that while confronting Beverly about her loan, respondent, who was smelling and reeking of liquor, suddenly appeared from behind and hit her left arm and threatened her saying, *"Indi mo paghulaton nga may matabo sa imo kag madug an gid ang kamot ko,"* which meant "Don't wait that something will happen to you and cause my hand to be stained;"[3] and that because of fear and respondent's threat, complainant caused the incident to be recorded in the police blotter at Police Station 7, Mansilingan, Bacolod City.

Complainant further averred that prior to the incident, she filed two separate cases against respondent and his wife: (1) Collection of Sum of Money where the Municipal Trial Court in Cities, Branch 6 *(MTCC)* rendered a decision in her favor and issued a writ of execution, which had not been served to respondent and his wife until now; and (2) Estafa which was pending with the Office of the City Prosecutor of Bacolod City. She believed that respondent, being a sheriff, manipulated the serving of the writ of execution.

The Comment of Respondent

In his Comment to the Affidavit-Complaint,[4] respondent denied hitting complainant and stated that he was not drunk at the time the incident occurred. He asserted that on July 27, 2015, he was in the Mansilingan area serving summons when his wife, Beverly, called and told him that they were out of cooking gas. Because his wife had no money and he was in the area, he told his wife to meet him at MG Store[5] so he could give her money to buy the cooking gas. As he was entering the store, respondent saw his wife and complainant in a tussle with the latter holding his wife's arm, shaking her and pointing a finger at her face. Respondent hurriedly went to them and asked

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[3] *Id*. at 2.

[4] *Id*. at 33-38.

[5] Referred to as MJ Store in the Affidavit-Complaint.

"Ano na man? Buy i na ang asawa ko!" (What is that? Let go of my wife).[6] He confronted complainant and they had an exchange of words about the manner of her collection and her actuations against his wife. Respondent claimed that complainant provoked him until he lost his patience and angrily told her, *"Indi na paghulata nga mag dug-anay kita"* (don't wait for things to get worse), to which she replied *"Ano gid gusto mo Jun haw?"* (What do you want, Jun?).[7] Thereafter, he backed off, pulled his wife away, and left the store.

Respondent further denied that he manipulated the service of the writ of execution, which was, in fact, already served upon his wife by the sheriff of RTC - Branch 6. He contended that he was discharged as defendant in the complaint for collection of sum of money because it was only his wife who transacted with complainant. As to the case of estafa, respondent stated that it was not the complainant who filed the complaint but a certain Faith Ombid.

Upon the recommendation[8] of the OCA, the Court, in its Resolution[9] dated January 30, 2017, referred the complaint to the Executive Judge of the RTC for investigation, report and recommendation.

The Report and Recommendation of the Investigating Judge

In his Investigation Report,[10] Executive Judge Raymond Joseph G. Javier *(EJ Javier)* found no evidence to sustain the charges of dishonesty and abuse of authority against respondent. He, however, found respondent guilty of conduct unbecoming a court employee and recommended that he be suspended from the service for a period of six (6) months without pay considering that he had been previously found administratively liable for

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[6] *Rollo*, p. 33.

[7] *Id*. at 34.

[8] Report, dated November 8, 2016, *id*. at 55-57.

[9] *Id*. at 58.

[10] *Id*. at 157-162.

the same offense in A.M. No. P-07-2313,[11] entitled *Zelinda G. Nicopior v. Jose Rene C. Vasquez*. EJ Javier opined that respondent's act of slapping the shoulder of complainant and his use of unsavory language failed to meet the exacting standards required of a court employee.

The Court's Ruling

The Court adopts the findings of the Investigating Judge but modifies the recommended penalty.

It must be stressed that employees of the Judiciary should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as to preserve the good name and standing of the courts in the community at all times.[12] Indeed, the image of a court of justice is mirrored by the conduct, official or otherwise, of its personnel from the judge to the lowest of its rank and file who are all bound to adhere to the exacting standard of morality and decency in both their professional and private actions.[13] They are expected to accord respect to the person and the rights of another; and their every act and word should be characterized by prudence, restraint, courtesy and dignity.[14]

In the present case, respondent's act of slapping the shoulder of complainant, and his use of improper and intemperate words and his threat against her should not be countenanced. Without a doubt, such acts tarnished not only the image and integrity of the public office but also the public perception of the very image of the Judiciary of which he was a part of.[15] Respondent must be reminded that government service is people-oriented

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[11] 550 Phil. 457 (2007).

[12] *Mendez, et al. v. Balbuena*, 665 Phil.161, 165-166 (2011); *Fernandez v. Rubillos*, 590 Phil. 303, 314 (2008).

[13] *Judge Buenaventura v. Mabalot*, 716 Phil. 476, 496 (2013).

[14] *Court Personnel of the Office of the Clerk of Court of the Regional Trial Court- San Carlos City v. Llamas*, 488 Phil. 62, 71 (2004).

[15] *Supra* note 13 at 497.

where high-strung behavior and belligerent attitude cannot be allowed.[16]

Time and again, this Court has reminded all employees that discourtesy and disrespect have no place in the Judiciary.[17] Boorishness and overbearing behavior can only bring their office to disrepute and erode public respect.[18] As stated, professionalism, respect for the rights of others, good manners and right conduct are expected from all judicial officers and employees at all times as the image of the Judiciary is necessarily mirrored in their actions.[19] Thus, any scandalous behavior or any act that may erode the people's esteem for the Judiciary is unbecoming of an employee, and tantamount to simple misconduct.[20]

Moreover, the Court takes note of the fact that respondent left the office during office hours without securing the necessary permission from his superiors. Respondent admitted that he was in MG Store on July 27, 2015 at around 3:00 o'clock in the afternoon. His explanation that he was in the area serving summons when he needed to meet his wife supposedly to give her money for their cooking gas, is bereft of merit. During the hearing conducted on May 19, 2017, respondent admitted that he was not armed with a written authority to travel when he allegedly served the summonses and court processes, and could not even remember the cases for which these summonses were issued, thus:

QUESTIONS FROM THE COURT TO MR. JOSE RENE VASQUEZ:

COURT:

Q : In your Judicial Affidavit you told me that you were there in the area of Mansilingan, July 27, 2015 more or less, 3:00 to 4:00 in the afternoon, correct?
A: Yes, Your Honor.

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[16] *Gonzales v. Gatcheco, Jr., et al.*, 503 Phil. 670, 675 (2005).

[17] *Fernandez v. Rubillos*, *supra*, at 314.

[18] *Supra* note 16.

[19] *Supra* note 17.

[20] *Mendez v. Balbuena*, 665 Phil. 161, 166 (2011).

Q: Do you know that this day is an Office day?
A: Yes, Your Honor.

Q: You said you are serving summons and processes in answer thirteen (13)?
A: Yes, Your Honor.

Q: Now, what are those summons cases?
A: I forgot the case but I was not able to serve it since the person was not around, Your Honor.

Q: You don't know the case?
A: I forgot, Your Honor.

Q: So, you cannot recall what cases are these?
A: Yes, Your Honor.

Q: Be sure that you cannot recall what cases are these?
A: Yes, Your Honor.

Q: Do you have also authority to travel issued by your Clerk of Court to serve?
A: No, Your Honor.

Q: Why? Meaning you are not being authorized by the Clerk of Court to serve summons and cases?
A: We did not practice that authority from the Clerk of Court since as a Sheriff when I serve subpoena in relation to foreclosure, I usually bring those notices of the same place like example in Mansilingan, Your Honor.

Q; Do you know that it is a rule that whenever you go out from the Office on official business you should be duly authorized with that authority to travel from the Clerk of Court?
A: Yes, Your Honor.

Q: But what you are trying to tell me is your deviating procedure, establish procedure by the Supreme Court?
A: We do not practice that, Your Honor. I only asked permission verbally without any written permission, Your Honor.[21]

It bears stressing that judicial officials and employees must devote their official time to government service.[22] They must

[21] *Rollo*, pp. 154-155.

[22] *Office of the Court Administrator v. Mallare, et al.,* 461 Phil. 18, 27 (2003).

strictly observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the Judiciary[23] and to inspire public respect for the justice system.[24]

Under Section 52 (B), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

The Court notes that this is not the first time that respondent has been administratively charged. In A.M. No. P-07-2313, respondent was found guilty of conduct unbecoming of a government employee for deliberately bumping and hitting the left breast of complainant therein. He was suspended for a period of two (2) months and was sternly warned that a repetition of the same or similar act would be dealt with more severely. Despite such warning, respondent repeated the same act. Hence, the ultimate penalty of dismissal should be imposed.

WHEREFORE, the Court finds respondent Jose Rene C. Vasquez, Sheriff IV, Regional Trial Court, Branch 41, Bacolod City, Negros Occidental, **GUILTY** of Conduct Unbecoming of a Court Employee. He is hereby **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to his re-employment in any branch or instrumentality in the government, including government-owned and controlled corporations.

SO ORDERED.

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

Caguioa and *Tijam, JJ.,* on official leave.

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[23] *Lopena v. Saloma*, 567 Phil. 217, 225-226 (2008).

[24] *Re: Icamina,* 588 Phil. 443, 450 (2008).

EN BANC

[G.R. No. 227796. February 20, 2018]

NATIONAL TRANSMISSION CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT (COA) and COA Chairperson MICHAEL G. AGUINALDO,** *respondents.*

SYLLABUS

POLITICAL LAW; REPUBLIC ACT NO. 9136 (THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001); PROVIDES THAT CONTRACTUAL EMPLOYEES ARE ENTITLED TO SEPARATION BENEFITS ONLY IF THEIR APPOINTMENTS HAVE BEEN APPROVED OR ATTESTED TO BY THE CIVIL SERVICE COMMISSION. — The issues raised by petitioner TransCo have been resolved in the similar case of *National Transmission Corporation v. Commission on Audit*, where the Court sustained the disallowance of a portion of the separation benefits of an employee corresponding to the period when he was still a contractual employee. In that case, the Court ruled that under the EPIRA Law contractual employees are entitled to separation benefits only if their appointments have been approved or attested to by the CSC. In this case, since there was no proof that Agulto's appointment was duly approved or attested to by the CSC, the disallowance of the amount of ₱22,965.81 was valid and proper. Thus, the Court finds no grave abuse of discretion on the part of respondent COA-CP in sustaining the disallowance. The disallowed amount, however, need not be refunded by the members of petitioner TransCo's Board of Directors as well as by Agulto, following the ruling of the Court in *National Transmission Corporation* x x x.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
The Solicitor General for respondents.

RESOLUTION

DEL CASTILLO, *J.*:

This Petition for *Certiorari*[1] filed under Rule 64 in relation to Rule 65 of the Rules of Court assails the Decision No. 2016-278[2] dated September 28, 2016 of respondent Commission on Audit (COA) Commission Proper (CP), affirming the disallowance of the payment of separation benefits to Mr. Alfredo V. Agulto, Jr. in the amount of ₱22,965.81.

Factual Antecedents

Petitioner National Transmission Corporation (TransCo) is a government instrumentality created under Republic Act No. 9136 (RA 9136), otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law). It operates and manages the power transmission system that links power plants to electric distribution utilities nationwide.[3]

In December 2007, pursuant to the EPIRA Law, its concession was awarded to the National Grid Corporation of the Philippines (NGCP).[4] Accordingly, on June 30, 2009, its employees were either retired or separated from service.[5]

Mr. Alfredo V. Agulto, Jr. (Agulto), who was a regular employee of petitioner TransCo with the position Principal Engineer B from March 17, 2003 to June 29, 2009, received the amount of ₱656,597.50 as separation benefits[6] pursuant to petitioner TransCo's Resolution implementing the Early Separation Program.

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[1] *Rollo*, pp. 13-42.

[2] *Id.* at 43-50; signed by Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia and Commissioner Isabel D. Agito.

[3] *Id*. at 14-15.

[4] *Id*. at 15.

[5] *Id*. at 16.

[6] *Id*. at 16-17.

During post-audit, the Supervising Auditor (SA) issued Notice of Disallowance (ND) No. TC-10-005 (09) dated October 19, 2010,[7] disallowing the amount of ₱22,965.81 from Agulto's separation benefits as said amount pertained to the period March 1 to 15, 2004 during which Agulto's employment status was still contractual.[8] The SA noted that the Service Agreement of Agulto during the said period specially provided that "the service to be rendered is not considered and will not be credited as government service."[9] Thus, the SA found the following persons liable:

1. Bernadine L. Protomartir – Division Manager, General Accounting & Financial Reporting (GAFR)
2. Jose Mari M. Ilagan – Manager, Administrative Department
3. Alfredo V. Agulto, Jr. – Payee.[10]

Petitioner TransCo appealed the ND before the Director, Cluster B, Corporate Government Sector (CGS) of the COA. It argued that the payment of separation benefits to contractual employees was lawful as it was in accordance with the EPIRA Law, the Corporation Code, and the Board Resolutions of petitioner TransCo.[11]

Ruling of the Commission on Audit Director

On July 9, 2014, the COA Director partially granted the appeal by exempting Agulto from liability since he received his separation benefits in good faith. The dispositive portion of the Decision[12] reads:

WHEREFORE, foregoing premises considered, the instant Appeal is hereby PARTIALLY GRANTED. Accordingly, only the Members of the Board of Directors responsible for the passage of Resolution

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[7] *Id*. at 65.

[8] *Id*.

[9] *Id*.

[10] *Id*.

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

[12] *Id*. at 81-88; penned by Rufina S. Laquindanum, Director IV.

Nos. TC 2009-005 and TC 2009-007 and the officers who authorized the release of the funds and certified the expense as necessary and lawful are hereby ordered to refund the amount of disallowed retirement benefits they respectively received. Hence, Mr. Alfredo V. Agulto, Jr. is no longer required to refund the amount disallowed.

This, notwithstanding, herein Decision is not yet final and is subject to the automatic review of the COA-[CP] pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit.[13]

Ruling of the Commission on Audit Commission Proper

On September 28, 2016, respondent COA-CP rendered Decision No. 2016-278,[14] disapproving the Decision of the COA Director. Respondent COA-CP maintained, that under Section 63[15] of RA 9136, in relation to Rule 33[16] of its Implementing Rules

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[13] *Id.* at 87-88.

[14] *Id.* at 43-50.

[15] SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies*. — National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case, shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act".

With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

[16] RULE 33. SEPARATION BENEFITS Section 1. General Statement on Coverage. This Rule shall apply to all employees in the National Government

and Regulations, contractual employees are entitled to separation benefits only if their appointments were approved or attested to by the Civil Service Commission (CSC).[17] In this case, since there was no proof that Agulto's appointment was duly approved or attested to by the CSC, the payment of the amount of ₱22,965.81 was correctly disallowed.[18] Accordingly, the members of petitioner TransCo's Board of Directors who approved the Resolutions implementing the Early Separation Program, as well as Agulto, were liable to return the said amount.[19]

As to the defense of good faith of Agulto, respondent COA-CP ruled that this cannot exempt him from liability as the disregard of laws and rules cannot be a source of a privilege to exempt him from refunding the benefits he was not entitled to receive.[20] Thus:

> WHEREFORE, premises considered, Commission on Audit Corporate Government Sector – Cluster 3 Decision No. 09 dated July 9, 2014 on the appeal of the National Transmission Corporation, Quezon City is hereby DISAPPROVED. Accordingly, Notice of Disallowance No. TC 10-005 (09) dated October 19, 2010, on the payment of separation benefits to Mr. Alfredo V. Agulto, Jr. in the amount of ₱22,965.81, is AFFIRMED.
>
> The Board of Directors of National Transmission Corporation who approved Board Resolution Nos. TC 2009-005 and TC No. 2009-007, shall be solidarily liable with Mr. Agulto, Jr.
>
> The concerned Audit Team Leader and Supervising Auditor shall issue a supplemental Notice of Disallowance to include as persons liable the concerned Members of the Board of Directors who approved said Board Resolutions.[21]

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service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: Provided, however, That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

[17] *Rollo*, pp. 46-48.

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

[19] *Id.* at 48-49.

[20] *Id.* at 48.

[21] *Id.* at 49.

Aggrieved, petitioner TransCo filed the instant Petition for *Certiorari*, raising the following issues:

A. WHETHER X X X THE GRANT OF FINANCIAL ASSISTANCE/SEPARATION BENEFIT[S] TO FORMER TRANSCO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS IS PROHIBITED.

B. WHETHER X X X IT IS WITHIN THE [PETITIONER] TRANSCO BOARD'S POWER TO GRANT FINANCIAL ASSISTANCE/SEPARATION BENEFIT[S] TO PERSONNEL ENGAGED BY VIRTUE OF SERVICE AGREEMENTS.

C. WHETHER X X X [RESPONDENT COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING DECISION NO. 2016-278 DATED 28 SEPTEMBER 2016.[22]

Simply put, the issues boil down to whether respondent COA-CP committed grave abuse of discretion in disallowing a portion of Agulto's separation benefits and in finding him and the members of petitioner TransCo's Board of Directors solidarily liable.

Ruling

The Petition is partly meritorious.

The issues raised by petitioner TransCo have been resolved in the similar case of *National Transmission Corporation v. Commission on Audit*,[23] where the Court sustained the disallowance of a portion of the separation benefits of an employee corresponding to the period when he was still a contractual employee. In that case, the Court ruled that under the EPIRA Law contractual employees are entitled to separation benefits only if their appointments have been approved or attested to by the CSC.[24]

In this case, since there was no proof that Agulto's appointment was duly approved or attested to by the CSC, the disallowance

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[22] *Id.* at 19.

[23] G.R. No. 223625, November 22, 2016.

[24] *Id.*

of the amount of ₱22,965.81 was valid and proper. Thus, the Court finds no grave abuse of discretion on the part of respondent COA-CP in sustaining the disallowance.

The disallowed amount, however, need not be refunded by the members of petitioner TransCo's Board of Directors as well as by Agulto, following the ruling of the Court in *National Transmission Corporation —*

> The Court, nevertheless, finds that TransCo and Miranda be excused from refunding the disallowed amount notwithstanding the propriety of the ND in question. In view of TransCo's reliance on *Lopez*, which the Court now abandons, the Court grants TransCo's petition *pro hac vice* and absolved it from any liability in refunding the disallowed amount.
>
> On another note, even if the ND is to be upheld, Miranda should not be solidarily liable to refund the same. In *Silang v. COA,* the Court had ruled that passive recipients of the disallowed disbursements, who acted in good faith, are absolved from refunding the same, x x x[25]

WHEREFORE, the instant Petition is **PARTLY GRANTED**. The Decision No. 2016-278 dated September 28, 2016 of respondent Commission on Audit, Commission Proper, is **AFFIRMED with MODIFICATION** that the disallowed amount of ₱22,965.81 need not be refunded.

SO ORDERED.

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

Caguioa and *Tijam, JJ.,* on official leave.

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[25] *Id*.

SECOND DIVISION

[A.C. No. 10756. February 21, 2018]
(Formerly CBD Case No. 11-3218)

JUNIELITO R. ESPANTO, *complainant, vs.* **ATTY. ERWIN V. BELLEZA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CASES AGAINST LAWYERS ARE DISTINCT FROM AND PROCEED INDEPENDENTLY OF CIVIL AND CRIMINAL CASES, AND THE REAL QUESTION FOR DETERMINATION IS WHETHER OR NOT THE ATTORNEY IS STILL A FIT PERSON TO BE ALLOWED THE PRIVILEGES AS SUCH.—** [A]dministrative cases against lawyers belong to a class of their own. These cases are distinct from and proceed independently of civil and criminal cases. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.

2. **ID.; ID.; EXPECTED TO RESPECT AND ABIDE BY THE LAW, AND AVOID ANY ACT OR OMISSION THAT IS CONTRARY THERETO.—** Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public. Given the facts of the case, we find that Atty. Belleza failed to exercise the good faith required of a lawyer in handling the legal affairs of his client.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; COMPROMISES; COMPROMISE AGREEMENT; HAS THE FORCE OF *RES JUDICATA* BETWEEN THE PARTIES ONCE APPROVED BY FINAL ORDER OF THE COURT, AND SHOULD NOT BE DISTURBED EXCEPT FOR VICES OF CONSENT OR FORGERY.— Atty. Belleza should know that a compromise agreement once approved by final order of the court has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. Hence, when a decision on a compromise agreement is final and executory; it has the force of law and is conclusive between the parties. Compromise agreements are contracts, and contractual obligations between parties have the force of law between them and absent any allegation that the same are contrary to law, morals, good customs, public order or public policy, they must be complied with in good faith. Thus, when Atty. Belleza ignored the provisions of the compromise agreement and proceeded with the sale of the property even without the relocation survey, there is no question that he wantonly violated Canon 1 of the CPR.

4. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; SPECIAL ORDER OF DEMOLITION; EVEN IF THERE IS ALREADY A WRIT OF EXECUTION, THERE MUST STILL BE A NEED FOR A SPECIAL ORDER FOR THE PURPOSE OF DEMOLITION ISSUED BY THE COURT BEFORE THE OFFICER IN CHARGE CAN REMOVE IMPROVEMENTS OVER THE CONTESTED PROPERTY.— It is basic that there could be no demolition of building or structures without a writ of execution and demolition issued by the court. This Court in a number of decisions held that even if there is already a writ of execution, there must still be a need for a special order for the purpose of demolition issued by the court before the officer in charge can destroy, demolish or remove improvements over the contested property. x x x The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

5. LEGAL ETHICS; ATTORNEYS; SHOULD REPRESENT THEIR CLIENTS WITH ZEAL BUT WITHIN THE BOUNDS OF THE LAW.— We note that while lawyers owe entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice. Canon 19 of the Code of Professional Responsibility mandates lawyers to represent their clients with zeal but within the bounds of the law. They should not, therefore, misuse the rules of procedure to defeat the ends of justice or unduly delay a case, impede the execution of a judgment or misuse court processes. Time and again, the Court has reminded lawyers that their support for the cause of their clients should never be attained at the expense of truth and justice. While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of the law. It needs to be emphasized that the lawyer's fidelity to his client must not be pursued at the expense of truth and justice, and must be held within the bounds of reason and common sense. His responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions.

6. ID.; ID.; DISBARMENT OR SUSPENSION; GROUNDS; A LAWYER MAY BE DISBARRED OR SUSPENDED FOR MISCONDUCT, WHETHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY.— Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

D E C I S I O N

PERALTA, *J.*:

Before us is the verified Complaint[1] of Junielito R. Espanto (*Junielito*) against Atty. Erwin V. Belleza (*Atty. Belleza*) for grave misconduct, malpractice, deliberate falsehood, violation of oath of office and violation of the Code of Professional Responsibility in connection with the demolition of complainant's 2-storey residential house situated at *Barangay* Maya, MacArthur, Leyte, without his knowledge and against his will.

Complainant alleged that he is the owner of a 2-storey concrete residential house situated on a lot covered by Original Certificate of Title No. P-43641,[2] which was sold by his father to him on January 12, 2001.[3]

Junielito alleged that sometime in 2006 while working abroad, he was informed that Nelia Alibangbang-Miller (*Nelia*), their neighbor, was claiming that his house was encroaching on a portion of the adjoining lot she bought. Thereafter, Nelia filed a case for Recovery of Possession with Damages before the Municipal Circuit Trial Court (*MCTC*) of MacArthur-Mayorga, MacArthur, Leyte, docketed as Civil Case No. 75 against the Espantos.[4] However, Junielito asserted that he was not included as party to said complaint despite Nelia's allegation that his house was encroaching on the latter's lot.

In January 2009, after Junielito went back to the Philippines, he averred that Nelia would always harass him to pay the portion of the land allegedly being encroached upon by his house. He complained that Nelia threatened him and his family that she would demolish their houses as she already won in the case she filed against his brother, sister and mother.

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[1] *Rollo*, pp. 2-5.

[2] *Id*. at 28.

[3] *Id*. at 29.

[4] *Id*. at 143-149; entitled *Nelia Alibangbang v. Ernesto Espanto, Revelina Pille, et al.*

On November 22, 2010, through a letter,[5] Atty. Belleza notified Junielito that he is given seven (7) days to vacate the subject property of his client, Nelia. After seven days, Nelia posted a notice on the door of his house stating "*To: Lito, your 7 days is up! Nelia Miller,*" and padlocked the gate of Junielito's house.[6]

On December 1, 2010, Junielito alleged that Atty. Belleza went to his house and threatened him that they will file a writ of execution to demolish his house if he will not agree to sell and vacate his house. Junielito lamented that while he initially refused, he eventually gave in as he was already tired of his situation.

On the same day, because Junielito was initially reluctant, Nelia and Atty. Belleza assured him that he will be informed of the final details of the sale should there be a buyer of the property. Junielito alleged that Atty. Belleza drafted an acknowledgment receipt[7] where it was indicated therein that he received the amount of ₱50,000.00 as a partial payment, and that he will receive the final percentage of the sale price when the property of Nelia is sold. Thereafter, Atty. Belleza and the Spouses Miller told him to vacate the house to facilitate its sale and to be able to make the necessary repairs to which he complied as he believed their sincerity and honesty.

Thus, in the morning of February 14, 2011, Junielito was surprised to receive a text message from his niece, Elenita Pille, informing him that his house was being demolished with the participation of Nelia and a certain Irene Tano (*Irene*), allegedly the buyer of the property.

Junielito lamented that when he got hold of the Deed of Absolute Sale[8] executed by Nelia and Irene, which was prepared and notarized by Atty. Belleza, he then realized that the latter defrauded him as shown by the fact that he facilitated the sale

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[5] *Id*. at 38.

[6] *Id*. at 39.

[7] *Id.* at 40.

[8] *Id*. at 41.

without his knowledge. Junielito felt aggrieved as they agreed that Atty. Belleza and Nelia will inform him should there be a buyer of the property so he can participate in the sale transaction, considering that his house sits on a portion of Nelia's property. However, not only did Atty. Belleza fail to inform him of the sale of the property, but they also had his house demolished without his knowledge and consent, and without permit from the municipal government.

Likewise, Junielito pointed out that in his Counter-Affidavit[9] dated April 30, 2011Atty. Belleza lied when he stated therein that Civil Case No. 75 has been decided with finality, when in truth and in fact, said case has yet to be decided with finality as shown by the Certification[10] dated May 19, 2011 issued by Melba Lagunzad, Clerk of Court II, 13th MCTC, MacArthur-Mayorga, MacArthur, Leyte.

Junielito also alleged that in the Counter-Affidavit[11] dated April 30, 2011 of the Spouses Miller, they lied when they made it appear that the ₱50,000.00 was given to him out of pity when infact it was a partial payment and guarantee that he will be informed of the sale should there be anyone interested to buy his property.

Junielito expressed his frustration as he believed that Atty. Belleza, a lawyer, was supposed to be an instrument in the administration of justice. However, given his above-mentioned actuations and behavior, Atty. Belleza not only failed to observe his duty and obligations as a lawyer but he likewise showed his unfitness to be retained as member of the bar. He, thus, pray that Atty. Belleza be suspended or disbarred from the practice of law.

On October 7, 2011, the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*), ordered Atty. Belleza to submit his Answer on the complaint against him.[12]

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[9] *Id*. at 89-91.

[10] *Id*. at 80.

[11] *Id*. at 81-83.

[12] *Id*. at 101.

In his Answer[13] dated November 10, 2011, Atty. Belleza countered that there was already a Compromise Agreement between the parties in Civil Case No. 75, which was approved by the court on December 27, 2006.[14] He, likewise, claimed that he merely typed and printed the acknowledgment receipt and served as witness to the issuance of the same.He further denied that he had any participation in the demolition of complainant's house.

In its Report and Recommendation[15] dated July 19, 2012, the IBP-CBD recommended that Atty. Belleza be suspended from the practice of law for six (6) months for his deliberate disregard of Canon 1 of the Code of Professional Responsibility.

However, the IBP-Board of Governors, in Notice of Resolution No. XX-2013-761,[16] dated June 21, 2013, resolved to adopt and approve with modification the Report and Recommendation of the IBP-CBD, and instead suspended Atty. Belleza from the practice of law for three (3) months.

We concur with the findings and recommendation of the IBP-CBD.

Well established is the rule that administrative cases against lawyers belong to a class of their own. These cases are distinct from and proceed independently of civil and criminal cases.[17] Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such.Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal

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[13] *Id.* at 110-114.

[14] *Id.* at 209-212.

[15] *Id.* at 219-223.

[16] *Id.* at 218.

[17] *Gonzales v. Atty. Alcaraz*, 534 Phil. 471, 481-482 (2006), citing *Gatchalian Promotions, Talents Pool, Inc. v. Naldoza*, 374 Phil. 1, 9 (1999).

profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[18] Corollarily, We will limit the issue on whether Atty. Belleza committed transgressions that would question his fitness to practice law, and thus, refrain from discussing issues that are judicial in nature.

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes.To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public.[19]

Given the facts of the case, we find that Atty. Belleza failed to exercise the good faith required of a lawyer in handling the legal affairs of his client. Even without touching the issue of the subject properties' ownership, Atty. Belleza cannot deny that the subject property sold by Nelia to Irene was still pending litigation due to the alleged encroachment of Junielito's house on the property of Nelia. It was precisely the reason why they filed a complaint for recovery of possession against Junielito's relatives. Moreover, when Atty. Belleza sent a notice to vacate Nelia's property to Junielito on November 22, 2010, the civil case was still pending litigation.

As noted by the IBP-CBD, the acknowledgment receipt of ₱50,000.00 issued by Nelia as witnessed and signed by Atty. Belleza is an evidence by itself that he had knowledge of Junielito's interest on the property even if he disputes the latter's ownership of the subject property. We quote the acknowledgment receipt for clarification, to wit:

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[18] *Id*.

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

I, LITO ESPANTO acknowledge receipt of the sum of Fifty Thousand (₱50,000.00) pesos, Philippine Currency from Nelia Miller as ***partial payment*** towards sale of "house". ***I acknowledged I will receive a final percentage of sale price when house and lot by Nelia Miller is ultimately sold. Final sales details will be disclosed immediately to me when all property is sold and final payment will be made at that time. I acknowledge sale price cannot be "predetermined" due to economic conditions.***

x x x x x x x x x[20]

Upon review of the foregoing acknowledgment receipt, it can be inferred that Junielito acknowledged that he received ₱50,000.00 as partial payment and that he will receive the final percentage of sale price when house and lot by Nelia is sold. It likewise stated therein that Junielito has the right to be informed of the final sale price and other details related to the sale. Considering that Junielito was infact paid *albeit* partial and was given the right to be informed of the final sale details, it clearly shows that Nelia and Atty. Belleza recognized Junielito's interest as an owner although it pertains only to a portion of Nelia's property where his house sits. Why else would they agree on informing Junielito of such material information if they knew that he has no right whatsoever with the property being sold.

It should also be pointed out that Atty. Belleza neither denied the existence of the acknowledgment receipt nor the fact that he signed the same.[21] Thus, given the foregoing circumstances, it can be presumed that Atty. Belleza knew that the sale of the property will necessarily affect Junielito. Consequently, when they sold the property of Nelia without informing Junielito despite their agreement to such effect, Atty. Belleza not only breached their agreement and betrayed Junielito's trust; he also instigated a malicious and unlawful transaction to the prejudice of Junielito.

Furthermore, even assuming there was already a compromise agreement, it was malicious to sell Nelia's property without

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[20] *Rollo*, p. 153. (Emphasis ours.)

[21] *Rollo*, p. 231.

complying with the conditions and agreements set forth therein. Atty. Belleza knew that one of the issues sought to be resolved in said case was the issue on whether Junielito's house was encroaching on Nelia's property. However, said issue could not be resolved without settling the boundaries of the lots, which explains why the compromise agreement contained provisions for a relocation survey. For clarification, We quote the pertinent portion of the compromise agreement as thus:

1. Parties agreed to relocate the subject properties designated as Cadastral Lot Nos. 127, and 159;

2. Parties agreed that a commissioner be appointed by the Court to conduct the relocation survey which be (sic) composed of a qualified and licensed geodetic engineer from the office of the Land and Surveys Division of the Department Environment and Natural Resources, Sto. Niño, Extension, Tacloban City;

x x x x x x x x x

4. Parties likewise agreed that if ever it will be found out by the result of the survey that indeed defendants encroached a portion of the land of the plaintiff designated as Cadastral Lot No. 159, parties have the following options:

a. Defendants will buy from the plaintiff the whole area encroached at a reasonable price; or

b. If defendants cannot afford, defendants shall buy only the area encroached which the house of the defendant is located with reasonable yard at reasonable price and defendant shall vacate the remaining area and transfer to the unoccupied portion of lot 127 vacated by the heirs of Onofre Lagarto provided further that plaintiff will be responsible to the heirs of Onofre Lagarto for them to remove their house; or

c. Plaintiff shall buy the value of the house at a reasonable price;

5. That if ever if (sic) it's found out by the relocation survey that the defendants have not encroached the land of the plaintiff designated as Cadastral Lot No. 159, then, plaintiff will not disturb the peaceful possession of the defendants and would voluntarily dismiss the above-entitled complaint;[22]

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[22] *Id*. at 84-85. (Emphasis ours)

However, when Junielito's house was demolished on February 14, 2011, it appears that no relocation survey was conducted on the subject properties. In fact, in Order[23] dated April 4, 2011, the court ordered the appearance of the parties in Civil Case No. 75 since while there was already a compromise agreement entered into by them, the court wanted to verify if a relocation survey has been conducted on the lots subject of the case as the records were bereft of any showing that a commissioner's report has been submitted to the court.

Atty. Belleza should know that a compromise agreement once approved by final order of the court has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery.[24] Hence, when a decision on a compromise agreement is final and executory; it has the force of law and is conclusive between the parties. Compromise agreements are contracts,[25] and contractual obligations between parties have the force of law between them and absent any allegation that the same are contrary to law, morals, good customs, public order or public policy, they must be complied with in good faith.[26] Thus, when Atty. Belleza ignored the provisions of the compromise agreement and proceeded with the sale of the property even without the relocation survey, there is no question that he wantonly violated Canon 1 of the CPR.

Moreover, as found during the mandatory conference before the IBP, Atty. Belleza knew that complainant was not a party in Civil Case No. 75, *albeit*, his 2-storey concrete residential house appeared to be encroaching on Nelia's property. Thus, even assuming that there was a valid compromise agreement in Civil Case No. 75, said judgment based on compromise agreement will not bind complainant. Consequently, even if there was already a writ of execution, the same will not likewise bind complainant. Moreso, while Atty. Belleza claims that there

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[23] *Id*. at 175.

[24] *Spouses Martir v. Spouses Verano*, 529 Phil. 120, 125 (2006).

[25] *Spouses San Antonio v. Court of Appeals*, 423 Phil. 8,19 (2001).

[26] *Id*.

was a valid compromise agreement, he, however, failed to show that there was a demolition order issued by the court. There was likewise no demolition permit issued by the local government.[27]

It is basic that there could be no demolition of building or structures without a writ of execution and demolition issued by the court. This Court in a number of decisions held that even if there is already a writ of execution, there must still be a need for a special order for the purpose of demolition issued by the court before the officer in charge can destroy, demolish or remove improvements over the contested property.[28] The pertinent provisions are the following:

Before the removal of an improvement must take place, there must be a special order, hearing and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides:

> (d) Removal of improvements on property subject of execution. When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

The above-stated rule is clear and needs no interpretation. If demolition is necessary, there must be a hearing on the motion filed and with due notices to the parties for the issuance of a special order of demolition.[29]

The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that every person must, in the exercise of his rights and in the performance of his duties, act with justice,

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[27] *Rollo*, p. 158.

[28] *Asilo, Jr. v. People*, 660 Phil. 329, 353 (2011).

[29] *Id*. (Citation omitted)

give everyone his due, and observe honesty and good faith.[30] Furthermore, it appeared that when the demolition was made on February 14, 2011, the case has not yet attained finality as evidenced by a certification issued by Clerk of Court Melba E. Lagunzad of the 13th MCTC of MacArthur-Mayorga, MacArthur, Leyte on May 19, 2011.[31]

In his last ditch effort to exonerate himself, Atty. Belleza denied that he or his client consented or had knowledge or participated on the demolition and pointed instead on the buyer, Irene, as the sole perpetrator of the illegal demolition. We are, however, unconvinced since the demolition would not have happened if Atty. Belleza and his client did not sell the subject property to Irene in violation of the compromise agreement and while Civil Case No. 75 is still pending litigation. Thus, Atty. Belleza cannot wash his hands from liability as to the illegal demolition of complainant's house since in the first place, he facilitated the sale of the subject property.

Clearly, Atty. Belleza's actuations which resulted in the demolition of Junielito's house violates Canon 1 of the Code of Professional Responsibility which mandates that a lawyer must uphold the Constitution and promote respect for the legal processes. In fact, contrary to this edict, Atty. Belleza's acts of demanding Junielito to vacate his house, and the selling of the property while Civil Case no. 75 was still pending, he violated the basic constitutional right of Junielito not to be deprived of a right or property without due process of law.

Despite his assertions of good faith, the Court cannot turn a blind eye on Atty. Belleza's acts of: (1) issuing the notice to vacate to Junielito while the case was still pending litigation; (2) failing to inform Junielito of the sale of Nelia's property in contravention to the stipulation in the acknowledgment receipt; and (3) facilitating, drafting and notarizing of the deed of sale between Nelia and Irene in violation of the compromise

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[30] *Id*. at 354.

[31] *Rollo*, p. 80.

agreement due to the absence of relocation survey. If the Court allows these irregular practice for the reason that lawyers are constrained to suit their client's interests, the Court would, in effect, sanction impropriety and wrongdoing.

We note that while lawyers owe entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice. Canon 19 of the Code of Professional Responsibility mandates lawyers to represent their clients with zeal but within the bounds of the law. They should not, therefore, misuse the rules of procedure to defeat the ends of justice or unduly delay a case, impede the execution of a judgment or misuse court processes.[32]

Time and again, the Court has reminded lawyers that their support for the cause of their clients should never be attained at the expense of truth and justice. While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of the law. It needs to be emphasized that the lawyer's fidelity to his client must not be pursued at the expense of truth and justice, and must be held within the bounds of reason and common sense. His responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions.[33]

PENALTY

Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction

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[32] *Eternal Gardens Memorial Park Corp. v. Court of Appeals,* 355 Phil. 369, 380 (1998).

[33] *Plus Builders, Inc. v. Atty. Revilla, Jr.*, 533 Phil. 250, 261 (2006), citing *Choa v. Chiongson*, 329 Phil. 270, 276 (1996).

of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

Here, the acts of Atty. Belleza in: (1) issuing the notice to vacate to Junielito while the case was still pending litigation; (2) failing to inform Junielito of the sale of Nelia's property in contravention to the stipulation in the acknowledgment receipt; and (3) facilitating, drafting and notarizing the deed of sale between Nelia and Irene in violation of the compromise agreement due to the absence of relocation survey, clearly constitute malpractice and gross misconduct in his office as attorney, for which a suspension from the practice of law for six (6) months is warranted.

WHEREFORE, the Court finds Atty. Erwin V. Belleza **GUILTY** of violations of Canons 1 and 19 of the Code of Professional Responsibility for which he is **SUSPENDED** from the practice of law for a period of six (6) months, effective immediately upon receipt of this Decision, with a **STERN WARNING** that a commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

Let a copy of this Decision be furnished the Office of the Bar Confidant to be appended to Atty. Erwin V. Belleza's personal record as a member of the Bar. Likewise, let copies of the same be served on the IBP, and the OCA, which is directed to circulate them to all courts in the country for their information and guidance.

Atty. Erwin V. Belleza is **DIRECTED** to inform the Court of the date of his receipt of this Decision so that the Court can determine the reckoning point when his suspension shall take effect.

SO ORDERED.

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

Caguioa, J., on wellness leave.

THIRD DIVISION

[G.R. No. 196045. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **AMADOR PASTRANA and RUFINA ABAD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; REQUISITES FOR ISSUANCE THEREOF.— Article III, Section 2 of the Constitution guarantees every individual the right to personal liberty and security of homes against unreasonable searches and seizures, x x x Rule 126, Sections 4 and 5 of the 2000 Rules on Criminal Procedure provide for the requisites for the issuance of a search warrant, x x x Hence, in the landmark case of *Stonehill v. Diokno (Stonehill)*, the Court stressed two points which must be considered in the issuance of a search warrant, namely: (1) that no warrant shall issue but *upon probable* cause, to be determined personally by the judge; and (2) that the warrant shall *particularly* describe the things to be seized. Moreover, in *Stonehill,* on account of the seriousness of the irregularities committed in connection with the search warrants involved in that case, the Court deemed it fit to amend the former Rules of Court by providing that "a search warrant shall not issue except upon probable cause *in connection with one specific offense*."

2. ID.; ID.; ID.; THE SEARCH WARRANT MUST BE ISSUED FOR ONE SPECIFIC OFFENSE; VIOLATED WHEN SEARCH WARRANT NO. 01-118 WAS ISSUED FOR VIOLATION OF RA 8799 (THE SECURITIES REGULATION CODE) AND FOR ESTAFA (ART. 315, RPC).— One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause which, under the Rules, must be in connection with one specific offense to prevent the issuance of a scatter–shot warrant. In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that **an offense has been committed** and that the objects sought in connection with the offense are in the place sought to be searched. x x x In this

case, Search Warrant No. 01-118 was issued for "violation of R.A. No. 8799 (The Securities Regulation Code) and for *estafa* (Art. 315, RPC)." x x x [C]ontrary to petitioner's claim that violation of Section 28.1 of the SRC and *estafa* are so intertwined with each other that the issuance of a single search warrant does not violate the one-specific-offense rule, the two offenses are entirely different from each other and neither one necessarily includes or is necessarily included in the other. An offense may be said to necessarily include another when some of the essential elements or ingredients of the former constitute the latter. And vice versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form part of those constituting the latter.

3. CRIMINAL LAW; *ESTAFA* IN CONNECTION WITH SECTION 28.1 OF THE SECURITIES REGULATION CODE (SRC).— The elements of *estafa* in general are the following: (a) that an accused defrauded another by abuse of confidence, or by means of deceit; and (b) that damage and prejudice capable of pecuniary estimation is caused the offended party or third person. On the other hand, Section 28.1 of the SRC penalizes the act of performing dealer or broker functions without registration with the SEC. For such offense, defrauding another and causing damage and prejudice capable of pecuniary estimation are not essential elements. Thus, a person who is found liable of violation of Section 28.1 of the SRC may, in addition, be convicted of *estafa* under the RPC. In the same manner, a person acquitted of violation of Section 28.1 of the SRC may be held liable for *estafa*. Double jeopardy will not set in because violation of Section 28.1 of the SRC is *malum prohibitum*, in which there is no necessity to prove criminal intent, whereas *estafa* is *malum in se,* in the prosecution of which, proof of criminal intent is necessary.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT REQUIRES REASONABLE PARTICULARITY OF DESCRIPTION OF THE THINGS TO BE SEIZED.— It is elemental that in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent

them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. In *Bache and Co. (Phil.), Inc. v. Judge Ruiz*, it was pointed out that one of the tests to determine the particularity in the description of objects to be seized under a search warrant is when the things described are limited to those which bear **direct relation to the offense for which the warrant is being issued.** In addition, under the Rules of Court, the following personal property may be the subject of a search warrant: (i) the subject of the offense; (ii) fruits of the offense; or (iii) those used or intended to be used as the means of committing an offense.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Arteche Garrido & Associates for respondents.

D E C I S I O N

MARTIRES, *J.*:

The sacred right against an arrest, search or seizure without valid warrant is not only ancient. It is also zealously safeguarded. The Constitution guarantees the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Any evidence obtained in violation of said right shall thus be inadmissible for any purpose in any proceeding. Indeed, while the power to search and seize may at times be necessary to the public welfare, still it must be exercised and the law implemented without contravening the constitutional rights of the citizens; for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.[1]

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[1] *Valdez v. People*, G.R. No. 170180, 23 November 2007, citing 1987 Constitution, Article III, Section 2 and *People v. Aruta*, 351 Phil. 868, 895 (1998).

This is a petition for review on certiorari seeking to reverse and set aside the Decision,[2] dated 22 September 2010, and Resolution,[3] dated 11 March 2011, of the Court of Appeals *(CA)* in CA-G.R. CV No. 77703. The CA affirmed the Omnibus Order,[4] dated 10 May 2002, of the Regional Trial Court, Makati City, Branch 58 *(RTC),* which nullified Search Warrant No. 01-118.

THE FACTS

On 26 March 2001, National Bureau of Investigation *(NBI)* Special Investigator Albert Froilan Gaerlan *(SI Gaerlan)* filed a Sworn Application for a Search Warrant[5] before the RTC, Makati City, Branch 63, for the purpose of conducting a search of the office premises of respondents Amador Pastrana and Rufina Abad at Room 1908, 88 Corporate Center, Valero Street, Makati City. SI Gaerlan alleged that he received confidential information that respondents were engaged in a scheme to defraud foreign investors. Some of their employees would call prospective clients abroad whom they would convince to invest in a foreign-based company by purchasing shares of stocks. Those who agreed to buy stocks were instructed to make a transfer for the payment thereof. No shares of stock, however, were actually purchased. Instead, the money collected was allocated as follows: 42% to respondent Pastrana's personal account; 32% to the sales office; 7% to investors-clients, who threatened respondents with lawsuits; 10% to the cost of sales; and 8% to marketing. Special Investigator Gaerlan averred that the scheme not only constituted *estafa* under Article 315 of the Revised Penal Code *(RPC)*, but also a violation of Republic Act *(R.A.)* No. 8799 or the Securities Regulation Code *(SRC)*.[6]

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[2] *Rollo*, pp. 47-63; penned by Associate Justice Ramon R. Garcia with Associate Justice Rosmari D. Carandang and Associate Justice Manuel M. Barrios, concurring.

[3] *Id*. at 64-65.

[4] *Id*. at 123-132; penned by Judge Winlove M. Dumayas.

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

[6] *Id*.

In support of the application for search warrant, SI Gaerlan attached the affidavit of Rashed H. Alghurairi, one of the complainants from Saudi Arabia;[7] the affidavits of respondents' former employees who actually called clients abroad;[8] the articles of incorporation of domestic corporations used by respondents in their scheme;[9] and the sketch of the place sought to be searched.[10]

On 26 March 2001, Judge Tranquil Salvador, Jr. *(Judge Salvador, Jr.)* of the RTC, Branch 63, Makati City, issued Search Warrant No. 01-118, *viz*:

PEOPLE OF THE PHILIPPINES, -versus- AMADOR PASTRANA AND RUFINA ABAD of 1908 88 Corporate Center, Valero St., Makati City	Search Warrant No. 01-118 For: Violation of R.A. 8799 (The Securities Regulation Code) and Estafa (Art. 315, RPC)

SEARCH WARRANT

TO ANY PEACE OFFICER:
G R E E T I N G S:

It appearing to the satisfaction of the undersigned after examining under oath the applicant NBI [Special Investigator] ALBERT FROILAN G. GAERLAN and his witnesses RONNIE AROJADO and MELANIE O. BATO, that there is probable cause to believe that AMADOR PASTRANA and RUFINA ABAD have in their possession/control located in [an] office premises located at 1908 88 Corporate Center, Valero St., Makati City, as shown in the application for search warrant the following documents, articles and items, to wit:

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[7] *Id*. at 78-82.

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

[9] Records (Vol. I), pp. 74-167.

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

Telephone bills showing the companies[‘] calls to clients abroad; list of brokers and their personal files; incorporation papers of all these companies[,] local and abroad; sales agreements with clients; copies of official receipts purposely for clients; fax messages from the clients; copies of credit advise from the banks; clients[‘] message slips; company brochures; letterheads; envelopes; copies of listings of personal assets of Amador Pastrana; list of clients and other showing that these companies acted in violation of their actual registration with the SEC.

which should be seized and brought to the undersigned.

You are hereby commanded to make an immediate search anytime of the day of the premises above-described and forewith seize and take possession thereof and bring said documents, articles and items to the undersigned to be dealt with as the law directs.

The officer(s) making the search shall make a return of their search within the validity of the warrant.

This search warrant shall be valid for ten (10) days from this date.[11]

Thus, on 27 March 2001, NBI agents and representatives from the Securities and Exchange Commission *(SEC)* proceeded to respondents’ office to search the same. The search was witnessed by Isagani Paulino and Gerardo Denna, Chief Security Officer and Building Administrator, respectively of 88 Corporate Center. Pursuant to the Return,[12] dated 2 April 2001, and the Inventory Sheet[13] attached thereto, the NBI and the SEC were able to seize the following:

1. Eighty-nine (89) boxes containing the following documents:
   a. Telephone bills of the company calls to clients;
   b. List of brokers and 201 files;
   c. Sales agreements;
   d. Official receipts;
   e. Credit advise;
   f. Fax messages;

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[11] *Rollo*, p. 87.

[12] *Id.* at 88.

[13] *Id.* at 89.

g. Clients message slips;
h. Company brochures;
i. Letterheads; and
j. Envelopes.

2. Forty (40) magazine stands of brokers' records;

3. Offshore incorporation papers;

4. Lease contracts; and

5. Vouchers/ledgers.

On 11 June 2001, respondent Abad moved to quash Search Warrant No. 01-118 because it was issued in connection with two (2) offenses, one for violation of the SRC and the other for *estafa* under the RPC, which circumstance contravened the basic tenet of the rules of criminal procedure that search warrants are to be issued only upon a finding of probable cause in connection with one specific offense. Further, Search Warrant No. 01-118 failed to describe with specificity the objects to be seized.[14]

On 19 September 2001, pending the resolution of the motion to quash the search warrant, respondent Abad moved for the inhibition of Judge Salvador, Jr. She contended that the lapse of three (3) months without action on the motion to quash clearly showed Judge Salvador, Jr.'s aversion to passing judgment on his own search warrant.[15]

In an Order,[16] dated 15 November 2001, Judge Salvador, Jr. voluntarily inhibited himself from the case. Hence, the case was re-raffled to the RTC, Makati City, Branch 58.

The Regional Trial Court Ruling

In an Omnibus Order, dated 10 May 2002, the RTC ruled that the search warrant was null and void because it violated

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[14] *Id.* at 90-106.

[15] *Id.* at 107-120.

[16] *Id.* at 121-122.

the requirement that a search warrant must be issued in connection with one specific offense only. It added that the SRC alone punishes various acts such that one would be left in limbo divining what specific provision was violated by respondents; and that even *estafa* under the RPC contemplates multifarious settings. The RTC further opined that the search warrant and the application thereto as well as the inventory submitted thereafter were all wanting in particularization. The *fallo* reads:

> WHEREFORE, Search Warrant No. 01-118 issued on March 26, 2001 is hereby QUASHED and NULLIFIED. All documents, articles and items seized are hereby ordered to be RETURNED to petitioner/ accused. Any and all items seized, products of the illegal search are INADMISSIBLE in evidence and cannot be used in any proceeding for whatever purpose. The petition to cite respondent SEC and NBI officers for contempt of court is DENIED for lack of merit.
>
> SO ORDERED.[17]

Aggrieved, petitioner, through the Office of the Solicitor General elevated an appeal before the CA.

The Court of Appeals Ruling

In its decision, dated 22 September 2010, the CA affirmed the ruling of the RTC. It declared that Search Warrant No. 01-118 clearly violated Section 4, Rule 126 of the Rules of Court which prohibits the issuance of a search warrant for more than one specific offense, because the application failed to specify what provision of the SRC was violated or even what type of *estafa* was committed by respondents. The appellate court observed that the application for search warrant never alleged that respondents or their corporations were not SEC-registered brokers or dealers, contrary to petitioner's allegation that respondents violated Section 28.1 of the SRC which makes unlawful the act of buying or selling of stocks in a dealer or broker capacity without the requisite SEC registration.

The CA further pronounced that the subject search warrant failed to pass the test of particularity. It reasoned that the inclusion

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[17] *Id*. at 132.

of the phrase "other showing that these companies acted in violation of their actual registration with the SEC" rendered the warrant all-embracing as it subjected any and all records of respondents inside the office premises to seizure and the implementing officers effectively had unlimited discretion as to what property should be seized. The CA disposed the case in this wise:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The Omnibus Order dated May 10, 2002 of the Regional Trial Court, Branch 58, Makati City is AFFIRMED.
>
> SO ORDERED.[18]

Petitioner moved for reconsideration but the motion was denied by the CA in its resolution, dated 11 March 2011. Hence, this petition.

ASSIGNMENT OF ERRORS

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN SUSTAINING THE TRIAL COURT'S ORDER WHICH QUASHED SEARCH WARRANT NO. 01-118 CONSIDERING THAT:

I.

READ TOGETHER, THE ALLEGATIONS IN NBI AGENT GAERLAN'S APPLICATION FOR A SEARCH WARRANT AND SEARCH WARRANT NO. 01-118 SHOW THAT SAID WARRANT WAS ISSUED IN CONNECTION WITH THE CRIME OF VIOLATION OF SECTION 28.1 OF R.A. NO. 8799.

II.

SEARCH WARRANT NO. 01-118 PARTICULARLY DESCRIBED THE ITEMS LISTED THEREIN WHICH SHOW A REASONABLE NEXUS TO THE OFFENSE OF ACTING AS STOCKBROKER WITHOUT THE REQUIRED LICENSE FROM THE SEC. THE IMPUGNED STATEMENT FOUND AT THE END OF THE ENUMERATION OF

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[18] *Id.* at 62-63.

ITEMS DID NOT INTEND TO SUBJECT ALL DOCUMENTS OF RESPONDENTS TO SEIZURE BUT ONLY THOSE "SHOWING THAT THESE COMPANIES ACTED IN VIOLATION OF THEIR ACTUAL REGISTRATION WITH THE SEC."[19]

Petitioner argues that violation of Section 28.1 of the SRC and *estafa* are so intertwined that the punishable acts defined in one of them can be considered as including or are necessarily included in the other; that operating and acting as stockbrokers without the requisite license infringe Section 28.1 of the SRC; that these specific acts of defrauding another by falsely pretending to possess power or qualification of being a stockbroker similarly constitute *estafa* under Article 315 of the RPC; and that both Section 28.1 of the SRC and Article 315 of the RPC penalize the act of misrepresentation, an element common to both offenses; thus, the issuance of a single search warrant did not violate the "one specific offense rule."[20]

Petitioner further contends that the subject search warrant is not a general warrant because the items listed therein show a reasonable nexus to the offense of acting as stockbrokers without the required license from the SEC; that the statement "and other showing that these companies acted in violation of their actual registration with the SEC" did not render the warrant void; and that the words "and other" only intend to emphasize that no technical description could be given to the items subject of the search warrant because of the very nature of the offense.[21]

In their comment,[22] respondents counter that the lower court was correct in ruling that the subject warrant was issued in connection with more than one specific offense; that *estafa* and violation of the SRC could not be considered as one crime because

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[19] *Id*. at 21-22.

[20] *Id*. at 23-32.

[21] *Id*. at 33-40.

[22] *Id*. at 235-257.

the former is punished under the RPC while the latter is punished under a special law; that there are many violations cited in the SRC that there can be no offense which is simply called "violation of R.A. No. 8799;" and that, similarly, there are three classes of *estafa* which could be committed through at least 10 modes, each one of them having elements distinct from those of the other modes.

Respondents assert that Search Warrant No. 01-118 does not expressly indicate that the documents, articles, and items sought to be seized thereunder are subjects of the offense, stolen or embezzled and other proceeds or fruits of the offense, or used or intended to be used as the means of committing an offense; that it is a general warrant because it enumerates every conceivable document that may be found in an office setting; that, as a result, it is entirely possible that in the course of the search for the articles and documents generally listed in the search warrant, those used and intended for legitimate purposes may be included in the seizure; that the concluding sentence in the subject warrant "and other showing that these companies acted in violation of their actual registration with the SEC" is a characteristic of a general warrant; and that it allows the raiding team unbridled latitude in determining by themselves what items or documents are evidence of the imputation that respondents and the corporations they represent are violating their registration with the SEC.[23]

In its reply,[24] petitioner avers that the validity of a search warrant may be properly evaluated by examining both the warrant itself and the application on which it was based; that the acts alleged in the application clearly constitute a transgression of Section 28.1 of the SRC; and that the nature of the offense for which a search warrant is issued is determined based on the factual recital of the elements of the subject crime therein and not the formal designation of the crime itself in its caption.

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[23] *Id*. at 247-250.

[24] *Id*. at 274-299.

THE COURT'S RULING

Article III, Section 2 of the Constitution guarantees every individual the right to personal liberty and security of homes against unreasonable searches and seizures, *viz*:

> 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.

The purpose of the constitutional provision against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasion of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted.[25]

Additionally, Rule 126, Sections 4 and 5 of the 2000 Rules on Criminal Procedure provide for the requisites for the issuance of a search warrant, to wit:

> SEC. 4. ***Requisites for issuing search warrant.*** A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.
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> SEC. 5. ***Examination of complainant; record.*** The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

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[25] *Nala v. Judge Barroso, Jr.,* 455 Phil. 999, 1007 (2003).

Hence, in the landmark case of *Stonehill v. Diokno (Stonehill)*,[26] the Court stressed two points which must be considered in the issuance of a search warrant, namely: (1) that no warrant shall issue but *upon probable* cause, to be determined personally by the judge; and (2) that the warrant shall *particularly* describe the things to be seized.[27] Moreover, in *Stonehill,* on account of the seriousness of the irregularities committed in connection with the search warrants involved in that case, the Court deemed it fit to amend the former Rules of Court by providing that "a search warrant shall not issue except upon probable cause *in connection with one specific offense*."

The search warrant must be issued for one specific offense.

One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause which, under the Rules, must be in connection with one specific offense to prevent the issuance of a scatter–shot warrant.[28] In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that **an offense has been committed** and that the objects sought in connection with the offense are in the place sought to be searched.[29]

In *Stonehill,* the Court, in declaring as null and void the search warrants which were issued for "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code," stated:

> In other words, no *specific* offense had been alleged in said applications. The averments thereof with respect to the offense committed were *abstract*. As a consequence, it was *impossible* for the judges who issued the warrants to have found the existence of

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[26] 126 Phil. 738 (1967).

[27] *Id*. at 747.

[28] *Tambasen v. People*, 316 Phil. 237, 243-244 (1995).

[29] *Del Castillo v. People*, 680 Phil. 447, 457 (2012).

probable cause, for the same presupposes the introduction of competent proof that the party against whom it is sought has performed *particular* acts, or committed *specific* omissions, violating a given provision of our criminal laws. As a matter of fact, the applications involved in this case do not allege any specific acts performed by herein petitioners. It would be the legal heresy, of the highest order, to convict anybody of a "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code," — as alleged in the aforementioned applications — without reference to any determinate provision of said laws; or

To uphold the validity of the warrants in question would be to wipe out completely one of the most fundamental rights guaranteed in our Constitution, for it would place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims caprice or passion of peace officers. This is precisely the evil sought to be remedied by the constitutional provision above quoted — to outlaw the so-called general warrants. It is not difficult to imagine what would happen, in times of keen political strife, when the party in power feels that the minority is likely to wrest it, even though by legal means.[30]

In *Philippine Long Distance Telephone Company v. Alvarez*,[31] the Court further ruled:

In the determination of probable cause, the court must necessarily determine whether an offense exists to justify the issuance or quashal of the search warrant because the personal properties that may be subject of the search warrant are very much intertwined with the "one specific offense" requirement of probable cause. The only way to determine whether a warrant should issue in connection with one specific offense is to juxtapose the facts and circumstances presented by the applicant with the elements of the offense that are alleged to support the search warrant.

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The one-specific-offense requirement reinforces the constitutional requirement that a search warrant should issue only on the basis of probable cause. Since the primary objective of applying for a search

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[30] *Supra* note 26 at 747-748.

[31] 728 Phil. 391 (2014).

warrant is to obtain evidence to be used in a subsequent prosecution for an offense for which the search warrant was applied, a judge issuing a particular warrant must satisfy himself that the evidence presented by the applicant establishes the facts and circumstances relating to this specific offense for which the warrant is sought and issued. x x x[32]

In this case, Search Warrant No. 01-118 was issued for "violation of R.A. No. 8799 (The Securities Regulation Code) and for *estafa* (Art. 315, RPC)."[33]

First, violation of the SRC is not an offense in itself for there are several punishable acts under the said law such as manipulation of security prices,[34] insider trading,[35] acting as dealer or broker without being registered with the SEC,[36] use of unregistered exchange,[37] use of unregistered clearing agency,[38] and violation of the restrictions on borrowings by members, brokers, and dealers[39] among others. Even the charge of "*estafa* under Article 315 of the RPC" is vague for there are three ways of committing the said crime: (1) with unfaithfulness or abuse of confidence; (2) by means of false pretenses or fraudulent acts; or (3) through fraudulent means. The three ways of committing *estafa* may be reduced to two, *i.e.*, (1) by means of abuse of confidence; or (2) by means of deceit. For these reasons alone, it can be easily discerned that Search Warrant No. 01-118 suffers a fatal defect.

Indeed, there are instances where the Court sustained the validity of search warrants issued for violation of R.A. No. 6425

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[32] *Id.* at 412-413 and 420.

[33] *Rollo*, p. 87.

[34] Section 24, R.A. No. 8799.

[35] Section 27, R.A. No. 8799.

[36] Section 28.1, R.A. No. 8799.

[37] Section 32, R.A. No. 8799.

[38] Section 41, R.A. No. 8799.

[39] Section 49, R.A. No. 8799.

or the then Dangerous Drugs Act of 1972. In *Olaes v. People,*[40] even though the search warrant merely stated that it was issued in connection with a violation of R.A. No. 6425, the Court did not nullify the same for it was clear in the body that it was issued for the specific offense of possession of illegal narcotics, *viz*:

> While it is true that the caption of the search warrant states that it is in connection with Violation of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, it is clearly recited in the text thereof that [t]here is probable cause to believe that Adolfo Olaes alias Debie and alias Baby of No. 628 Comia St., Filtration, Sta. Rita, Olongapo City, [**have] in their possession and control and custody** of marijuana dried stalks/leaves/seeds/cigarettes and other regulated/prohibited and exempt narcotics preparations which is the subject of the offense stated above. Although the specific section of the Dangerous Drugs Act is not pinpointed, there is no question at all of the specific offense alleged to have been committed as a basis for the finding of probable cause. The search warrant also satisfies the requirement in the Bill of Rights of the particularity of the description to be made of the place to be searched and the persons or things to be seized.[41] (emphasis supplied)

In *People v. Dichoso,*[42] the search warrant was also for violation of R.A. No. 6425, without specifying what provisions of the law were violated. The Court upheld the validity of the warrant:

> Appellants' contention that the search warrant in question was issued for more than one (1) offense, hence, in violation of Section 3, Rule 126 of the Rules of Court, is unpersuasive. He engages in semantic juggling by suggesting that **since illegal possession of shabu, illegal possession of marijuana and illegal possession of paraphernalia** are covered by different articles and sections of the Dangerous Drugs Act of 1972, the search warrant is clearly for more than one (1) specific offense. In short, following this theory, there should have been three (3) separate search warrants, one for illegal

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[40] 239 Phil. 468 (1987).

[41] *Id*. at 472.

[42] 295 Phil. 198 (1993).

possession of shabu, the second for illegal possession of marijuana and the third for illegal possession of paraphernalia. This argument is pedantic. The Dangerous Drugs Act of 1972 is a special law that deals specifically with dangerous drugs which are subsumed into prohibited and regulated drugs and defines and **penalizes categories of offenses which are closely related or which belong to the same class or species.** Accordingly, one (1) search warrant may thus be validly issued for the said violations of the Dangerous Drugs Act.[43] (emphases supplied)

Meanwhile, in *Prudente v. Dayrit,*[44] the search warrant was captioned: For Violation of P.D. No. 1866 (Illegal Possession of Firearms, etc.), the Court held that while "illegal possession of firearms is penalized under Section 1 of P.D. No. 1866 and illegal possession of explosives is penalized under Section 3 thereof, it cannot be overlooked that said decree is a codification of the various laws on illegal possession of firearms, ammunitions and explosives; such illegal possession of items destructive of life and property are related offenses or belong to the same species, as to be subsumed within the category of illegal possession of firearms, etc. under P.D. No. 1866."[45]

The aforecited cases, however, are not applicable in this case. Aside from its failure to specify what particular provision of the SRC did respondents allegedly violate, Search Warrant No. 01-118 also covered *estafa* under the RPC. Even the application for the search warrant merely stated:

Amador Pastrana and Rufina Abad through their employees scattered throughout their numerous companies call prospective clients abroad and convince them to buy shares of stocks in a certain company likewise based abroad. Once the client is convinced to buy said shares of stocks, he or she is advised to make a telegraphic transfer of the money supposedly intended for the purchase of the stocks. The transfer is made to the account of the company which contacted the client. Once the money is received, the same is immediately withdrawn and

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[43] *Id*. at 214.

[44] 259 Phil. 541 (1989).

[45] *Id*. at 554.

brought to the treasury department of the particular company. The money is then counted and eventually allocated to the following: 42% to Pastrana, 32% for the Sales Office, 7% for the redeeming clients (those with small accounts and who already threatened the company with lawsuits), 10% for the cost of sales and 8% goes to marketing. No allocation is ever made to buy the shares of stocks.[46]

Moreover, the SRC is not merely a special penal law. It is first and foremost a codification of various rules and regulations governing securities. Thus, unlike, the drugs law wherein there is a clear delineation between use and possession of illegal drugs, the offenses punishable under the SRC could not be lumped together in categories. Hence, it is imperative to specify what particular provision of the SRC was violated.

Second, to somehow remedy the defect in Search Warrant No. 01-118, petitioner insists that the warrant was issued for violation of Section 28.1 of the SRC, which reads, "No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission." However, despite this belated attempt to pinpoint a provision of the SRC which respondents allegedly violated, Search Warrant No. 01-118 still remains null and void. The allegations in the application for search warrant do not indicate that respondents acted as brokers or dealers without prior registration from the SEC which is an essential element to be held liable for violation of Section 28.1 of the SRC. It is even worthy to note that Section 28.1 was specified only in the SEC's Comment on the Motion to Quash,[47] dated 5 April 2002.

In addition, even assuming that violation of Section 28.1 of the SRC was specified in the application for search warrant, there could have been no finding of probable cause in connection with that offense. In *People v. Hon. Estrada*,[48] the Court pronounced:

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[46] *Rollo*, pp. 69-70.

[47] Records (Vol. IV), pp. 793-807.

[48] 357 Phil. 377 (1998).

The facts and circumstances that would show probable cause must be the best evidence that could be obtained under the circumstances. The introduction of such evidence is necessary especially in cases where the issue is the existence of the negative ingredient of the offense charged — for instance, **the absence of a license required by law, as in the present case — and such evidence is within the knowledge and control of the applicant who could easily produce the same.** But if the best evidence could not be secured at the time of application, the applicant must show a justifiable reason therefor during the examination by the judge. The necessity of requiring stringent procedural safeguards before a search warrant can be issued is to give meaning to the constitutional right of a person to the privacy of his home and personalities.[49] (emphasis supplied)

Here, the applicant for the search warrant did not present proof that respondents lacked the license to operate as brokers or dealers. Such circumstance only reinforces the view that at the time of the application, the NBI and the SEC were in a quandary as to what offense to charge respondents with.

Third, contrary to petitioner's claim that violation of Section 28.1 of the SRC and *estafa* are so intertwined with each other that the issuance of a single search warrant does not violate the one-specific-offense rule, the two offenses are entirely different from each other and neither one necessarily includes or is necessarily included in the other. An offense may be said to necessarily include another when some of the essential elements or ingredients of the former constitute the latter. And vice versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form part of those constituting the latter.[50]

The elements of *estafa* in general are the following: (a) that an accused defrauded another by abuse of confidence, or by means of deceit; and (b) that damage and prejudice capable of pecuniary estimation is caused the offended party or third person.[51] On

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[49] *Id*. at 392.

[50] *Daan v. Sandiganbayan*, 573 Phil. 368, 382 (2008).

[51] Luis B. Reyes, *Revised Penal Code (Book Two)*, 17th Edition, p. 776 (2008).

the other hand, Section 28.1 of the SRC penalizes the act of performing dealer or broker functions without registration with the SEC. For such offense, defrauding another and causing damage and prejudice capable of pecuniary estimation are not essential elements. Thus, a person who is found liable of violation of Section 28.1 of the SRC may, in addition, be convicted of *estafa* under the RPC. In the same manner, a person acquitted of violation of Section 28.1 of the SRC may be held liable for *estafa*. Double jeopardy will not set in because violation of Section 28.1 of the SRC is *malum prohibitum*, in which there is no necessity to prove criminal intent, whereas *estafa* is *malum in se,* in the prosecution of which, proof of criminal intent is necessary.

Finally, the Court's rulings in *Columbia Pictures, Inc. v. CA (Columbia)*[52] and *Laud v. People (Laud)*[53] even militate against petitioner. In *Columbia*, the Court ruled that a search warrant which covers several counts of a certain specific offense does not violate the one-specific-offense rule, *viz*:

> That there were several counts of the offense of copyright infringement and the search warrant uncovered several contraband items in the form of pirated videotapes is not to be confused with the number of offenses charged. The search warrant herein issued does not violate the one-specific-offense rule.[54]

In *Laud*, Search Warrant No. 09-14407 was adjudged valid as it was issued only for one specific offense – that is, for Murder, albeit for six (6) counts.

In this case, the core of the problem is that the subject warrant did not state one specific offense. It included violation of the SRC which, as previously discussed, covers several penal provisions and *estafa*, which could be committed in a number of ways.

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[52] 329 Phil. 875 (1996).

[53] 747 Phil. 503 (2014).

[54] *Columbia Pictures, Inc. v. CA*, *supra* note 52 at 928.

Hence, Search Warrant No. 01-118 is null and void for having been issued for more than one specific offense.

Reasonable particularity of the description of the things to be seized

It is elemental that in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities.[55]

In *Bache and Co. (Phil.), Inc. v. Judge Ruiz*,[56] it was pointed out that one of the tests to determine the particularity in the description of objects to be seized under a search warrant is when the things described are limited to those which bear **direct relation to the offense for which the warrant is being issued.**[57]

In addition, under the Rules of Court, the following personal property may be the subject of a search warrant: (i) the subject of the offense; (ii) fruits of the offense; or (iii) those used or intended to be used as the means of committing an offense.[58]

Here, as previously discussed, Search Warrant No. 01-118 failed to state the specific offense alleged committed by respondents. Consequently, it could not have been possible for

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[55] *Hon Ne Chan, et al. v. Honda Motor Co., Ltd. and Honda Phil., Inc.*, 565 Phil. 545, 557 (2007).

[56] 148 Phil. 794 (1971).

[57] *Id.* at 811.

[58] Section 3, Rule 126, Rules of Court.

the issuing judge as well as the applicant for the search warrant to determine that the items sought to be seized are connected to any crime. Moreover, even if Search Warrant No. 01-118 was issued for violation of Section 28.1 of the SRC as petitioner insists, the documents, articles and items enumerated in the search warrant failed the test of particularity. The terms used in this warrant were too all-embracing, thus, subjecting all documents pertaining to the transactions of respondents, whether legal or illegal, to search and seizure. Even the phrase "and other showing that these companies acted in violation of their actual registration with the SEC" does not support petitioner's contention that Search Warrant No. 01-118 was indeed issued for violation of Section 28.1 of the SRC; the same could well-nigh pertain to the corporations' certificate of registration with the SEC and not just to respondents' lack of registration to act as brokers or dealers.

In fine, Search Warrant No. 01-118 is null and void for having been issued for more than one offense and for lack of particularity in the description of the things sought for seizure.

WHEREFORE, the petition is **DENIED**. The 22 September 2010 Decision and 11 March 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 77703 are **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199172. February 21, 2018]

HON. LEONCIO EVASCO, JR., in his capacity as OIC CITY ENGINEER OF DAVAO CITY and HON. WENDEL AVISADO, in his capacity as THE CITY ADMINISTRATOR OF DAVAO CITY, *petitioners, vs.* **ALEX P. MONTAÑEZ, doing business under the name and style APM or AD AND PROMO MANAGEMENT,** *respondents,* **DAVAO BILLBOARD AND SIGNMAKERS ASSOCIATION (DABASA), INC.**, *respondent-intervenor.*

SYLLABUS

1. **POLITICAL LAW; LOCAL GOVERNMENT; ORDINANCES; REQUISITES FOR VALIDITY.—** It is settled that an ordinance's validity shall be upheld if the following requisites are present: *First*, the local government unit must possess the power to enact an ordinance covering a particular subject matter and according to the procedure prescribed by law. *Second*, the ordinance must not contravene the fundamental law of the land, or an act of the legislature, or must not be against public policy or must not be unreasonable, oppressive, partial, discriminating or in derogation of a common right.

2. **ID.; ID.; ID.; ORDINANCE NO. 092-2000; THE POWER TO REGULATE BILLBOARDS WITHIN DAVAO CITY WAS VALIDLY DELEGATED TO THE LOCAL CITY COUNCIL VIA DAVAO'S CHARTER.—** Ordinance No. 092-2000, which regulates the construction and installation of building and other structures such as billboards within Davao City, is an exercise of police power. It has been stressed in *Metropolitan Manila Development Authority v. Bel-Air Village Association* that while police power is lodged primarily in the National Legislature, Congress may delegate this power to local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body. Republic Act No. 4354 otherwise known as the Revised Charter of the City of Davao (Davao City Charter), enacted on June 19, 1965, **vested the local Sangguniang Panlungsod with the legislative power to regulate, prohibit, and fix license fees for the display, construction, and**

maintenance of billboards and similar structures. With the aforementioned law, Congress expressly granted the Davao City government, through the Sangguniang Panlungsod, police power to regulate billboard structures within its territorial jurisdiction.

3. ID.; ID.; ID.; ID.; AN ORDINANCE IS PRESUMED CONSTITUTIONAL UNLESS OTHERWISE PROVED.— The records reveal that while petitioners claim that Ordinance No. 092-2000 is unconstitutional, they have not pointed to any specific constitutional provision it allegedly violated. The settled rule is that an ordinance is presumed constitutional and valid. This presumption may only be overcome by a showing of the ordinance's clear and unequivocal breach of the Constitution. To invalidate an ordinance based on a bare and unilateral declaration that it is unconstitutional is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.

4. ID.; ID.; ID.; ID.; THE CONSISTENCY BETWEEN ORDINANCE NO. 092-2000 WITH THE NATIONAL BUILDING CODE IS IRRELEVANT TO THE VALIDITY OF THE FORMER.— [T]he power to regulate billboards within its territorial jurisdiction has been delegated by Congress to the city government via the Davao City Charter. This direct and specific grant takes precedence over requirements set forth in another law of general application, in this case the National Building Code. Stated differently, the city government does not need to refer to the procedures laid down in the National Building Code to exercise this power. **Thus, the consistency between Ordinance No. 092-2000 with the National Building Code is irrelevant to the validity of the former.** To be clear, even if the National Building Code imposes minimum requirements as to the construction and regulation of billboards, **the city government may impose stricter limitations because its police power to do so originates from its charter and not from the National Building Code.** The ordinance specifically governs billboards and other similar structures situated within Davao City, independent of the provisions of the National Building Code.

5. ID.; ID.; ID.; ID.; WHEN AN ORDINANCE CONSTITUTES A VALID EXERCISE OF POLICE POWER.— An ordinance constitutes a valid exercise of police power if (a) it has a **lawful subject** such that the interests of the public generally, as distinguished from those of a particular class, require its exercise; and (b) it uses a **lawful method** such that its implementing

> measures must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. x x x The Court will not be quick at invalidating an ordinance as unreasonable unless the rules imposed are so excessive as to be prohibitive, arbitrary, unreasonable, oppressive, or confiscatory. It must be remembered that the local legislative authority has a wide discretion to determine not only what the interests of the public require but also what measures are necessary for the protection of such interests. We accord high respect to the Sanggunian's issuance because the local council is in the best position to determine the needs of its constituents. **In the same vein, Ordinance No. 092-2000 reflects the wisdom of the Sangguniang Panlungsod as elected representatives of the people of Davao City. In local affairs, acts of local officials must be upheld when it is clear that these were performed squarely within the statutory authority granted to them and in the exercise of their sound discretion.** For the foregoing reasons, the validity of Ordinance No. 092-2000, including the provisions at issue in the present petition, *viz.*: Sections 7, 8, 37, and 45 must be upheld.

APPEARANCES OF COUNSEL

Office of the City Legal Officer, Davao City for petitioners.

Batacan Montejo & Vicencio Law Firm for respondent A. Montañez.

Cariaga Law Offices for respondent-intervenor DABASA.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[1] dated June 14, 2011 and Amended

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[*] Acting Chairperson; per Special Order No. 2536 dated February 20, 2018.

[1] *Rollo*, pp. 63-82; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles concurring.

Decision[2] dated October 13, 2011 of the Court of Appeals in CA-G.R. CV No. 02281-MIN, where it declared null and void Sections 7, 8, 37 and 45 of the Davao City Ordinance No. 092, Series of 2000 (hereinafter referred to as "Ordinance No. 092-2000" or "the Ordinance").[3]

The facts are as follows:

On August 8, 2000, the city government of Davao (City Government), through its Sangguniang Panlungsod, approved Ordinance No. 092-2000 entitled "An Ordinance Regulating the Construction, Repair, Renovation, Erection, Installation and Maintenance of Outdoor Advertising Materials and For Related Purposes." Sections 7, 8, 37, and 45 of the ordinance provided as follows:

CHAPTER 5
SPECIFIC PROVISIONS

Article 1
Advertising Sign

SECTION 7 — BILLBOARD — Outdoor advertising signs shall not be allowed in a residential zone as designated in the Official Zoning Map. Adjacent billboards shall be erected in such a way as to maintain 150.00 meters unobstructed line of sight.

Billboards and other self-supporting outdoor signs along highways shall be located within a minimum of 10.00 meters away from the property lines abutting the road right-of-way.

SECTION 8 — REGULATED AREAS — Bridge approach areas within 200 meters of the following bridges shall be designated as "regulated areas" in order to preserve, among others, the natural view and beauty of the Davao River, Mt. Apo, the Davao City Skyline and the view of Samal Island, to wit:

1. Generoso Bridge I and II;
2. Bolton Bridge I and II;
3. Lasang Bridge

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[2] *Id*. at 108-111.

[3] Available at http://ordinances.davaocity.gov.ph/Download.aspx. (Last visited on May 5, 2017.)

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CHAPTER 10
FEES

SECTION 37 – FEES – Fees for the application of Sign Permits to be paid at the Office of the City Treasurer shall be as follows:

I. DISPLAY SURFACE

a) Sign fee shall be collected per square meter of the display surface of billboards, business signs, electrical signs, ground signs, projecting signs, roof signs, signboards and wall signs for such amount as follows:

a.1	outdoor video screen	₱ 150.00
a.2	tri-wind billboard	₱ 100.00
a.3	neon	₱ 75.00
a.4	illuminated	₱ 50.00
a.5	painted-on	₱ 30.00
a.6	others	₱ 15.00

b) Posters (per piece) ₱ 5.00

c) Temporary signs (per square meter) ₱ 5.00

d) Other advertising and/or propaganda (materials per square meter) ₱ 10.00

e) Building lines/staking line and Grade (fixed amount) ₱ 200.00

II. STRUCTURE

Erection of support for any signboard, billboard and the like shall be charged a fee as follows:

1) up to 4 square meter of signboard ₱ 100.00
2) in every square meter or fraction thereof ₱ 50.00

III. RENEWAL FEE

Renewal of sign permit shall include among others the corresponding payment for the display surface and support structure of the sign as determined in accordance with this Section and Section 35 of this Ordinance.

IV. OTHER FEES

Sign fees paid under this Ordinance shall be without prejudice to an additional payment of electrical permit fee for signs with

electrical devices as required in accordance with the provisions of the National Building Code.

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CHAPTER 14
REMOVAL OF ILLEGAL MATERIALS

SECTION 45 – REMOVAL. The City Engineer or his duly authorized representative shall remove, upon recommendation of the Building Official, the following at the expense of the displaying party:

1. Those displayed without permit from the Local Building Official, provided that the displaying party shall be given a reasonable period of sixty (60) days from receipt of the notice to comply with the sign permit requirement provided hereof;
2. Those displayed with a permit but without bearing the necessary permit marking requirement as provided in Section 39 hereof, provided that the displaying party shall be given a reasonable period of sixty (60) days from receipt of the notice to comply with the marking permit requirement provided hereof;
3. Those displayed beyond the expiry date as provided in Section 34 hereof, however, if the displaying party intends to renew such permit even beyond the period sought to be extended, the same shall be given a reasonable period of sixty (60) days from receipt of the notice to comply with the renewal requirement provided hereof without prejudice to the payment of surcharge of 25% of the total fees for such delay.
4. Those displayed in public places and/or structures as stated in section 41;
5. Those billboards, business signs, electrical signs, ground signs, projecting signs, roof signs or wall signs which are installed or constructed in violation of this Ordinance or other applicable statues and ordinances.

As early as 2003, the City Engineer of Davao City (City Engineer) started sending notices of illegal construction to various outdoor advertising businesses, including Ad & Promo Management (APM), owned by herein respondent Alex P. Montañez, that constructed the billboards in different areas within the city. The City Engineer reminded the entities to secure a

sign permit or apply for a renewal for each billboard structure as required by Ordinance No. 092-2000.

In February[4] and March 2006, the City Engineer issued orders[5] of demolition directing erring outdoor advertising businesses, including APM, to "voluntarily dismantle" their billboards that violate Ordinance No. 092-2000 within three days from receipt of the order. Otherwise, the city government shall summarily remove these structures without further notice. In the orders of demolition dated March 17, 2006, the summary removal was scheduled on March 30, 2006 at 8:30 in the morning.

With the impending demolition of APM's billboard structures, respondent Montañez sought recourse before the Regional Trial Court (RTC), Branch 14, Davao City on March 28, 2006 and filed a petition for injunction and declaration of nullity of Ordinance No. 092-2000 and order of demolition dated March 17, 2006 with application for a writ of preliminary injunction and temporary restraining order docketed as Sp. Civil Case No. 31,346-06.

In his petition,[6] respondent Montañez claimed that Ordinance No. 092-2000 is unconstitutional for being overbreadth in its application, vague, and inconsistent with Presidential Decree No. 1096 or the National Building Code of the Philippines (National Building Code).

In an Order[7] dated April 17, 2006, the RTC granted respondent Montañez's application for the issuance of a writ of preliminary injunction, to wit:

WHEREFORE, conformably with the foregoing, the instant prayer for the issuance of the writ of preliminary injunction is hereby GRANTED. The respondents, namely, OIC Leoncio Evasco, Jr. of the Davao City Engineer's Office and Davao City Administrator

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[4] According to the Court of Appeals Decision dated June 14, 2011.

[5] See *rollo*, pp. 194-196.

[6] *Id*. at 112-128.

[7] *Id*. at 165-167.

Wendel Avisado are hereby restrained from implementing the Order of demolition dated March 17, 2006 and from actually demolishing the advertising structures of petitioner Alex P. Montañez along Bolton Bridge and Bankerohan Bridge until the main case is decided and tried on the merits or until further orders from this Court.

Meanwhile, in response to the damage caused by typhoon Milenyo in September 2006 especially to various billboard structures within Metro Manila, former President Gloria Macapagal-Arroyo (President Arroyo) issued Administrative Order (AO) No. 160[8] directing the Department of Public Works and Highways (DPWH) to conduct nationwide field inspections, evaluations, and assessments of billboards and to abate and dismantle those: (a) posing imminent danger or threat to the life, health, safety and property of the public; (b) violating applicable laws, rules and regulations; (c) constructed within the easement of road right-of-way; and/or, (d) constructed without the necessary permits. President Arroyo also issued AO No. 160-A[9] specifying the legal grounds and procedures in the abatement of billboards and signboards constituting public nuisance or other violations of law.

Assuming the role given by AO No. 160, Acting DPWH Secretary Hermogenes E. Ebdane, Jr. issued National Building Code Development Office (NBCDO) Memorandum Circular No. 3[10] directing all local government Building Officials to cease and desist from processing application for and issuing and renewing billboard permits.

Pursuant to this directive, the city government suspended all pending applications for billboard permits.

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[8] Dated October 4, 2006 and entitled, "Directing The Department Of Public Works And Highways (DPWH) To Conduct Field Inspections, Evaluations And Assessments Of All Billboards And Determine Those That Are Hazardous And Pose Imminent Danger To Life, Health, Safety And Property Of The General Public And To Abate And Dismantle The Same."

[9] Dated October 10, 2006.

[10] Dated October 6, 2006, *rollo*, p. 146, Annex "3".

While petitioner Montañez's case was still pending before the RTC, the city government issued another order of demolition dated September 25, 2008, this time directed against Prime Advertisements & Signs (Prime), on the ground that the latter's billboards had no sign permits and encroached a portion of the road right of way. The city government gave Prime until October 8, 2008 to voluntarily trim its structures. Otherwise, the same shall be removed by the city demolition team.

The directive against Prime prompted herein respondent Davao Billboards and Signmakers Association, Inc. (DABASA) to intervene[11] in Sp. Civil Case No. 31,346-06 in behalf of its members consisting of outdoor advertising and signmaker businesses in Davao City such as APM and Prime.

The RTC Decision

In its Decision[12] dated January 19, 2009, the RTC ruled in favor of herein respondents Montañez and DABASA, to wit:

> WHEREFORE, and in view of all the foregoing, judgment is rendered declaring as void and unconstitutional the following provisions of City Ordinance No. 092-2000 as follows:
>
> (a) Sections 7, 8 and 41
>
> for being contrary to P.D. 1096 or the National Building Code of the Philippines.
>
> The injunction previously issued base (sic) on the aforesaid provisions of the ordinance is hereby made permanent.[13]

Both parties moved for reconsideration. Thus, in its Joint Order dated April 1, 2009, the RTC modified its original decision, to wit:

> WHEREFORE, and in view of all the foregoing, the instant motion for partial reconsideration of petitioner is GRANTED modifying the court's decision dated JANUARY 19, 2009 as follows:

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[11] *Rollo*, pp. 129-145.

[12] *Id.* at 282-290.

[13] *Id.* at 289-290.

(a) declaring as void and unconstitutional the following provisions of City Ordinance No. 092-2000, as follows:

aa) Sections 7, 8 and 37, for being contrary to P.D. 1096 or the National Building Code of the Philippines;

[bb] declaring herein Section 41 of City Ordinance No. 092-2000 as deleted; and

[cc] declaring the injunction previously issued by the Court based on the aforesaid provisions of the Ordinance, permanent.

Respondents' (sic) motion for reconsideration is DENIED.[14]

Aggrieved, the petitioner City Engineer sought recourse before the Court of Appeals.

The Ruling of the Court of Appeals

In its assailed Decision, the Court of Appeals denied the City Engineer's appeal, to wit:

WHEREFORE, premises foregoing, the appeal is hereby DENIED and the January 19, 2009 Decision and April 1, 2009 Joint Order of Branch 14 of the Regional Trial Court of Davao City in Civil Case No. 31,346-06 the Regional Trial Court (sic) AFFIRMED with modification.

The appealed Decision and Joint Order are affirmed insofar as it declares Section 7 and 8 of City Ordinance of Davao No. 092 series of 2002 (sic) null and void. Section 45 of the challenged Order (sic) is likewise declared null and void. We, however, reinstate Section 41 of the challenged Ordinance.[15]

Again, both parties moved for reconsideration. Subsequently, the Court of Appeals promulgated its Amended Decision, to wit:

WHEREFORE, premises foregoing, respondent-appellant City of Davao's Motion for Reconsideration is hereby DENIED. Petitioner-appellee's prayer for the categorical declaration of the nullity of Section 37 of the challenged Ordinance and rectification of the dispositive

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[14] *Id*. at 293.

[15] *Id*. at 82.

portion of our June 14, 2011 Decision are GRANTED. The *fallo* of said decision should now read:

> "WHEREFORE, premises foregoing, the appeal is hereby DENIED and the January 19, 2009 Decision and April 1, 2009 Joint Order of Branch 14 of the Regional Trial Court of Davao City in Civil Case No. 31,346-06 **are** AFFIRMED with modification.
>
> The appealed Decision and Joint Order are affirmed insofar as it declares Section 7, 8 **and 37** of City Ordinance of Davao No. 092 series of 2002 (sic) null and void. Section 45 of the challenged **Ordinance** is likewise declared null and void. We however, reinstate Section 41 of the challenged Ordinance."[16]

Hence, the present petition.

On the basis of *City of Manila v. Laguio, Jr.,*[17] the appellate court held that Ordinance No. 092-2000 is not consistent with the National Building Code and, thus, invalid. It cited the following inconsistencies: *First*, Section 7 of Ordinance No. 092-2000 requires that signs and signboards must be constructed at least 10 meters away from the property line while the National Building Code allows projection of not more than 300 millimeters over alleys and roads. The Ordinance unduly interferes with proprietary rights inasmuch as it requires a larger setback distance. *Second*, Section 8 of the Ordinance regulates building and construction of signs and signboards within certain areas to preserve the natural beauty of the Davao River, Mt. Apo, the Davao City Skyline, and the view of Samal Island. Upholding *People v. Fajardo*,[18] the local government cannot rely solely on aesthetics in justifying its exercise of police power. *Third*, Section 45 of the Ordinance authorizes the City Engineer, upon the Building Official's recommendation, to demolish advertising materials that have been found to be illegally constructed. In effect, the Ordinance expanded the Building Official's authority,

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[16] *Id*. at 110.

[17] 495 Phil. 289 (2005).

[18] 104 Phil. 443 (1958).

which, under the National Building Code, was limited to determining ruinous and dangerous buildings or structures and to recommending its repair or demolition. Further, the National Building Code does not allow the demolition of signs based on a supposed lack of permit. Instead, it allows these structures to continue to operate so long as a duly accredited engineer certifies the structures' structural integrity.[19]

The Issues

The petitioner City Engineer now comes before this Court raising the following issues:

I

WHETHER OR NOT SECTION 7 OF SIGNAGE ORDINANCE, WHICH IS LIFTED/COPIED FROM UNCHALLENGED PROVISION OF THE IMPLEMENTING RULES AND REGULATION (SIC) OF NATIONAL BUILDING CODE OF THE PHILIPPINES, RUNS CONTRA[R]Y TO THE NATIONAL BUILDING CODE ITSELF?

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING SECTION 8 OF SIGNAGE ORDINANCE NULL AND VOID

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING SECTION 37 OF SIGNAGE ORDINANCE NULL AND VOID

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING SECTION 45 OF SIGNAGE ORDINANCE NULL AND VOID[20]

The petitioner City Engineer argues that Ordinance No. 092-2000 is not inconsistent with the National Building Code as follows: *as to Section 7*, it cannot be held to be inconsistent

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[19] *Rollo*, pp. 71-80.

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

with Section 1002,[21] which is under Chapter 10, of the National Building Code because said provision applies to all building projections, in general. Signs and billboards are specifically governed by Chapter 20 thereof. *As to Section 8*, Section 458(a)(3)(iv)[22] of Republic Act No. 7160 or the Local Government Code of the Philippines (LGC), the city government has the power to regulate the display of signs for the purpose of preserving the natural view and beauty of the surroundings. Aesthetic considerations do not constitute undue interference on property rights because it merely sets a limitation and, in fact, still allows construction of property provided it is done beyond the setback. *As to Section 37*, when it nullified the same, the Court of Appeals did not state the specific legal findings and bases supporting its nullity. Thus, the assailed decision

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[21] SECTION 1002. *Projection into Alleys or Streets.* — (a) No part of any structure or its appendage shall project into any alley or street, national road or public highway except as provided in this Code.

(b) Footings located at least 2.40 meters below grade along national roads or public highway may project not more than 300 millimeters beyond the property line.

(c) Foundations may be permitted to encroach into public sidewalk areas to a width not exceeding 500 millimeters; provided, that the top of the said foundations is not less than 600 millimeters below the established grade; And provided, further, that said projections does not obstruct any existing utility such as power, communication, gas, water, or sewer lines, unless the owner concerned shall pay the corresponding entities for the rerouting of the parts of the affected utilities.

[22] SECTION 458. *Powers, Duties, Functions and Compensation.* – (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall: x x x (3) Subject to the provisions of Book II of this Code, enact ordinances granting franchises and authorizing the issuance of permits or licenses, upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the city and pursuant to this legislative authority shall: x x x (iv) Regulate the display of and fix the license fees for signs, signboards, or billboards at the place or places where the profession or business advertised thereby is, in whole or in part, conducted[.]

violated Section 14, Article VIII[23] of the Constitution. *As to Section 45*, the Court of Appeals went beyond its authority when it invalidated the said Section because the parties, both petitioners and respondents, did not raise any issue as to the validity of said section. Moreover, the city engineer is mandated to act as the local building official. In turn, under the LGC, the city engineer is empowered to perform duties and functions prescribed by ordinances, such as Ordinance No. 092-2000. Thus, the city engineer has the authority to cause the removal of structures found to have violated the ordinance.

On the other hand, herein respondents maintain that Ordinance No. 092-2000 is invalid for the following reasons: *first*, Section 7 thereof contradicts the National Building Code because while the latter does not impose a minimum setback from the property lines abutting the road right-of-way, the said provision requires a 10-meter setback. *Second*, Section 8's establishment of "regulated areas" in keeping with aesthetic purposes of the surroundings is not a valid exercise of police power. *Third*, the fees required by Section 37 of the ordinance are excessive, confiscatory, and oppressive. *Fourth*, Section 45, insofar as it empowers the building official to cause the removal of erring billboards, is an undue delegation of derivative power. Under the National Building Code, the building official's authority is limited to the determination of ruinous and dangerous buildings and structures.[24]

The Ruling of the Court

The petition is meritorious.

We disagree with the Court of Appeals when it declared Sections 7, 8, 37, and 45 of Ordinance No. 092-2000 as

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[23] Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[24] *Rollo*, pp. 421-426.

unconstitutional, thus, null and void for being inconsistent with the National Building Code. However, the validity of Ordinance No. 092-2000 is being upheld for reasons different from those espoused by the petitioners.

It is settled that an ordinance's validity shall be upheld if the following requisites are present: *First*, the local government unit must possess the power to enact an ordinance covering a particular subject matter and according to the procedure prescribed by law. *Second*, the ordinance must not contravene the fundamental law of the land, or an act of the legislature, or must not be against public policy or must not be unreasonable, oppressive, partial, discriminating or in derogation of a common right.[25]

The power to regulate billboards was validly delegated to the local city council via Davao's charter

Ordinance No. 092-2000, which regulates the construction and installation of building and other structures such as billboards within Davao City, is an exercise of police power.[26] It has been stressed in *Metropolitan Manila Development Authority v. Bel-Air Village Association*[27] that while police power is lodged primarily in the National Legislature, Congress may delegate this power to local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.

Republic Act No. 4354 otherwise known as the Revised Charter of the City of Davao (Davao City Charter),[28] enacted on June 19, 1965, **vested the local Sangguniang Panlungsod with the legislative power to regulate, prohibit, and fix license fees for the display, construction, and maintenance of billboards and similar structures.**

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[25] See *Social Justice Society (SJS) v. Atienza, Jr.*, 568 Phil. 658, 699-700 (2008); *City of Manila v. Laguio, Jr.*, *supra* note 17 at 307-308.

[26] See *Gancayco v. City Government of Quezon City*, 674 Phil. 637 (2011).

[27] 385 Phil. 586, 601-602.

[28] Section 16(hh), Davao City Charter.

With the aforementioned law, Congress expressly granted the Davao City government, through the Sangguniang Panlungsod, police power to regulate billboard structures within its territorial jurisdiction.[29]

Petitioners failed to allege the specific constitutional provision violated

The records reveal that while petitioners claim that Ordinance No. 092-2000 is unconstitutional, they have not pointed to any specific constitutional provision it allegedly violated. The settled rule is that an ordinance is presumed constitutional and valid.[30] This presumption may only be overcome by a showing of the ordinance's clear and unequivocal breach of the Constitution.[31]

To invalidate an ordinance based on a bare and unilateral declaration that it is unconstitutional is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.[32]

Consistency between Ordinance No. 092-2000 and the National Building Code is irrelevant

The Court of Appeals ruled that Ordinance No. 092-2000 is invalid because it contradicts the provisions of the National Building Code, *i.e.*, the Ordinance imposes additional requirements not provided in the National Building Code and even expanded the authority of the city building official in the removal of erring billboard structures.

We disagree.

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[29] See *Gancayco v. City Government of Quezon City*, *supra* note 26.

[30] See *Ferrer, Jr. v. Bautista*, 762 Phil. 233, 262 (2015); *Legaspi v. City of Cebu*, 723 Phil. 90 (2013); *Gancayco v. City Government of Quezon City*, *id*.

[31] *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, 727 Phil. 430, 447 (2014).

[32] *Id*., citing *Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management*, 686 Phil. 357, 373 (2012).

As stated earlier, the power to regulate billboards within its territorial jurisdiction has been delegated by Congress to the city government via the Davao City Charter. This direct and specific grant takes precedence over requirements set forth in another law of general application,[33] in this case the National Building Code. Stated differently, the city government does not need to refer to the procedures laid down in the National Building Code to exercise this power.

Thus, the consistency between Ordinance No. 092-2000 with the National Building Code is irrelevant to the validity of the former.

To be clear, even if the National Building Code imposes minimum requirements as to the construction and regulation of billboards, **the city government may impose stricter limitations because its police power to do so originates from its charter and not from the National Building Code**. The ordinance specifically governs billboards and other similar structures situated within Davao City, independent of the provisions of the National Building Code.

Ordinance No. 092-2000 is a valid exercise of police power

An ordinance constitutes a valid exercise of police power if: (a) it has a **lawful subject** such that the interests of the public generally, as distinguished from those of a particular class, require its exercise; and (b) it uses a **lawful method** such that its implementing measures must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[34]

First, Ordinance No. 092-2000 seeks to regulate all signs and sign structures based on prescribed standards as to its location,

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[33] See *Philippine Long Distance Telephone Company v. Davao City*, 122 Phil. 478 (1965).

[34] See *Social Justice Society (SJS) v. Atienza, Jr.*, *supra* note 25; *Ferrer, Jr. v. Bautista*, *supra* note 30.

design, size, quality of materials, construction and maintenance[35] to: (a) safeguard the life and property of Davao City's inhabitants; (b) keep the surroundings clean and orderly; (c) ensure public decency and good taste; and (d) preserve a harmonious aesthetic relationship of these structures as against the general surroundings.[36]

Second, the ordinance employs the following rules in implementing its policy, *viz.*: (a) Minimum distances must be observed in installing and constructing outdoor billboards (*i.e.*, 150 meters unobstructed line of sight, 10 meters away from the property lines abutting the right-of-way);[37] (b) Additional requirements shall be observed (*i.e.*, billboards shall have a maximum total height of 17 meters, the top and bottom lines of billboards shall follow a common base)[38] in locations designated as "regulated areas" to preserve the natural view and beauty of the Davao River, Mt. Apo, the Davao City Skyline, and the view of Samal Island;[39] (c) Sign permits must be secured from and proper fees paid to the city government;[40] and (d) Billboards without permits, without the required marking signs, or otherwise violative of any provision thereof shall be removed, allowing the owner 60 days from receipt of notice to correct and address its violation.[41]

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[35] Ordinance No. 092-2000, Section 3.

[36] *Id.*, Section 2 states, "STATEMENT OF POLICY. It is the policy of the City Government of Davao to: (1) safeguard its people's life and property by providing all signs and sign structures prescribed standards relative to their site, design, load and stresses, anchorage, quality of materials, construction and maintenance; (2) keep its premises clean and orderly by imposing basic discipline and regulation in the location of signs and sign structures both in public and private places; (3) display or convey only messages or visuals that conform to public decency and good taste; and (4) install or display all kinds of signs in a manner that the harmonious aesthetic relationship of all units therein is presented.

[37] *Id.*, Section 7.

[38] *Id.*, Section 9.

[39] *Id.*, Section 8.

[40] *Id.*, Section 37.

[41] *Id.*, Section 45.

The Court will not be quick at invalidating an ordinance as unreasonable unless the rules imposed are so excessive as to be prohibitive, arbitrary, unreasonable, oppressive, or confiscatory.[42] It must be remembered that the local legislative authority has a wide discretion to determine not only what the interests of the public require but also what measures are necessary for the protection of such interests.[43] We accord high respect to the Sanggunian's issuance because the local council is in the best position to determine the needs of its constituents.[44]

In the same vein, Ordinance No. 092-2000 reflects the wisdom of the Sangguniang Panlungsod as elected representatives of the people of Davao City. In local affairs, acts of local officials must be upheld when it is clear that these were performed squarely within the statutory authority granted to them and in the exercise of their sound discretion.[45]

For the foregoing reasons, the validity of Ordinance No. 092-2000, including the provisions at issue in the present petition, *viz.*: Sections 7, 8, 37, and 45 must be upheld.

By way of an observation, We note that petitioner City Engineer issued orders of demolition that required erring outdoor advertising businesses to correct the defects of their structures within **three days from receipt of notice**. Otherwise, the billboard will be summarily removed. In said orders dated March 17, 2006[46] and September 25, 2008,[47] the summary removal operations were March 30, 2006 and October 8, 2008, respectively. These orders of demolition, however, violate Section 45 of the ordinance inasmuch as the orders do not observe

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[42] *Ferrer, Jr. v. Bautista*, *supra* note 30, citing *Victorias Milling Co., Inc. v. Municipality of Victorias*, 134 Phil. 180 (1968).

[43] *Ferrer, Jr. v. Bautista*, *supra* note 30.

[44] *Social Justice Society (SJS) v. Atienza, Jr.*, *supra* note 25.

[45] *Id*.

[46] *Rollo*, pp. 194-196.

[47] *Id*. at 146.

the reglementary periods granted to erring billboard owners. Section 45 clearly gives the owners at least 60 days to correct any defect suffered by their structures and altogether comply with the ordinance requirements.

WHEREFORE, in view of all the foregoing, the instant petition is **GRANTED**. the Decision and Amended Decision of the Court of Appeals dated June 14, 2011 and October 13, 2011, respectively, in CA-G.R. CV No. 02281-MIN are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Del Castillo and *Jardeleza, JJ.,* concur.

Sereno, C.J. and *Tijam, J.,* on official leave.

THIRD DIVISION

[G.R. No. 202863. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ISIDRO RAGASA *y* STA. ANA *alias* "NONOY,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT ESPECIALLY IF AFFIRMED BY THE APPELLATE COURT, RESPECTED; CASE AT BAR.— The assessment of the credibility of witnesses is a task most properly within the domain of trial courts. The general rule adopted by the Court as to the questions on the credibility of the witnesses have been to defer to the findings of the trial court especially if these had been affirmed by the appellate court. x x x [T]he Court has meticulously reviewed the records of this case but found nothing that would sustain

a conclusion that the trial court and the appellate court have overlooked a material fact that, otherwise, would change the outcome of the case; or have misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.

2. CRIMINAL LAW; RAPE; ELEMENTS; COMMITTED BY FORCE OR INTIMIDATION; MUST BE SUFFICIENTLY ESTABLISHED.— Jurisprudence dictates that in criminal cases, "proof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainty; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind. Bearing in mind this teaching, it must be equally stressed that for a charge of rape under Article 266-A(1) of R.A. No. 8353 to prosper, it must be proven that: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. The gravamen of rape under Article 266-A (1) is carnal knowledge of "a woman against her will or without her consent." "In rape cases alleged to have been committed by force, threat or intimidation, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT DIMINISHED BY INCONSISTENCIES ON TRIVIAL AND COLLATERAL MATTERS AS LONG AS THE TESTIMONIES ARE COHERENT AND INTRINSICALLY BELIEVABLE ON THE WHOLE.— The alleged inconsistencies and improbabilities in the testimony of AAA refer to trivial and collateral matters which, not being elements of the crime, do not diminish the credibility of AAA's declarations as long as these are coherent and intrinsically believable on the whole. Indeed, there is even more reason to uphold the finding that AAA's testimony was credible since jurisprudence teaches that testimonies of child victims are normally given full weight and credit.

4. CRIMINAL LAW; RAPE; HEALED LACERATIONS DO NOT NEGATE RAPE.— The allegation of the accused-appellant that AAA's hymen could not have healed quickly

deserves no merit. It must be stressed that proof of hymenal laceration is not even an element of rape and healed lacerations do not negate rape. The level of healing of AAA's hymen does not cast any doubt on the conclusion that she was raped. The mere penetration of the penis from entry through the labia, even without rupture or laceration of the hymen, is enough to justify conviction for rape. Accordingly, what is crucial is that AAA's testimony meets the test of credibility which serves as the basis for accused-appellant's conviction.

5. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; NO GREATER EVIDENTIARY VALUE OVER THE AFFIRMATIVE TESTIMONIES OF CREDIBLE WITNESSES.— [T]he time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable finds its significance in this case. x x x It must be emphasized that for the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. Moreover, the record is bereft of any showing that AAA had ill motive in imputing to the accused-appellant the grievous crime of rape; thus, the accused-appellant's denial which was not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

6. CRIMINAL LAW; RAPE COMMITTED WITH THE USE OF A DEADLY WEAPON; PENALTY.— Pursuant to Art. 266-B of R.A. No. 8353, the penalty that should be imposed upon the accused-appellant is *reclusion perpetua* to death since the rape was committed with the use of a deadly weapon. Article 63(2) of the Revised Penal Code states that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. Hence, the penalty of *reclusion perpetua* was properly imposed, and such penalty pursuant to R.A. No. 9346 does not qualify him for parole under the Indeterminate Sentence Law. Following the jurisprudence in *People v. Jugueta,* the accused- appellant shall be liable for civil indemnity, moral damages, and exemplary

damages in the amount of ₱75,000.00 each. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from the date of finality of this decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This resolves the appeal of accused-appellant Isidro Ragasa *y* Sta. Ana alias "Nonoy" from the 8 September 2011 Decision[1] of the Court of Appeals *(CA),* Nineteenth Division, in CA-G.R. CR HC No. 00463 affirming with modification his non-eligibility for parole and the amount of damages to be awarded to the victim; and from the 12 January 2006 Judgment[2] of the Regional Trial Court, Branch 63, Bayawan City, Negros Oriental *(RTC),* convicting him of Rape under Articles *(Art.)* 266-A and 266-B of the Revised Penal Code.

THE FACTS

Accused-appellant was charged with rape in an Information[3] docketed as Criminal Case No. 16131, the accusatory portion of which reads:

That at about 9:00 o'clock in the morning of March 10, 2000, in [redacted], Negros Oriental, within the jurisdiction of this Honorable Court, while the 13 year-old minor AAA, born on [redacted] was inside her house, the accused threatened said minor with a hunting knife, covered her mouth with a cloth and tied her hands with some kind of a cord and then forcibly

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[1] *Rollo,* pp. 2-15.

[2] Records, pp. 106-112.

[3] *Id*. at 1.

had sexual intercourse with her against her will, to her great damage and prejudice.

CONTRARY TO LAW.

With the assistance of his counsel, accused-appellant pleaded not guilty when arraigned;[4] hence, trial on the merits ensued.

To prove its case, the prosecution placed on the witness stand AAA, her brother BBB, and Dr. Rosita Muñoz *(Dr. Muñoz),* the municipal health officer of [redacted], Negros Oriental.

Accused-appellant and Vicente Montoya *(Montoya)* testified for the defense.

The Version of the Prosecution

On 10 March 2000, at about 8:00 a.m., AAA's grandmother and mother left the house to sell banana cue. AAA, who was then thirteen years old, was left alone sleeping in the house as she was not feeling well. At about 9:00 a.m., AAA heard somebody trying to open the door to her room. As she was about to go to the door, it opened and she saw accused-appellant holding a knife. AAA was about to shout but the accused-appellant immediately covered her mouth with a cloth and tied her hands back with a rubber strip. The accused-appellant, known by AAA as Nonoy, told her not to tell anybody about it; otherwise, he would kill her.[5]

The accused-appellant pulled up her t-shirt to her breasts, removed her shorts and underwear and then took off his t-shirt and shorts, and mounted her and had sexual intercourse four times. His lust satisfied, the accused-appellant untied her, pulled down her t-shirt, put her underwear and shorts back on her, and tied her hands again. Then he dressed himself and left through the window.[6]

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[4] *Id*. at 37.

[5] TSN, 7 May 2004, pp. 3-6, and 8-9; TSN, 25 June 2004, pp. 4-6, 9-10, and 13.

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

About noon of the same day, as BBB was on his way home after selling banana cue, his friend Dongking told him that Nonoy came out of their house through the window. BBB knew Nonoy because they became friends when Nonoy arrived from Manila.[7]

When BBB got home, he found AAA alone with her hands tied. He untied her but she didn't say anything. Three days after the incident, AAA told her father and BBB at the municipal hall that Nonoy was the person responsible for what happened to her.[8]

On 13 March 2000, AAA and her grandmother reported the incident to the police. On the same day, AAA was examined by Dr. Muñoz who thereafter issued a medical certificate on her findings.[9] Although AAA was already in grade III when the incident happened, she didn't go back to school for several years as she was ashamed.[10]

The Version of the Defense

Accused-appellant testified that on 10 March 2000 from 7:00 a.m. to 12:00 noon, he worked alone at the plantation of Eking Moleño[11] *(Moleño)* cutting down sugarcane, then rested the whole afternoon. He and his father had been staying at the house of a certain Inting in Caranoche, Sta. Catalina, Negros Oriental, for almost two weeks. He admitted that his nickname was Nonoy and that he stayed in Manila prior to his stay in Caranoche. He said he did not know AAA, BBB or Dongking. He was arrested on 11 March 2000.[12]

Montoya, nicknamed lnting, who stayed in a hut standing on a lot owned by Moleño at Caranoche, testified that on 10

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[7] TSN, 1 October 2004, pp. 4-6.

[8] *Id*. at 6-9.

[9] Records, p. 9, Exh. "A".

[10] TSN, 7 May 2004, pp. 10-11; TSN, 28 January 2005, p. 6.

[11] Sometimes spelled as Moleña.

[12] TSN, 4 July 2005, pp. 3-6, and 9.

March 2000, he stayed home because his knees were swollen. From the porch of his house, he saw accused-appellant cutting sugarcane on the lot of Moleño from 7:00 a.m. until 12:00 noon, and from 1:00 p.m. to 5:00 p.m. He claimed that the accused-appellant was staying at his house because he had nowhere else to go. He did not know AAA, BBB or Dongking.[13]

The Ruling of the RTC

The RTC ruled that the accused-appellant's act of holding a knife to ensure carnal knowledge of AAA constitutes rape. It found AAA's testimony categorical, positive, straightforward, deserving of full faith and credit, and consistent with Dr. Muñoz's medical findings. On the other hand, the accused-appellant's alibi was uncorroborated and which cannot prevail over AAA's declarations that she was raped four times by the accused-appellant.[14]

The RTC noted that the accused-appellant was charged with only one count of rape although AAA claimed that she was raped four times on 10 March 2000. The RTC deferred to the jurisprudence that there can only be one conviction for rape if the information charges only one offense, even if the evidence shows that more than one was in fact committed. Moreover, albeit AAA was alleged as a minor in the information, this fact, however, was never established. The RTC observed that attached to the records was a certificate of live birth[15] bearing the name of AAA but which the prosecution failed to present during the hearing.[16]

In view of its findings, the RTC resolved the charge against the accused-appellant as follows:

WHEREFORE, the prosecution having proved the guilt of the accused beyond reasonable doubt of the crime of **Rape,** defined and

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[13] TSN, 12 September 2005, pp. 3-6, and 8-10.

[14] Records, p. 111.

[15] *Id*. at 8.

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

penalized under Articles 266-A and 266-B of the Revised Penal Code of the Philippines, respectively, accused Isidro Ragasa y Sta. Ana is **CONVICTED,** sentenced to imprisonment of **Reclusion Perpetua** and ordered to indemnify the victim AAA, the sum of **Fifty Thousand** (₱50,000.00) pesos as **civil indemnity** and **Fifty Thousand** (₱50,000.00) pesos, as **moral damages.**

SO ORDERED.

Asserting that the RTC erred in finding him guilty of rape, the accused-appellant appealed before the CA.

The Ruling of the CA

The CA held that the arguments raised by the accused-appellant in his brief failed to persuade. The CA accorded weight to the findings of the RTC as it had the unique opportunity to observe the demeanor of the witnesses, and was in the best position to discern whether they were telling the truth. It found the alleged inconsistencies in the testimony of AAA as trivial and do not relate to the elements of the crime. On the issues raised by the accused-appellant as to the medical findings of Dr. Muñoz, the CA ruled that the medical examination and the medical certificate were not indispensable elements for a conviction in a rape case as long as the victim's testimony was credible. Additionally, the bare denial of the accused-appellant failed to prevail over the positive identification and testimony of AAA.[17]

The CA, however, found the need to modify the decision of the RTC since the use of a deadly weapon was alleged in the information; thus, the penalty to be imposed upon the accused-appellant should be *reclusion perpetua* without eligibility for parole. Likewise, it ruled that there was need to increase the civil indemnity and award of moral damages from ₱50,000.00 to ₱75,000.00.[18]

The CA decided accused-appellant's appeal as follows:

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[17] *Rollo,* pp. 6-8, 12.

[18] *Id.* at 14.

WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated January 12, 2006, of the Regional Trial Court, Branch 63, [redacted] Negros Oriental, in Criminal Case No. 070, is **AFFIRMED with MODIFICATION**, that accused-appellant Isidro Ragasa y Sta. Ana alias "Nonoy," is found **GUILTY** beyond reasonable doubt of the crime of rape committed against AAA, and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and to pay AAA the amount of Seventy Five Thousand pesos (₱75,000.00) as civil indemnity, and Seventy Five Thousand Pesos (₱75,000.00) as moral damages.

SO ORDERED.[19]

ISSUE

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

OUR RULING

The appeal is without merit.

The general rule that the findings of the trial court are binding upon the Court, finds application to the present case.

The assessment of the credibility of witnesses is a task most properly within the domain of trial courts.[20] The general rule adopted by the Court as to the questions on the credibility of the witnesses have been to defer to the findings of the trial court especially if these had been affirmed by the appellate court, *viz:*

> Time and again, this Court has held that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe the elusive and incommunicable evidence of witnesses' deportment on the stand while testifying which is denied

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[19] *Id*.

[20] *People v. Gerola,* G.R. No. 217973, 19 July 2017.

to the appellate courts. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more strictly applied if the appellate court has concurred with the trial court as in this case.[21]

It is well-settled that in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the appellate court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.[22] In observance of this ruling, the Court has meticulously reviewed the records of this case but found nothing that would sustain a conclusion that the trial court and the appellate court have overlooked a material fact that, otherwise, would change the outcome of the case; or have misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.[23] For sure, the established guiding principles in reviewing rape cases, *viz:* (*a*) an accusation of rape can be made with facility; and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense;[24] and which had been carefully observed by the Court in this case, yet, it found no cogent reason to disturb the findings of fact of the trial court.

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[21] *People v. Labraque,* G.R. No. 225065, 13 September 2017.

[22] *People v. Aycardo,* G.R. No. 218114, 5 June 2017.

[23] *People v. Amar,* G.R. No. 223513, 5 July 2017.

[24] *People v. Rubilar, Jr.,* G.R. No. 224631, 23 August 2017.

The guilt of the accused-appellant was established beyond reasonable doubt.

Jurisprudence dictates that in criminal cases, "proof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainty; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind.[25] Bearing in mind this teaching, it must be equally stressed that for a charge of rape under Article 266-A(1)[26] of R.A. No. 8353[27] to prosper, it must be proven that: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[28] The gravamen of rape under Article 266-A (1) is carnal knowledge of "a woman against her will or without her consent."[29] "In rape cases alleged to have been committed by force, threat or intimidation, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused

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[25] *People v. Gerola, supra* note 20.

[26] Article 266-A. Rape: *When And How Committed.* – Rape is committed:

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

a) Through force, threat, or intimidation;

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

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

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

[27] Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, otherwise known as the Revised Penal Code, and for Other Purposes" and dated 30 September 1997.

[28] *People v. Francia,* G.R. No. 208625, 6 September 2017.

[29] *People v. Corpuz,* G.R. No. 208013, 3 July 2017.

upon his victim to achieve his end. Failure to do so is fatal to its cause."[30]

Records will confirm that the prosecution was able to establish beyond reasonable doubt that the accused-appellant had carnal knowledge of AAA against her will through threat and intimidation. Armed with a knife, the accused-appellant threatened AAA not to tell anyone, otherwise, he would kill her. To avoid any resistance on the part of AAA and to ensure that he would be able to successfully carry out his bestial acts, the accused- appellant even tied her hands at the back. AAA's credible and straightforward testimony follows:

> Q. What was that unusual incident that happened on March 10, 2000 at about 9:00 o'clock in the morning?
>
> A. Somebody was trying to open the door.
>
> Q. Are you telling us AAA that you heard or you saw that the door was about to be opened?
>
> A. I heard.
>
> Q. You did not see that it is being opened?
>
> A. I did not see.
>
> Q. Where were you in that particular house when the door was being opened?
>
> A. At the room.
>
> x x x x x x x x x
>
> Q. So, what happened next when the door was being opened while you are in that situation?
>
> A. When the door was opened, I saw Nonoy Ragasa.
>
> Q. And what happened next?
>
> A. I was supposed to get out from that particular place to find out who was trying to open the door and I saw Nonoy Ragasa holding a knife?

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[30] *People v. Tionloc,* G.R. No. 212193, 15 February 2017.

Q. Are you telling us AAA that while you were in that particular situation, meaning hearing the door open, you did not approach the door x x x and you discovered suddenly that Nonoy Ragasa was inside your room?

A. Yes.

x x x x x x x x x

Q. What was your reaction when you saw that person inside the bedroom?

A. I was about to shout but he immediately covered my mouth and tied me.

Q. What was he holding when he was tying you?

A. A knife.

Q. What happened next while [he was] holding a knife and covering your mouth?

A. He tied both of my hands and told me not to tell anybody because he said that if I do so, he is going to kill me.

Q. What happened next when you were already tied there threatening you not to tell anyone?

A. He undressed me.

Q. Including your underwear?

A. Yes.

Q. When you were already without your underwear and clothes, what did the person named Nonoy do to you?

A. He positioned himself on top of me and have intercourse with me.

Q. Of course, he was also undressed when he committed that intercourse with you?

A. Yes.

Q. What did you feel when he committed that sexual intercourse with you?

A. I felt pain.

x x x x x x x x x

Q. How many times did he abuse you on that particular morning?

A. Four times.

Q. After that, there was no other intercourse committed?

A. Yes.

Q. What happened next when he was already able to satisfy his lust?

A. He returned and put on my panty and went out of the house.[31]

To justify his appeal, the accused-appellant averred that there were inconsistencies in the testimony of AAA which were highly improbable and ran counter to the normal course of human behavior, *viz:* (a) during the direct examination, she stated that he entered the house through the door but when cross-examined she narrated that he entered through the window; (b) that she admitted that, as of 10 March 2000, she did not know him but when confronted during the cross-examination, she testified that she knew him through her brother; (c) his alleged act of getting her dressed when he should have scurried to leave the place; (d) that he allegedly gained entrance through the door but that he left through the window where he would be visible to the neighbors; (e) the laceration on her hymen could not have healed quickly; and (f) the sexual intercourse could not have been consummated with her hands tied behind her and with him lying on top of her.[32]

The alleged inconsistencies and improbabilities in the testimony of AAA refer to trivial and collateral matters which, not being elements of the crime, do not diminish the credibility of AAA's declarations[33] as long as these are coherent and intrinsically believable on the whole.[34] Indeed, there is even more reason to uphold the finding that AAA's testimony was

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[31] TSN, 7 May 2004, pp. 5-8.

[32] *Rollo,* pp. 22-24.

[33] *People v. Divinagracia,* G.R. No. 207765, 26 July 2017.

[34] *People v. Bentayo,* G.R. No. 216938, 5 June 2017.

credible since jurisprudence teaches that testimonies of child victims are normally given full weight and credit. When a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed.[35] Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.[36] Youth and immaturity are generally badges of truth.[37]

The allegation of the accused-appellant that AAA's hymen could not have healed quickly deserves no merit. It must be stressed that proof of hymenal laceration is not even an element of rape[38] and healed lacerations do not negate rape.[39] The level of healing of AAA's hymen does not cast any doubt on the conclusion that she was raped.[40] The mere penetration of the penis from entry through the labia, even without rupture or laceration of the hymen, is enough to justify conviction for rape.[41] Accordingly, what is crucial is that AAA's testimony meets the test of credibility which serves as the basis for accused-appellant's conviction.[42]

The accused-appellant's claim that the rape could not have been consummated since her hands were tied at the back fails to convince. The truth that the hands of the victim were tied does not contradict her claim that she was raped. In fact, such statement is an indication that her testimony was truthful and

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[35] *People v. Dizon,* G.R. No. 217982, 10 July 2017.

[36] *People v. Tubillo,* G.R. No. 220718, 21 June 2017.

[37] *People v. Ronquillo,* G.R. No. 214762, 20 September 2017.

[38] *People v. Aycardo, supra* note 22.

[39] *People v. Amistoso,* 701 Phil. 345, 360 (2013).

[40] *People v. Bisora,* G.R. No. 218942, 5 June 2017.

[41] *People v. Gaa,* G.R. No. 212934, 7 June 2017.

[42] *People v. Belen,* G.R. No. 215331, 23 January 2017.

unrehearsed.[43] It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[44] In the same manner, the fact that the accused-appellant was able to consummate his hideous acts on AAA while her hands were tied at the back, brings to light the severe agony she endured on that fateful day.

Significantly, AAA's testimony that she was raped was corroborated by the medical findings of Dr. Muñoz, *viz:* healed laceration of the hymen at 8 o'clock; and the irritation around the labia minora.[45] Such medico-legal findings bolster the prosecution's testimonial evidence. The healed laceration is physical evidence of the highest order. It speaks more eloquently than a hundred witnesses.[46] Together, these pieces of evidence produce a moral certainty that accused-appellant had indeed raped the victim.[47]

The defense of denial and alibi raised by the accused-appellant were inherently weak.

The defense of denial and alibi proffered by the accused-appellant deserve scant consideration. Accused-appellant testified that he was at the plantation of Moleno cutting down sugarcane on 10 March 2000 from 7:00 a.m. until 12:00 noon and then he rested the whole afternoon. Montoya, on the one hand, who was supposed to fortify accused-appellant's alibi, claimed that the accused-appellant worked the whole day at the plantation. Palpably, Montoya's testimony fatally collided with that of the accused-appellant. Hence, the time-honored principle in jurisprudence that positive identification prevails over alibi since

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[43] *People v. Batoon,* 375 Phil. 998, 1009 (1999).

[44] *People v. Ronquillo, supra* note 37.

[45] Records, p. 4, Exh. "A".

[46] *People v. Divinagracia, supra* note 33.

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

the latter can easily be fabricated and is inherently unreliable[48] finds its significance in this case.

It is noteworthy that Moleno's plantation was in Caranoche where AAA's house was likewise located. Thus, granting for the sake of argument that the accused-appellant was cutting sugarcane at the plantation on 10 March 2000, it was not implausible for him to have had carnal knowledge of AAA. It must be emphasized that for the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[49]

Moreover, the record is bereft of any showing that AAA had ill motive in imputing to the accused-appellant the grievous crime of rape; thus, the accused-appellant's denial which was not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[50]

The Court agrees with the finding of the CA that the prosecution was not able to establish that AAA was a minor since her certificate of live birth, albeit attached to the records, was not presented by the prosecution during the hearing.

Pursuant to Art. 266-B of R.A. No. 8353,[51] the penalty that should be imposed upon the accused-appellant is *reclusion perpetua* to death since the rape was committed with the use

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[48] *People v. Palanay,* G.R. No. 224583, 1 February 2017.

[49] *Id*.

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

[51] Article 266-B. *Penalty.*— Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.* "Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death."

of a deadly weapon. Article 63(2) of the Revised Penal Code states that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.[52] Hence, the penalty of *reclusion perpetua* was properly imposed, and such penalty pursuant to R.A. No. 9346[53] does not qualify him for parole under the Indeterminate Sentence Law.[54]

Following the jurisprudence in *People v. Jugueta,*[55] the accused-appellant shall be liable for civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from the date of finality of this decision until fully paid.[56]

Finally, the Court takes this opportunity to remind members of the prosecution service to be consistently punctilious in the performance of their duties.

The Court takes note of the fact that AAA was consistent in her claim that the accused-appellant had carnal knowledge of her four times, *viz:* in her affidavit executed three days after the rape incident;[57] in her sworn statement during the preliminary investigation of the case;[58] and when she was put to the witness stand.[59] These facts should have forthwith prompted the prosecution to ascertain the truth of AAA's claim and to act accordingly on the results of its findings. Unfortunately, nothing

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[52] *People v. Belen, supra* note 42.

[53] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[54] Act No. 4180.

[55] G.R. No. 202124, 5 April 2016, 788 SCRA 331-391.

[56] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, 716 Phil. 267, 281 (2013).

[57] Records, p. 7.

[58] *Id.* at 12-13.

[59] TSN, 7 May 2004, p. 8.

from the records would confirm that the prosecution had undertaken an investigation pertinent to this claim as in fact there was only one count of rape filed against the accused-appellant.

Granting that there was truth to the claim of AAA that she had been raped several times by the accused-appellant on 10 March 2000, the logical conclusion is that she was not given the opportunity to prove her claim against him since he was charged with only one count of rape. If there was truth to AAA's claim, then the act of the agents of the State in depriving her of her right in securing the justice she truly deserves would be equally as grave as the act of the accused-appellant in robbing her of her virginity and innocence.

Lastly, the non-appreciation of the victim's minority in the case at bar appears to be caused by the failure of the prosecution, for no apparent reason, to present in open court the victim's certificate of live birth which was attached to the records. Thus, we take this opportunity to remind the prosecution to be more circumspect in the performance of their duties.

WHEREFORE, the appeal is **DISMISSED.** The 8 September 2011 Decision of the Court of Appeals finding the accused-appellant Isidro Ragasa y Sta. Ana alias "Nonoy" **GUILTY** beyond reasonable doubt of Rape as defined under Art. 266-A of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole is **AFFIRMED** with **MODIFICATON** that he is ordered to pay AAA the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. The interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from date of finality of this decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 212195. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NAMRAIDA ALBOKA *y* NANING @ "MALIRA,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE APPELLATE COURT, GENERALLY RESPECTED.—** The evaluation of the trial court judge from the viewpoint of having observed the witness on the stand, coupled by the fact that the CA affirmed the findings of the trial court, is binding on the Court unless it can be shown that facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner. Jurisprudence even abounds on the well-chiseled exceptions to this general rule.

2. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE *CORPUS DELICTI* IN CASES INVOLVING DANGEROUS DRUGS IS THE PRESENTATION OF THE DANGEROUS DRUG ITSELF.—** [T]he elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, *viz*: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. For illegal possession of dangerous drugs under Sec. 11, the following elements must be established: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs. The *corpus delicti* in cases involving dangerous drugs is the

presentation of the dangerous drug itself. "For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that their integrity is well preserved — from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. x x x The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

3. ID.; ID.; CHAIN OF CUSTODY; FOUR LINKS IN THE CHAIN OF CUSTODY OF THE CONFISCATED ITEM THAT MUST BE ESTABLISHED; NON-COMPLIANCE, UNDER JUSTICIABLE GROUNDS, WILL NOT RENDER VOID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THEIR INTEGRITY AND EVIDENTIARY VALUE ARE PROPERLY PRESERVED. — [A]s a general rule, the four links in the chain of custody of the confiscated item must be established: *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. The prosecution has the burden of proving each of the link from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. x x x [N]on-compliance with the requirements of Sec. 21, Art. II — 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.

4. ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE WHERE THE BREACH IN PROCEDURE WAS LEFT UNACKNOWLEDGED AND UNEXPLAINED.— The Court is mindful of the presumption of regularity in the performance of duties by public officers, but it must be emphasized that the presumption can be overturned if evidence is presented to prove either of two things, namely: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive. x x x [Here] the serious and irreparable gaps

in the chain of custody of evidence highlighted the reality that the police officers did not accurately perform their duties. Serious uncertainty is generated on the identity of the shabu x x x The breaches in procedure contained in Sec. 21, Art. II of R.A. No. 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellant as the integrity and evidentiary value of the *corpus delicti* had been compromised.

5. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; IN CRIMINAL CASES, THE GUILT OF THE ACCUSED MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.— The conviction of an accused can only be justified if his guilt has been established beyond reasonable doubt. The requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. The conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This resolves the appeal of Namraida Alboka y Naning @ "Malira" (*Alboka*) from the Decision[1] of the Court of Appeals (*CA*), Seventeenth Division, in CA G.R. CR-H.C. No. 04918 which affirmed the Judgment[2] of the Regional Trial Court (*RTC*), Branch 204, Muntinlupa City, in Criminal Case Nos. 07-904 and 07-905 finding her guilty of Violation of Section (*Sec.*) 5 in relation to Sec. 26 and Sec. 11, both of Article (*Art.*) II of Republic Act (*R.A.*) No. 9165.

THE FACTS

Accused-appellant Alboka was charged before the RTC of Muntinlupa with two counts of violation of R.A. No. 9165, viz:

Crim. Case No. 07-904[3]
(For Violation of Sec. 5 in relation to Sec. 26, Art. II of R.A. 9165)

That on or about the 1st day of December 2007, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually aiding one another, not being authorized by law, did then and there wilfully and unlawfully sell, trade, deliver, and give away to another one (1) piece of heat sealed transparent plastic sachet containing Methylamphetamine Hydrochloride, a dangerous drug, weighing 0.05 grams, in violation of the above-cited law.

CONTRARY TO LAW

Crim. Case No. 07-905[4]
(For Violation of Sec. 11, Art. II of R.A. No. 9165)

That on or about the 1st day of December 2007 in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable

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[1] *Rollo*, pp. 2-12. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales.

[2] Records, pp. 202-212. Penned by Judge Juanita T. Guerrero.

[3] *Id*. at 1.

[4] *Id*. at 2.

Court, the above-named accused, not being authorized by law, did then and there wilfully and unlawfully have in her possession, custody and control two (2) pieces of heat sealed transparent plastic sachets each containing Methylamphetamine Hydrochloride, a dangerous drug weighing 0.05 gram each, in violation of the above-cited law.

CONTRARY TO LAW

When arraigned, accused-appellant pleaded not guilty to the charges against her.[5] Joint trial of the cases thereafter proceeded.

The Version of the Prosecution

The prosecution tried to establish its cases against the accused-appellant through the testimony of Gerald Marion Lagos (*Lagos*) and Rommel Turingan (*Turingan*), both members of the Philippine National Police (*PNP*) assigned to the Narcotic Operatives of the District Anti-Illegal Drugs, Special Operations Team, Southern Police District (*SPD*), Taguig City.

On 1 December 2007, the SPD received information from its informant that a certain alias "Bobby" was involved in drugs; hence, the SPD sent thru fax a coordination form[6] and a pre-operation report[7] to the Philippine Drug Enforcement Agency (*PDEA*), which in turn issued a certificate of coordination.[8] On the one hand, commanding officer Adolfo Samala gave Lagos the buy-bust money consisting of two (2) two hundred pesos[9] bearing the marking "AS" representing his initials.[10]

During the briefing, Lagos and Turingan were assigned as poseur-buyer and back-up, respectively. It was agreed that Lagos would wink at the informant, who in turn would light his cigarette as a pre-arranged signal that the transaction was already

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[5] *Id*. at 31.

[6] *Id*. at 173, Exh. "A".

[7] *Id*. at 174, Exh. "B".

[8] *Id*. at 175, Exh. "C".

[9] *Id*. at 176, Exhs. "D" and "D-1".

[10] TSN, 2 October 2008, pp. 4-8.

consummated. After the briefing, the informant called Bobby and introduced Lagos as the buyer of the shabu.

Thereafter, the team, consisting of Lagos, Turingan, PSI Gollod, SPO3 Mallari, SPO3 de Lima, PO2 Boiser, PO2 Antonino, and the informant, proceeded to the Gospel Church along San Guillermo St., Putatan, Muntinlupa City. When they arrived there at around 9:30 p.m., the informant received a call from Bobby informing him that the item he ordered had been passed on to a certain Malira. Bobby told the informant that he and Lagos should proceed to the residence of one alias "Monta" at 302 San Guillermo St. and Monta would bring them to Malira.[11]

After Lagos and the informant told Monta their purpose in coming to his house, Monta brought them to a store located ten meters away. At the store, Malira and Monta conversed. Malira asked Lagos and the informant if they were the persons contacted by Bobby. When they answered in the affirmative, Malira told them that Bobby had given her the item they had ordered which was worth four hundred pesos (₱400.00) each, and then inquired how much they would need. Malira added that one of the items she was selling was shabu. Lagos answered that ₱400.00 worth of shabu would be enough. Malira asked for the payment and Lagos handed her the buy-bust money. Upon her receipt of the money, Malira handed a sachet to Lagos who, after checking the item, winked at the informant who in turn lit his cigarette.[12]

Seeing that Turingan was already approaching the store, Lagos introduced himself to Malira as a police officer and told her she was being arrested for selling drugs. When he frisked Malira, Lagos was able to recover the marked money and two pieces of plastic sachets of shabu. Turingan did not find anything when he frisked Monta but he was able to recover one (1) plastic sachet of shabu on top of a display rack at the store. Both Monta and Malira were informed of their constitutional rights. Lagos

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[11] *Id*. at 9-11; Records p. 5.

[12] *Id*. at 11-14.

placed the respective markings "GL-1-011207,"[13] "GL-2-011207,"[14] "GL-3-011207,"[15] and "GL-4-011207"[16] on the sachet of shabu handed to him by Malira and on the three other sachets recovered. The markings represented the initials of Lagos and the date, month, and year the crime happened. Monta and Malira were then brought to the SPD where their respective identities were determined as Montasir Satol (*Satol*) and Namraida Alboka. Lagos was in possession of the seized items and the marked money from the time that he left the scene of the crime until he reached the SPD.[17]

On that same night, Lagos turned over the seized items to SPO3 Salvio de Lima (*De Lima*) for the preparation of the request for laboratory examination.[18] A request was likewise prepared for the drug testing[19] of Satol and the accused-appellant. Lagos and Turingan brought the seized items to the SPD crime laboratory on 2 December 2007 at 4:25 a.m. The laboratory report[20] showing that the seized items were positive for methamphetamine hydrochloride was released on the same day.[21]

The team prepared the booking and information sheet[22] of accused-appellant and a spot report[23] to inform the PDEA of the result of the operation. Lagos and Turingan also executed

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[13] TSN, 27 May 2010, p. 3, Exh. "K".

[14] *Id*. Exh. "K-1".

[15] *Id*. Exh. "K-2".

[16] *Id*. Exh. "K-3".

[17] TSN, 2 October 2008, pp. 14-18.

[18] Records, p. 177, Exh. "E".

[19] *Id*. at 179, Exh. "G".

[20] *Id*. at 178, Exh. "F".

[21] TSN, 2 October 2008, pp. 19-20.

[22] Records, p. 181, Exh. "I".

[23] *Id*. at 180, Exh. "H".

their joint affidavit of arrest[24] detailing the conduct of the buy-bust operation.[25]

The testimony of Police Senior Inspector Richard Allan Mangalip (*Mangalip*), the forensic chemist of the SPD Crime Laboratory Office, was dispensed with after the parties made the following admissions during the pre-trial conference, to wit:

> That PS/Insp. Richard Allan B. Mangalip is a forensic chemist connected with the SPD Crime Laboratory, Makati City as of December 2, 2007 and that he is an expert in forensic chemistry;
>
> That pursuant to the Request for Laboratory Examination, he conducted laboratory examination on the specimen which consists of one (1) small brown envelope containing: one (1) small heat-sealed transparent plastic sachet with white crystalline substance; two (2) small heat-sealed transparent plastic sachets containing white crystalline substance; and one (1) small heat-sealed transparent plastic sachet containing white crystalline substance, and which tested positive for Methylamphetamine Hydrochloride.[26]

The Version of the Defense

To prove her innocence, the accused-appellant testified.

On 1 December 2007 at around 7:00p.m., while the accused-appellant was at her store carrying her six-month-old child, a man suddenly entered her store and poked his gun at her. She ran towards the billiard hall located about 10 meters from her store but another man arrived and likewise poked his gun at her. Thereafter, she was handcuffed and made to board a vehicle. Her shouts for help caught the attention of the lady owner of the house where her store was. The owner asked the two men what they were doing to the accused-appellant and her child but the men told her to just get the child as she might also get involved.[27]

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[24] *Id.* at 182-183, Exh. "J".

[25] TSN, 2 October 2008, pp. 21-22.

[26] Records, p. 68.

[27] TSN, 23 September 2010, pp. 3-6.

While inside the vehicle, the accused-appellant cried and asked the two men what crime she had committed. The men and their companions insisted that she lead them to the location of a person they were looking for. When she replied that she did not know that person, she was told that she would be charged; one of the men hit her on the head with a comb while another hit her on the forehead with a cellphone. She remained silent as she was afraid.[28]

It was about 2:00 a.m. the following day that she was brought to Makati where her urine sample was taken. She was asked whether she was hurt but she remained silent because the men who brought her there made her hide her bruises. Later, she was brought to Fort Bonifacio where she was told to shell out ₱300,000.00 for her release; because she did not have the amount, she was charged with the crimes.[29]

The Ruling of the RTC

In Crim. Case No. 07-904, the RTC ruled that the testimony of Lagos and Turingan were direct, unwavering, and consistent on material points that leave no doubt as to their truthfulness; and that the police officers had no reason to concoct the charges against the accused-appellant; while the accused-appellant simply denied that the buy-bust operation occurred.[30]

In Crim. Case No. 07-905, the RTC held that the accused-appellant was caught *in flagrante delicto* selling shabu, an overt act which justified Lagos to search for and seize the illegal items in her possession. The RTC noted that while Lagos was not able to prepare the certificate of inventory of the items which were seized and subsequently identified in court, he nonetheless took steps not to compromise the purity and integrity of the items: by marking them at the place of arrest and having the custody thereof throughout the operation until these were delivered and received by the crime laboratory for examination.

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

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

[30] Records, p. 209.

The RTC concluded that Lagos had substantially complied with the requirements provided for under Sec. 21, Art. II of R.A. No. 9165 and its implementing rules and regulations.[31] Thus, the RTC resolved the charges against the accused-appellant as follows:

> WHEREFORE, finding accused GUILTY beyond reasonable doubt of Violation of Sec. 5, Art. II of R.A. No. 9165 in Criminal Case No. 07-907, NAMRAIDA ALBOKA y NANING is sentenced to LIFE IMPRISONMENT and to pay a fine of Php500,000.00; and of Violation of Sec. 11, Art. II of R.A. No. 9165 in Criminal Case No. 07-905, she is sentenced to an indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and to pay a fine of Php300,000.00.
>
> The subject drug items are ordered transmitted to the Philippine Drug Enforcement Agency for proper disposition.
>
> The preventive imprisonment undergone by the accused shall be credited in her favour.
>
> SO ORDERED.[32]

The Ruling of the CA

Feeling aggrieved with the resolution of the RTC on the charges against her, the accused-appellant appealed to the CA which found the appeal to be without merit.

The CA noted that the accused-appellant did not assail the chain of custody of the evidence albeit she raised the issue on the failure of the buy-bust team to conduct an inventory of the seized items at the crime scene. The CA ruled, however, that even if the procedural requirements in Sec. 21 of R.A. No. 9165 were not faithfully observed, as long as the chain of custody remains unbroken, the guilt of the accused would not be affected. Moreover, it held that the accused-appellant failed to overcome the presumption that the police officers handled the seized items with regularity.[33]

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[31] *Id*. at 211.

[32] *Id*. at 212.

[33] *Rollo*, pp. 7-9.

According to the CA, the accused-appellant was caught *in flagrante delicto* and that the prosecution was able to prove all the elements for the crime of illegal sale of dangerous drugs. The crime was consummated with the police officer going through the operation as a buyer, whose offer was accepted by the accused-appellant, followed by the delivery of the dangerous drugs to the buyer.[34]

On the charge of illegal possession of shabu, the CA held that after the lawful arrest of the accused-appellant resulting from the buy-bust operation, two more plastic sachets suspected to contain shabu were recovered in her possession. The CA observed that the record was bereft of any showing that the accused-appellant had the authority to possess these two plastic sachets which actually contained shabu.[35]

The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the present appeal is **DENIED** for lack of merit. The assailed decision dated January 28, 2011, rendered by the Regional Trial Court, Branch 204, Muntinlupa City, is hereby **AFFIRMED *in toto***.[36]

ISSUE

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HER GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

OUR RULING

The appeal is meritorious.

The general rule that the findings of the trial court and the appellate court as to the credibility of the prosecution witnesses are binding

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

[35] *Id*. at 10.

[36] *Id*. at 11.

upon the Court, does not apply to the present case.

As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.[37] The evaluation of the trial court judge from the viewpoint of having observed the witness on the stand, coupled by the fact that the CA affirmed the findings of the trial court, is binding on the Court unless it can be shown that facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner.[38]

Jurisprudence even abounds on the well-chiseled exceptions to this general rule, *viz*: (1) when the factual findings of the CA and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (3) when the inference made by the CA from the findings of fact is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA is premised on misapprehension of facts; (7) when the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.[39]

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[37] *People v. Baay*, G.R. No. 220143, 7 June 2017.

[38] *People v. Belen*, G.R. No. 215331, 23 January 2017.

[39] *Dela Cruz v. People*, G.R. No. 163494, 3 August 2016, 799 SCRA 216, 224-225.

A review of the records will prove that the trial and the appellate courts have overlooked facts and circumstances which would have affected the resolution of the cases filed against the accused-appellant.

There was a broken chain of custody of evidence.

Enlightened jurisprudence is consistent as to the elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5,[40]

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[40] **Section 5.** Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

Art. II of R.A. No. 9165,[41] *viz*: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[42] What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[43]

For illegal possession of dangerous drugs under Sec. 11,[44] the following elements must be established: (1) the accused

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The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[41] 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" and dated 7 June 2002.

[42] *People v. Macapundag*, G.R. No. 225965, 13 March 2017.

[43] *People v. Ismael*, G.R. No. 208093, 20 February 2017.

[44] **Section 11.** *Possession of Dangerous Drugs*.— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

(6) 10 grams or more of *marijuana* resin or *marijuana* resin oil;

(7) 500 grams or more of *marijuana*; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond

was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.[45]

The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself.[46] "For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that their integrity is well preserved — from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. The

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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 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*.

[45] *People v. Macapundag*, *supra* note 42.

[46] *People v. Hementiza*, G.R. No. 227398, 22 March 2017.

fact that the substance said to have been illegally sold or possessed was the very same substance offered in court as exhibit must be established."[47] The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[48]

The chain of custody is defined under Sec. 1 (b) of Dangerous Drugs Board Regulation No. 1, series of 2002,[49] as follows:

> 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.

The chain of custody was further explained by this Court in *Mallillin v. People*,[50] *viz*:

> 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 in 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

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

[48] *People v. Ismael*, *supra* note 43.

[49] Entitled "Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment."

[50] 576 Phil. 576, 587-589 (2008).

been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the exhibits level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.

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 v. State* positively acknowledged this danger. In that case where a substance was 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 the 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.

In connection thereto, Sec. 21 of R.A. No. 9165 provides for the manner by which law enforcement officers should handle the seized items in dangerous drugs cases:

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 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;

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 under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

Thus, as a general rule, the four links in the chain of custody of the confiscated item must be established: *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.[51] The prosecution has the burden of proving each of the link from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

An evaluation of the prosecution's evidence will prove that there was an irreversible broken chain in the custody of evidence that casts suspicion on the integrity and evidentiary value of the seized items, *viz*:

a. the seizure and marking

People v. Breis[52] defined marking as follows:

> "Marking" is the placing by the apprehending officer of some distinguishing signs with his/her initials and signature on the items seized. It helps ensure that the dangerous drugs seized upon apprehension are the same dangerous drugs subjected to inventory and photography when these activities are undertaken at the police station or at some other practicable venue rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items—to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.

Lagos claimed that he placed the markings "GL-1-011207," "GL-2-011207," "GL-3-011207," and "GL-4-011207" on the sachet of shabu handed to him by Malira and on the three other sachets recovered. Worthy of note, however, was the evident

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[51] *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

[52] 766 Phil. 785, 801-802 (2015).

failure of the prosecution in eliciting from its witnesses where and when the markings were placed, and whether the markings were placed in the presence of the accused-appellant. While it was during the re-cross examination that it was shown that the markings were placed by Lagos at the scene of the crime,[53] the joint affidavit of arrest was deafeningly quiet on this matter.

Glaring likewise was that the records failed to show that a physical inventory of the seized items was conducted in the presence of the accused-appellant, a representative from the media, the DOJ, and any elected public official, and that the items were photographed. Lagos claimed that he knew that other than the marking, the inventory was also required,[54] yet he never made a written record of the items allegedly seized during the buy-bust operation. It bewilders that the prudent decision observed by the SPD in coordinating with the PDEA, i.e., by sending thru fax the coordination form and the pre-operation report prior to the conduct of the buy-bust operation, was not observed pertinent to the marking, inventory, and taking pictures of the seized items in this case.

It must be underscored that the IRR[55] of R.A. No. 9165 mirrors the content of Sec. 21, Art. II of the same law, but adds that the

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[53] TSN, 6 November 2008, p. 20.

[54] *Id.* at 20-21.

[55] SECTION 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/ or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

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 Sec. 21, Art. II — 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.[56] Any departure from the prescribed procedure must then still be reasonably justified, and must further be shown not to have affected the integrity and evidentiary value of the confiscated contraband.[57]

Worthy of note was the fact that the prosecution had failed to recognize and to prove the justifiable reasons for these procedural lapses on the part of the police officers thereby generating question on the integrity of the seized items. Simply put, because the integrity and evidentiary value of the seized items had been compromised, the flagrant nonconformity by the buy-bust team with Sec. 21, Art. II of R.A. No. 9165 rendered void the seizure and custody of these items.

b. the turnover of the illegal drug seized by the apprehending officer to the investigating officer

On that same night, Lagos turned over the seized items to De Lima allegedly for the preparation of the request for the laboratory examination. Lagos claimed that De Lima was the investigator of the case; thus, Lagos left the items with De Lima. Lagos, who then roamed around the headquarters, admitted that he was not aware where De Lima had taken the seized items.[58]

c. the turnover by the investigating officer of the illegal drug to the

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[56] *Gamboa v. People*, G.R. No. 220333, 14 November 2016.

[57] *People v. Barte*, G.R. No. 179749, 1 March 2017.

[58] TSN, 6 November 2008, pp. 16-17.

forensic chemist for laboratory examination

No explanation was offered by the prosecution on why Lagos and Turingan were the ones who brought the seized items to the SPD crime laboratory[59] instead of De Lima. Notwithstanding the markings placed by Lagos on the seized items, it still cannot be definitely ascertained whether these were the exact items that he left with De Lima, while he roamed around the headquarters after leaving these with the investigator.

d. the turnover and submission of the marked illegal drug seized from the forensic chemist to the court

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.[60]

It will be noted that the testimony of Mangalip was dispensed with after the parties agreed to stipulate that he was a forensic chemist and that he conducted a laboratory examination on the four plastic sachets which he found positive for methamphetamine hydrochloride. While it is true that the seized items were identified by Lagos during the hearing, the prosecution however miserably failed to show who brought the seized items before the trial court.

The Court is mindful of the presumption of regularity in the performance of duties by public officers, but it must be emphasized that the presumption can be overturned if evidence is presented to prove either of two things, namely: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[61] Irrefragably, the records

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[59] *Id.* at 19-20; TSN, 2 October 2008, p. 19; TSN, 3 September 2009, p. 16.

[60] *People v. Hementiza*, *supra* note 46.

[61] *People v. Barte*, *supra* note 57.

do not sustain a finding that the police officers had improper motive to falsely testify against the accused-appellant, but the serious and irreparable gaps in the chain of custody of evidence highlighted the reality that the police officers did not accurately perform their duties. Serious uncertainty is generated on the identity of the shabu in view of the broken linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the trial and the appellate courts cannot arise.[62]

The breaches in procedure contained in Sec. 21, Art. II of R.A. No. 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellant as the integrity and evidentiary value of the *corpus delicti* had been compromised.[63] The inappropriate manner of handling the evidence prior to its offer in court, diminishes the government's chance of successfully prosecuting a drug case.[64]

The guilt of the accused-appellant must be established beyond reasonable doubt.

The conviction of an accused can only be justified if his guilt has been established beyond reasonable doubt. The requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[65] While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing

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[62] *People v. Gayoso*, *supra* note 51.

[63] *Gamboa v. People*, *supra* note 56.

[64] *People v. Gayoso*, *supra* note 51.

[65] *People v. Manson*, G.R. No. 215341, 28 November 2016.

moral certainty, a certainty that ultimately appeals to a person's very conscience.[66]

The conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the prosecution has not discharged its burden of proof in establishing the commission of the crime charged.[67] This is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt.[68] And it is precisely because of this presumption that the Court is required "as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused. In this instance, therefore, the Court is not limited to the assigned errors, but can consider and correct errors though unassigned, and even reverse the decision on grounds other than those the parties raised as errors.[69]

To recapitulate, the records of these cases were bereft of any showing that the prosecution had discharged its burden to: (1) overcome the presumption of innocence which the accused-appellant enjoy; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Sec. 21, R.A. No. 9165 were not complied with. This Court is thus constrained to acquit the accused-appellant based on reasonable doubt.[70]

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[66] *Daayata v. People*, G.R. No. 205745, 8 March 2017.

[67] *People v. Claro*, G.R. No. 199894, 5 April 2017.

[68] *People v. Rodriguez*, G.R. No. 211721, 20 September 2017.

[69] *People v. Barte*, *supra* note 57.

[70] *People v. Ismael*, *supra* note 43.

The Court takes this opportunity to remind the law enforcement and the prosecutorial agencies that the arduous task in diminishing, if not totally eradicating, the drug problem in the country can only be accomplished if they would be prudent in the performance of their respective functions. To stress, law enforcers should not only be mindful of the procedures required in the seizure, handling, and safekeeping of confiscated drugs, but the prosecution should also prove every material detail in court.[71]

WHEREFORE, in view of the foregoing, we **REVERSE** and **SET ASIDE** the 23 October 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04918. Accused-appellant NAMRAIDA ALBOKA y NANING @ "MALIRA" is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered **IMMEDIATELY RELEASED** unless she is otherwise detained for some other case/s.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

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

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[71] *People v. Hementiza*, *supra* note 46.

THIRD DIVISION

[G.R. No. 215720. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **OSCAR MAT-AN *y* ESCAD,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — The established rule in our criminal jurisprudence is that when the issue is one of credibility of witnesses, the appellate courts will not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Unless it can be shown that the trial court plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case; or in instances where the evidence fails to support or substantiate the trial court's findings of fact and conclusions; or where the disputed decision is based on a misapprehension of facts; the trial court's assessment of the credibility of witnesses will be upheld.

2. ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES IN TESTIMONIES.— It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.

3. ID.; ID.; DENIAL; INHERENTLY WEAK DEFENSE WHICH CANNOT OUTWEIGH POSITIVE TESTIMONY.— Denial is inherently a weak defense which cannot outweigh positive testimony. As between a categorical statement that has the earmarks of truth on the one hand and bare denial on the other, the former is generally held to prevail.

4. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; WHEN PRESENT.—

The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime. The appreciation of the aggravating circumstance of abuse of superior strength depends on the age, size, and strength of the parties. In a plethora of cases, the Court has consistently held that the circumstance of abuse of superior strength is present when a man, armed with a deadly weapon, attacks an unarmed and defenseless woman. In such case, the assailant clearly took advantage of the superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.

5. ID.; SLIGHT PHYSICAL INJURIES; PRESENT IF WITHOUT THE ELEMENT OF INTENT TO KILL AND CONSIDERING THAT THE WOUND WAS ONLY SUPERFICIAL.— The Court also concurs that Oscar can be held guilty only of slight physical injuries with respect to Anthonette. The prosecution failed to present any evidence which would show that Oscar also intended to kill Anthonette. Without the element of intent to kill, Oscar could only be convicted for physical injury; and considering that Anthonette's wound was only superficial, the appellate court correctly convicted Oscar of slight physical injury.

6. ID.; ALTERNATIVE CIRCUMSTANCES; INTOXICATION; IT IS AGGRAVATING IF HABITUAL OR INTENTIONAL AND IT IS MITIGATING IF NOT HABITUAL NOR INTENTIONAL.— Drunkenness or intoxication is a modifying circumstance which may either aggravate or mitigate the crime. It is aggravating if habitual or intentional; and it is mitigating if not habitual nor intentional, that is, not subsequent to the plan to commit the crime. Once intoxication is established by satisfactory evidence, then, in the absence of truth to the contrary, it is presumed to be unintentional or not habitual. From the foregoing, however, it is clear that the accused must first establish his state of intoxication at the time of the commission of the felony before he may benefit from the presumption that the intoxication was unintentional and not habitual. He must prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason. In this case,

other than his bare allegation that he blacked out, Oscar failed to present sufficient evidence that would show that he was in a state of intoxication as would blur his reason. This uncorroborated and self-serving statement as to his state of intoxication is devoid of any probative value.

7. ID.; MURDER AND SLIGHT PHYSICAL INJURIES; RESPECTIVE PENALTIES IN CASE AT BAR.— In Criminal Case No. 29335-R (on Slight Physical Injuries), there being no aggravating or mitigating circumstance present in the commission of the crime, the penalty shall be imposed in its medium period or twenty (20) days of *arresto menor*, following Article 266 of the RPC. The Court further finds the monetary awards consisting of ₱929.00 as actual damages and ₱5,000.00 as moral damages proper in this case. In Criminal Case No. 29336-R (on Murder), other than the circumstance of abuse of superior strength which already qualified the crimes to murder, no other modifying circumstance is present, whether aggravating or mitigating. Thus, the penalty of *reclusion perpetua* is imposed in accordance with Article 248 of the RPC, as amended by Section 6 of Republic Act *(R.A.)* No. 7659, in relation to Article 63(2) of the RPC. The Court, however, modifies the CA decision with respect to the monetary awards. In *People v. Jugueta*, the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that when the penalty imposed is *reclusion perpetua*, the following amounts may be awarded: (1) ₱75,000.00, as civil indemnity; (2) ₱75,000.00, as moral damages; and (3) ₱75,000.00 as exemplary damages. The aforesaid amounts are proper in this case. The Court further retains the award of actual damages in the amount of ₱83,763.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

On appeal is the 25 April 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 05858, which affirmed with modifications the 4 September 2012 Joint Judgment[2] of the Regional Trial Court of Baguio City, Branch 59, in Criminal Case Nos. 29335-R and 29336-R, finding herein accused-appellant Oscar Mat-An *y* Escad *(Oscar)* guilty beyond reasonable doubt of the crimes of Slight Physical Injury and Murder, defined and penalized under Article 266 and Article 248 of the Revised Penal Code *(RPC).*

THE FACTS

On 13 April 2009, Oscar was charged with the crimes of Attempted Homicide and Murder in two Informations, the inculpatory allegations of which respectively read, thus:

Criminal Case No. 29335-R (Attempted Homicide)

That on or about the 8th day of April 2009, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attempt to kill ANTHONETTE EWANGAN, a 1½ year old child, by stabbing her with a knife at the nape, thus commencing the commission of the crime of homicide directly by overt acts, but was not able to perform all the acts of execution which would produce the crime of homicide as a consequence by reason of some causes other than his own spontaneous desistance, that is, due to some other causes which prevented the accused from consummating his unlawful purpose.

CONTRARY TO LAW.[3]

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[1] *Rollo*, pp. 2-9; penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justice Jose C. Reyes, Jr., and Associate Justice Socorro B. Inting.

[2] Records (Crim. Case No. 29335-R), pp. 489-515; penned by Judge Iluminada P. Cabato.

[3] *Id*. at 1.

Criminal Case No. 29336-R (Murder)

That on or about the 8th day of April 2009, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and taking advantage of superior strength and with evident premeditation, did then and there willfully, unlawfully and feloniously stab MINDA BABSA-AY, a 61-year old woman, twice on her chest with a knife, thereby inflicting upon the latter: Multiple stab wounds on the chest, and as a result thereof, said MINDA BABSA-AY died.

That the killing was attended by the aggravating circumstance of evident premeditation considering that the killing was planned, deliberated upon and the criminal design carried out by the accused, and abuse of superior strength considering that the accused being then armed with a knife took advantage of his superiority in strength disregarding the sex and age of the victim.

CONTRARY TO LAW.[4]

On 13 May 2009, the RTC granted Oscar's motion to consolidate the two cases.[5]

On 2 June 2009, Oscar, duly assisted by counsel, was arraigned and pleaded not guilty to the charges against him.[6]

On 10 November 2009, pre-trial was conducted wherein the parties entered into stipulations as to the identity of the accused, among others; the minority of Anthonette Ewangan *(Anthonette)*[7]; that Oscar is the husband of Ruby Babsa-ay Mat-an *(Ruby),* the daughter of the deceased Minda Babsa-ay *(Minda)*; and that Ruby works overseas and sends money remittances through her mother and not to Oscar.[8]

Thereafter, trial on the merits ensued.

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[4] Records (Crim. Case No. 29336-R), p. 1.

[5] *Id*. at 28.

[6] Records (Crim. Case No. 29335-R), p. 25.

[7] Also referred to as "Antonette Ewangan" in some parts of the records.

[8] Records (Crim. Case No. 29335-R), pp. 29-30.

Evidence for the Prosecution

The prosecution presented ten (10) witnesses, namely: Norma C. Gulayan *(Norma)*, Dr. John L. Tinoyan *(Dr. Tinoyan),* Dr. Samuel P. Daw-as, Jr. *(Dr. Daw-as),* Clyde Bunhian *(Clyde),* Police Senior Inspector Angeline B. Amangan *(PSI Amangan),* Rosemarie B. Ewangan *(Rosemarie),* Police Officer 3 Leo Mojica *(PO3 Mojica),* Police Officer 1 Jose Mana-ar, Jr. *(PO1 Mana-ar),* Robinson B. Babsa-ay *(Robinson),* and Sheyanne Mat-an *(Sheyanne).* Their combined testimonies tended to establish the following:

On 8 April 2009, at around 11:00 a.m., Norma was selling *halo-halo* beside Minda's store at Sunnyside Fairview, Tacay Road, Baguio City; Clyde was in front of the same store. At that time, Minda was inside her store cradling her 18-month-old granddaughter Anthonette in a blanket,[9] its ends tied behind her back.

Moments later, Oscar entered the store and an argument ensued between him and Minda. Apparently, Oscar was asking Minda why Ruby had not answered his calls. Minda responded by telling Oscar not to create trouble and to return once he was sober. There was silence for a few seconds;[10] after which, Norma and Clyde heard Minda moaning as if her mouth was being covered.[11] Norma immediately ran inside the store where she saw Oscar stab Minda twice. Norma pulled him out of the store and away from Minda.[12] Norma then asked Clyde, who followed her inside the store, to look for Sheyanne, Oscar and Ruby's daughter.[13] Norma also called out to neighbors for help.[14] Before calling Sheyanne, Clyde saw Oscar leaving the vicinity.[15]

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[9] TSN, dated 15 June 2011, pp. 7-8; TSN, dated 10 August 2011, p. 5.

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

[11] *Id*. at 10; TSN, dated 10 August 2011, p. 6.

[12] *Id*. at 10-12; *id.* at 6-7.

[13] *Id*. at 14; *id*. at 8.

[14] *Id*. at 14.

[15] TSN, dated 10 August 2011, p. 8.

Sheyanne testified that on 8 April 2009, while she and her sister Desiree Mat-an were doing laundry, Norma suddenly appeared, crying and without her slippers and told them that Minda was stabbed by their father. Upon hearing this, they immediately ran towards Minda's store. Upon reaching the store, they saw Minda in a prone position with blood splattered on the floor. Underneath Minda's body was Anthonette who appeared to be injured as well.[16] Sheyanne then ran to the roadside where her father was being held by some of their neighbors including PO1 Mana-ar, a police officer on vacation in Baguio at that time.[17] Thereafter, PO1 Mana-ar, Sheyanne, and some of the neighbors brought Oscar to the police station and they also turned over the knife used by Oscar to stab Minda.[18] Meanwhile, Minda and Anthonette were rushed to the Baguio General Hospital and Medical Center *(BGHMC)* where Anthonette was admitted for further observation.[19] Minda died on the same day at the age of 61.[20]

The postmortem examination conducted by Dr. Tinoyan revealed that Minda sustained four (4) stab wounds in her chest — three (3) of which were fatal, while one (1) was superficial.[21] As regards Anthonette, the medico-legal certificate prepared by Dr. Daw-as of the BGHMC revealed that she sustained a superficial stab wound in the nape area.[22]

Rosemarie, Anthonette's mother, testified that her daughter was confined in the hospital for a night; and for that they incurred ₱929.00 for her medication and hospitalization,[23] as shown by

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[16] TSN, dated 9 November 2011, pp. 9-10.

[17] *Id*. at 10; TSN, dated 25 October 2011, pp. 3 and 6.

[18] *Id.; id*. at 7.

[19] TSN, dated 21 June 2011, p. 5.

[20] Records (Crim. Case No. 29335-R), p. 70, Exhibit "D"; TSN, dated 6 June 2011, p. 6.

[21] *Id*. at 71, Exhibit "E"; *id.* at 6-14.

[22] *Id*. at 68, Exhibit "B"; TSN, dated 21 June 2011, p. 5.

[23] TSN, dated 6 September 2011, p. 11.

the receipts she presented.[24] The heirs of Minda incurred the amount of ₱83,763.00 as expenses for her wake and burial.[25] This amount was admitted by the defense.[26]

Evidence for the Defense

The defense presented Oscar as its sole witness. In his testimony, he invoked denial as his defense and narrated his version of the incident as follows:

On 8 April 2009, at about 9:00 to 10:00 o'clock in the morning, Oscar was invited by Donato Bunhian for a drink at Donato's house. Later, he went to Minda's store to buy bread, but he was not able to do so because Minda said to him: "*Why are you still coming here? You are even drunk*." He answered back but could no longer recall what his exact retort was.[27] After that brief exchange, he could no longer recall what transpired next. When he came to his senses, he was already by the roadside, allegedly waiting for a taxi to go to his workplace at Camp 7.[28] While waiting for a taxi, however, some persons approached him and brought him to the police station where he was informed that he had inflicted injuries on his mother-in-law. He maintained, however, that he did not kill his mother-in-law and injure Anthonette; and that he was actually surprised by the charges against him.[29]

The RTC Ruling

In its joint judgment, the RTC found Oscar guilty of attempted homicide and murder.

With respect to the killing of Minda, the trial court was convinced that the prosecution was able to prove beyond

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[24] Records (Crim. Case No. 29335-R), pp. 82-85; Exhibits "T-1" to "T-4".

[25] *Id*. at 79-80-C; Exhibits "S" to "S-4".

[26] TSN, dated 7 February 2012, p. 3.

[27] TSN, dated 16 April 2012, pp. 4-5.

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

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

reasonable doubt that Oscar had committed the crime. It also appreciated the aggravating circumstance of evident premeditation to qualify the killing to murder. It observed that Oscar decided to commit the crime because of his grudge against Minda as it was to her, and not to him, that his wife remitted money from abroad.

The trial court also appreciated the aggravating circumstance of abuse of superior strength. It noted that Oscar was about 5'10" tall, heavily built, and armed with a deadly weapon; whereas Minda was only 4'11" in height, was already 61 years old, and was carrying a child.

As to the injury inflicted on Anthonette, the trial court ruled that the same constituted attempted homicide. It also opined that abuse of superior strength was present considering her tender age. However, the same could not be appreciated to qualify the crime to attempted murder because the information charged only the crime of attempted homicide.

The dispositive portion of the joint judgment states:

WHEREFORE, in view of the foregoing disquisitions, the Court, finding the guilt of the accused beyond reasonable doubt of the crimes of MURDER and ATTEMPTED HOMICIDE, imposes upon the accused the following penalties:

1. Criminal Case No. 29335-R for Attempted Homicide — the Indeterminate Sentence of six (6) months of *arresto mayor* as the minimum penalty to six (6) years and one (1) day of *prision correccional* as the maximum penalty, to indemnify the private complainant the amount of ₱929.00 as actual and compensatory damages, ₱25,000.00 as moral damages, and ₱10,000.00 as exemplary damages.

2. Criminal Case No. 29336-R for Murder – reclusion perpetua and to indemnify the heirs of Minda Babsa-ay the amounts of ₱83,763.00 as actual and compensatory damages, ₱50,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

In the service of his sentence, accused shall serve them successively. He shall be credited with 4/5 of his preventive imprisonment.

Accused is ordered transferred to the National Bilibid Prisons, Muntinlupa, Metro Manila in view of the nature of the penalties imposed upon him pending any appeal he may undertake.

SO ORDERED.[30]

Aggrieved, Oscar appealed before the CA.[31]

The CA Ruling

In its appealed decision, the CA affirmed with modification the RTC joint judgment. The appellate court concurred with the trial court in its assessment that the prosecution was able to establish by proof beyond reasonable doubt that Oscar killed Minda and injured Anthonette.

The appellate court, however, ruled that evident premeditation could not be appreciated to qualify the killing of Minda to murder. It explained that the prosecution failed to establish with certainty the time when Oscar decided to commit the felony. Consequently, that he clung to his determination to kill Minda could not also be inferred. Nevertheless, the appellate court ruled that abuse of superior strength attended the killing due to the evident disparity in strength between Oscar and Minda. Thus, Oscar is still guilty of murder for the killing of Minda.

The appellate court also ruled that Oscar could not be held criminally liable for attempted homicide because there was no evidence that he had the intent to kill Anthonette. Thus, Oscar could only be convicted of physical injuries; and considering that the physician who treated Anthonette testified that her injury was only superficial, Oscar is liable only for slight physical injuries therefor.

The *fallo* of the appealed decision provides:

FOR THESE REASONS, the September 4, 2012 Decision of the Regional Trial Court of Baguio City, Branch 59, is AFFIRMED with the following MODIFICATIONS:

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[30] Records (Crim. Case No. 29335-R), pp. 514-515.

[31] *Id.* at 518-520.

1. In Criminal Case No. 29335-R, accused-appellant OSCAR MAT-AN *Y* ESCAD is found GUILTY of SLIGHT PHYSICAL INJURY and is meted a straight penalty of twenty (20) days of arresto menor, and further ORDERED to pay the victim the amounts of ₱929.00 as actual damages and ₱5,000.00 as moral damages which shall earn interest at the rate of 6% per annum from date of finality of judgment until fully paid.

2. In Criminal Case No. 29336-R, accused-appellant OSCAR MAT-AN *Y* ESCAD is found GUILTY of MURDER and is sentenced to serve the penalty of reclusion perpetua, and further ORDERED to pay the heirs of the victim the amounts of ₱83,763.00 as actual damages, ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages which shall earn interest at the rate of 6% per annum from date of finality of the judgment until fully paid.

SO ORDERED.[32]

Hence, this appeal.

ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN ADJUDGING ACCUSED-APPELLANT OSCAR MAT-AN *Y* ESCAD GUILTY BEYOND REASONABLE DOUBT FOR THE DEATH OF MINDA BABSA-AY AND INJURIES SUSTAINED BY ANTHONETTE EWANGAN.

THE COURT'S RULING

The appeal lacks merit.

Factual findings of the trial court; minor inconsistencies between the testimonies of the witnesses

Oscar assails the credibility of the prosecution witnesses, particularly Norma's. He claims that Norma's testimony that she had instructed Clyde to look for Sheyanne is inconsistent

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

with Sheyanne's version that Norma herself appeared before her while doing laundry and related the incident to her. For Oscar, this discrepancy generated perplexity on who between Norma and Sheyanne was telling the truth, thereby putting in question what they actually witnessed on the morning of 8 April 2009.

This argument deserves scant consideration.

The established rule in our criminal jurisprudence is that when the issue is one of credibility of witnesses, the appellate courts will not disturb the findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Unless it can be shown that the trial court plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case; or in instances where the evidence fails to support or substantiate the trial court's findings of fact and conclusions; or where the disputed decision is based on a misapprehension of facts; the trial court's assessment of the credibility of witnesses will be upheld.[33]

In this case, no cogent reason exists which would justify the reversal of the trial court's assessment on the credibility of the witnesses. It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.[34]

While there are inconsistencies between Norma and Sheyanne's testimonies, these refer only to minor details which do not diminish the probative value of the testimonies at issue. Thus, the fact remains that Norma's categorical and positive identification of Oscar as the person who stabbed Minda prevails

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[33] *People v. Balleras*, 432 Phil. 1018, 1024 (2002).

[34] *Avelino v. People*, 714 Phil. 322, 334 (2013).

over his defense of denial. Denial is inherently a weak defense which cannot outweigh positive testimony. As between a categorical statement that has the earmarks of truth on the one hand and bare denial on the other, the former is generally held to prevail.[35]

Furthermore, Oscar himself could not firmly deny the accusations against him. Oscar himself could not categorically deny the possibility that he stabbed Minda and Anthonette after he "blacked-out." He merely stated that he was "shocked" by the aforesaid charges and that he "cannot recall" stabbing Minda and Anthonette, thus:

ATTY. CAMUYOT:

Q. So from the residence of your neighbour Donato Bunhian, where did you proceed, if you can remember?
A. I went to buy bread at the store, Ma'am.

Q. What store are you referring to Mr. Witness?
A. From the store of my mother-in-law, Ma'am.

Q. And what is the name of your mother-in-law?
A. Minda Babsa-ay, Ma'am.

Q. So were you able to buy bread from the store of your mother-in-law?
A. I was not able to buy, Ma'am.

Q. Why?
A. I was about to buy bread, Ma'am, but then my mother-in-law, Minda Babsa-ay, uttered some words on me, Ma'am.

Q. What did she utter to you particularly? What word did your mother-in-law uttered against you, if you can still remember?
A. "Why are you still coming here? You are even drunk."

Q. So how did you answer your mother-in-law, if you did answer?
A. I answered her back, Ma'am, but I cannot recall anymore what I have answered.

Q. So what transpired after that exchange of words with your mother-in-law, if you can still remember?

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[35] *People v. Bitancor*, 441 Phil. 758, 769 (2002).

A. I cannot recall anymore, Ma'am, I was shocked and I had a black out.

Q. So when did you come next to your senses during that day if you did, Mr. Witness?
A. I was already at the road located at the upper level, Ma'am.

Q. On the same day, Mr. Witness?
A. Yes, Ma'm.[36] (emphasis supplied)

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ATTY. CAMUYOT:

Q. Now, Mr. Witness, you are being charged of murdering your mother-in-law, Minda Babsa-ay. What can you say about this allegation?
A. I am shocked, Ma'am.

Q. You are also being charged, Mr. Witness of attempting to kill Ant[h]onette Ewangan. What can you say about this charge?
A. I don't know anything about that, Ma'am.[37] (emphases supplied)

x x x x x x x x x

PROS. BERNABE:

Q. You do not recall, Mr. Witness, that you stabbed your mother-in-law?
A. No, ma'am.

Q. You do not also recall that you stabbed Ant[h]onette Ewangan whom she was carrying at that time?
A. No, ma'am.[38]

From the foregoing, it is clear that the trial and appellate courts did not err in convicting Oscar. The prosecution was able to establish his guilt for Minda's death and Anthonette's injury. He cannot escape liability therefor just because he "blacked out" and "could not recall" that he committed said crimes.

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[36] TSN, dated 16 April 2012, pp. 4-5.

[37] *Id*. at 7.

[38] TSN, dated 7 May 2012, p. 6.

Oscar is guilty of murder qualified by abuse of superior strength, and also of slight physical injury.

The Court concurs that the crime committed against Minda is Murder qualified by abuse of superior strength.

The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime.[39] The appreciation of the aggravating circumstance of abuse of superior strength depends on the age, size, and strength of the parties.[40]

In a plethora of cases, the Court has consistently held that the circumstance of abuse of superior strength is present when a man, armed with a deadly weapon, attacks an unarmed and defenseless woman. In such case, the assailant clearly took advantage of the superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[41]

In this case, the prosecution was able to establish that Oscar abused his superiority when he killed Minda. Indeed, it was sufficiently shown that Oscar was armed with a knife, a deadly weapon, while Minda was then burdened by a child and had no means to defend and repel the attacks of her assailant. Furthermore, the trial court noted that Oscar was of heavy build and stood at 5'10" in contrast to Minda's 4'11" frame. Clearly, Oscar abused his superiority afforded him by his sex, height, and build and a weapon when he attacked Minda who was then carrying a child. Thus, the trial and appellate courts correctly convicted him of murder.

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[39] *Espineli v. People*, 735 Phil. 530, 544-545 (2014); *People v. Quisayas*, 731 Phil. 577, 596 (2014).

[40] *People v. Calpito*, 462 Phil. 172, 179 (2003).

[41] *People v. Appegu*, 429 Phil. 467, 482 (2002); *People v. Molas*, 291-A Phil. 516, 525 (1993).

The Court also concurs that Oscar can be held guilty only of slight physical injuries with respect to Anthonette. The prosecution failed to present any evidence which would show that Oscar also intended to kill Anthonette. Without the element of intent to kill, Oscar could only be convicted for physical injury; and considering that Anthonette's wound was only superficial, the appellate court correctly convicted Oscar of slight physical injury.

Alternative circumstance of intoxication

Oscar disputes that, on the assumption of his guilt, the trial and appellate courts erred in not appreciating the alternative circumstance of intoxication to mitigate his liability. He argues that records would show that he blacked out and could not remember what transpired; thus, his mental faculties were dulled by the alcohol he imbibed.

The Court is not persuaded.

Drunkenness or intoxication is a modifying circumstance which may either aggravate or mitigate the crime. It is aggravating if habitual or intentional; and it is mitigating if not habitual nor intentional, that is, not subsequent to the plan to commit the crime.[42] Once intoxication is established by satisfactory evidence, then, in the absence of truth to the contrary, it is presumed to be unintentional or not habitual.[43] From the foregoing, however, it is clear that the accused must first establish his state of intoxication at the time of the commission of the felony before he may benefit from the presumption that the intoxication was unintentional and not habitual. He must prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason.[44]

In this case, other than his bare allegation that he blacked out, Oscar failed to present sufficient evidence that would show

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[42] *People v. Baroy*, 431 Phil. 638, 659 (2002).

[43] *People v. Fortich*, 346 Phil. 596, 618 (1997).

[44] *People v. Fontillas*, 653 Phil. 406, 419 (2010).

that he was in a state of intoxication as would blur his reason. This uncorroborated and self-serving statement as to his state of intoxication is devoid of any probative value.[45] On the contrary, there is sufficient reason to believe that Oscar recognized the injustice of his acts. After stabbing her mother-in-law to death, Oscar proceeded to the roadside and waited for a taxi in an apparent attempt to escape. His excuse that he was there because he was going to work is not worthy of any belief. Thus, the trial and appellate courts did not err in not appreciating the alternative circumstance of intoxication in favor of Oscar.

Penalties and monetary awards

In Criminal Case No. 29335-R, there being no aggravating or mitigating circumstance present in the commission of the crime, the penalty shall be imposed in its medium period or twenty (20) days of *arresto menor*, following Article 266 of the RPC. The Court further finds the monetary awards consisting of ₱929.00 as actual damages and ₱5,000.00 as moral damages proper in this case.

In Criminal Case No. 29336-R, other than the circumstance of abuse of superior strength which already qualified the crimes to murder, no other modifying circumstance is present, whether aggravating or mitigating. Thus, the penalty of *reclusion perpetua* is imposed in accordance with Article 248 of the RPC, as amended by Section 6 of Republic Act *(R.A.)* No. 7659, in relation to Article 63(2) of the RPC.

The Court, however, modifies the CA decision with respect to the monetary awards. In *People v. Jugueta*,[46] the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that when the penalty imposed is *reclusion perpetua*, the following amounts may be awarded: (1) ₱75,000.00, as civil indemnity; (2) ₱75,000.00, as moral damages; and (3) ₱75,000.00 as exemplary damages.

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[45] *People v. Apduhan*, 133 Phil. 786, 800 (1968).

[46] G.R. No. 202124, 05 April 2016, 788 SCRA 331, 373.

The aforesaid amounts are proper in this case. The Court further retains the award of actual damages in the amount of ₱83,763.00.

WHEREFORE, the present appeal is **DISMISSED** for lack of merit. The 25 April 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05858 is **AFFIRMED with MODIFICATIONS** as follows:

1. In Criminal Case No. 29335-R, accused-appellant OSCAR MAT-AN *Y* ESCAD is found **GUILTY** of SLIGHT PHYSICAL INJURY and is meted a straight penalty of twenty (20) days of *arresto menor*, and further **ORDERED** to pay the victim the amounts of ₱929.00 as actual damages and ₱5,000.00 as moral damages which shall earn interest at the rate of six percent (6%) per annum from date of finality of judgment until fully paid.

2. In Criminal Case No. 29336-R, accused-appellant OSCAR MAT-AN *Y* ESCAD is found **GUILTY** of MURDER and is sentenced to serve the penalty of *reclusion perpetua*, and further **ORDERED** to pay the heirs of the deceased Minda Babsa-ay the following amounts: (1) ₱83,763.00 as actual damages; (2) ₱75,000.00 as civil indemnity; (3) ₱75,000.00 as moral damages; and (4) ₱75,000.00 as exemplary damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.[47]

SO ORDERED.

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

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[47] *People v. Combate*, 653 Phil. 487, 517-518 (2010).

THIRD DIVISION

[G.R. No. 219174. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALVIN VELASCO *y* HUEVOS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— To establish the crime of illegal sale of dangerous drugs, the following elements must concur: (a) the identity of the buyer and the seller, object and the consideration of the sale; and (b) the delivery of the thing sold and the payment for it. The Prosecution must prove that the transaction or sale of dangerous drugs actually took place, coupled with the presentation in court of evidence of the thing sold, which is the *corpus delicti*. The Prosecution must then establish with the same exacting degree of certitude as that required for sustaining a conviction that the substance illegally sold was the very substance adduced in court. In that regard, the requirement for ensuring the chain of custody becomes essential as it ensures that unnecessary doubts respecting the identity of the evidence are thereby minimized if not altogether removed.

2. ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE REQUIRES JUSTIFICATION THEREOF.— Section 21, paragraph 1, of R.A. No. 9165 and Section 21 (a), Article II of its Implementing Rules and Regulations (IRR) are relevant. x x x Although the last paragraph of Section 21(a) of the IRR has set a saving mechanism such that the non-compliance with the required procedures would not automatically invalidate the seizure and custody of the dangerous drugs recovered or seized, the applicability of the saving mechanism is conditioned upon the rendering by the apprehending team of a justification for such non-compliance. Otherwise, the failure to render the justification will create doubt as to the identity and the evidentiary value of the drugs presented as evidence in court. x x x The last paragraph of Section 21(a) of the IRR provides a saving mechanism to ensure that not every case of non-compliance

irreversibly prejudices the State's evidence. It is significant to note, however, that the application of the saving mechanism to any particular situation is expressly conditioned upon the State rendering a fitting or suitable explanation of the lapse or gap in the compliance with the procedures. The explanation should at least disclose to the trial court the reason or reasons for the lapse or gap in compliance with the procedure considering that every step in the procedure is an essential link in the chain of custody.

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

BERSAMIN, *J.*:

The regularity of the performance of official duty on the part of the arresting officers during the buy-bust operation and its aftermath cannot be presumed when the records do not contain any explanation why the requirements of Section 21 of Republic Act No. 9165 (*The Comprehensive Dangerous Drugs Act of 2002*) were not complied with. The incrimination of the accused thereby becomes doubtful, and his acquittal of the charge of illegal selling of dangerous drugs should follow.

The Case

This appeal seeks the review and reversal of the decision promulgated on May 27, 2014,[1] whereby the Court of Appeals (CA) affirmed the conviction of accused Alvin Velasco *y* Huevos and his co-accused Vevir Diaz *y* Malinao by the Regional Trial Court, Branch 39, in Calapan City, Oriental Mindoro[2] for the

[1] *Rollo,* pp. 2-18; penned by Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios.

[2] CA *rollo*, pp. 83-94, penned by Judge Manuel C. Luna, Jr.

crime illegal sale of prohibited drugs as defined and punished by Section 5 of R.A. No. 9165.

We note that Diaz was also found guilty of illegal possession of dangerous drugs as defined and punished under Section 11 of R.A. No. 9165.

Antecedents

In Criminal Case No. CR-06-8538, only Diaz was charged with the violation of Section 11 of R.A. No. 9165.

In Criminal Case No. CR-06-8539, Velasco and Diaz were jointly charged with the violation of Section 5 of R.A. No. 9165. The relevant information alleged:

> That on or about [the] **7th** day of August 2006, at around **12:30** in the **afternoon**, more or less, at Barangay **Camilmil**, City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without any legal authority nor corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, deliver, transport or distribute to a **poseur-buyer,** ***methampethamine hydrochloride (shabu),*** a dangerous drug, weighing 0.26 gram, more or less.
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> Contrary to law.[3]

The Prosecution presented PO2 Rodel Alcano, PO2 Jomer Rodil, PO2 Virgilio Rosales, and P. Sr. Insp. Rhea Dela Cruz-Alviar as its witnesses. On the other hand, the Defense relied on Diaz and Velasco as witnesses.[4]

The CA summarized the respective versions of the parties in the assailed decision as follows:

Evidence for the Prosecution

Sometime in July 2006, a police asset reported to PO2 Alcano that the Accused-Appellants were selling shabu in Calapan City. The

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[3] *Id*. at 128.

[4] *Rollo,* p. 4.

Calapan City Police Station verified this information through a surveillance operation that lasted for at least two (2) weeks.

On August 7, 2006, a buy-bust operation was planned and led by Senior Police Officer II Eduardo Espiritu (SPO2 Espiritu). PO2 Alcano was designated as the poseur-buyer with Police Officer III Avelino Masongson, PO2 Rodil, and PO2 Rosales as arresting officers. Three (3) Five Hundred-Peso (PhP500.00)-bills were prepared as marked money. The initials "RUA", corresponding to PO2 Alcano's initials, were written thereon and the bills' serial numbers were recorded in the police blotter.

x x x x x x x x x

After the preparation was completed, the police asset contacted the Accused-Appellants and arranged a sale of shabu near a Petron gasoline station in Barangay Camilmil.

PO2 Alcano and the police asset proceeded to the above meeting place on board a motorcycle and the other police officers followed discreetly in an unmarked Toyota Revo. PO2 Alcano parked the motorcycle beside the air and water section and the other members of the buy-bust team remained inside the Revo and parked the same beside a gas pump of Petron. The Accused-Appellants arrived there ahead of them. PO2 Alcano and the police asset approached Accused-Appellants and handed the marked money to Velasco, who accepted the same. Velasco then took out a small plastic sachet containing a white crystalline substance suspected to be shabu and gave it to PO2 Alcano. On the other hand, Diaz watched the entire exchange and attempted to sell more shabu saying, "*If you still need more, we still have some.*"

After seeing the sale, the other members of the buy-bust team quickly alighted from the vehicle and apprehended the Accused-Appellants. They were searched for more illegal drugs and found three (3) small plastic sachets on Diaz containing white crystalline substance suspected to be shabu. The marked money were found inside Velasco's wallet.

The Accused-Appellants, together with the seized items, were brought to the Calapan City Police Station and were photographed in the presence of Barangay Captain Frayre. The small plastic sachet confiscated from Velasco containing a substance suspected to be shabu was marked with PO2 Alcano's initials "RUA". On the other hand, the three (3) small plastic sachets found on Diaz were marked

as "JVR-1", "JVR-2", and "JVR-3". PO2 Alcano prepared the Inventory of Confiscated Items and the same was attested to by Barangay Captain Freyre. The requests for laboratory examination were prepared by Police Superintendent Policarpio Lopez. Thereafter, the plastic sachets recovered from the Accused-Appellants were personally turned over by PO2 Alcano and PO2 Rodil to PSI Alviar, the forensic chemist of the Crime Laboratory Service of Calapan City, on the same day of arrest.

PSI Alviar received the four (4) heat-sealed transparent plastic sachets with the above markings. Qualitative, chemical, and confirmatory examinations were conducted thereon and the results yielded positive for *Methamphetamine Hydrochloride* or more commonly known as shabu.

PO2 Rosales, as arresting officer, corroborated the testimonies of PO2 Alcano and PO2 Rodil on its material points.[5]

Evidence for the Defense

Diaz testified that on August 7, 2006 at around 3:00 a.m., he left their house in Fairview, Quezon City, and went to Calapan City, Oriental Mindoro, to participate in cockfights and billiard games. x x x

Diaz then went to the house of his friend Manding Mercado (Manding) in Lumangbayan, Calapan City. It turned out that Manding was in Puerto Galera that time, so Diaz decided to follow him there. Before going to Puerto Galera, he took his lunch at a *kambingan* near Petron gasoline station in Camilmil, Calapan City.

After eating, two (2) persons arrived and asked Diaz, *"May dala kang baril?"* He raised his hands and after which, he was led to a Toyota Revo. He saw Velasco already inside the said vehicle.

For his part, Velasco testified that on August 7, 2006 at around 12:00 noon, he was at the national highway across the MOTOC terminal in Barangay Lalud. When he was about to cross the road, a white Toyota Revo suddenly stopped in front of him and several armed men in civilian clothes alighted, three (3) of whom pointed their guns at him. One of the armed men, later identified as PO2 Rosales, told him that concerned citizens informed them that he was carrying a firearm. He was bodily searched but none was found. Velasco was,

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

nonetheless, handcuffed and was directed to board the vehicle. They drove to Barangay Camilmil and stopped in front of a *kambingan* for a period of around five (5) minutes, then Diaz was later brought inside the vehicle. Diaz knew who Velasco was because they were introduced to each other by a *kumpare* about a year prior to the incident.

The Accused-Appellants were brought to the Calapan City Police Station where they were frisked and stripped naked but no firearm or illegal drugs were found in their possession. They were investigated without the assistance of a counsel. They were maltreated and one of the policemen even took Velasco's money amounting to Twenty Thousand Pesos (PhP20,000.00). The Accused-Appellants were brought to the Prosecutors' Office the next day for inquest proceedings where they revealed that one of the arresting officers demanded One Hundred Thousand Pesos (PhP100,000.00) in exchange for Velasco's release. When Velasco told the arresting officer that he does not have money, he heard them saying, *"Accomplishment na lang natin 'to.*"[6]

Ruling of the RTC

On April 10, 2012, the RTC rendered its joint decision after trial, and convicted Velasco and Diaz as charged,[7] disposing:

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

1. In CR-06-8538, this Court finds the accused VEVIR DIAZ y MANALO **GUILTY** beyond reasonable doubt as principal of the crime charged in the aforequoted information and in default of any modifying circumstances attendant, hereby sentences him to suffer the indeterminate penalty of imprisonment ranging ***from TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FIFTEEN (15) YEARS and ONE (1) DAY as MAXIMUM and to pay a fine in the amount of ₱300,000.00,*** with the accessory penalties provided by law and with credit for preventive imprisonment undergone, if any. The 0.90 grams of *methamphetamine hydrochloride (*shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

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

[7] CA *rollo,* pp. 83-94.

2. In CR-06-8539, this Court finds accused VEVIR DIAZ y MANALO and ALVIN VELASCO y HUEVOS ***GUILTY*** beyond reasonable doubt as principals of the crime charged in the aforequoted Information and in default of any modifying circumstances attendant, hereby sentences them to suffer the penalty of ***LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS,*** with the accessory penalties provided by law and with credit of preventive imprisonment undergone, if any. The 0.26 grams of *methampethamine hydrochloride* (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

SO ORDERED.[8]

The RTC observed that the elements of illegal possession of dangerous drugs charged against Diaz in Criminal Case No. CR-06-8538 and of illegal sale of dangerous drugs charged against Diaz and Velasco in Criminal Case No. 06-8539 were established during the trial; that the accused were caught *in flagrante delicto* selling *shabu* during the valid buy-bust operation, thereby rendering the evidence presented against them admissible; that the apprehending police officers properly preserved the integrity and evidentiary value of the seized items by substantially complying with the requirements of Section 21 of R.A. No. 9165; and that their defenses of denial and frame-up did not prevail over the positive testimonies of the Prosecution's witnesses.[9]

Judgment of the CA

On appeal, the CA affirmed the convictions of Velasco and Diaz, upholding the RTC's findings that the Prosecution established all the elements of the offenses charged; that the testimonies of the Prosecution's witnesses should be given full faith and credence, and should thus be presumed to have performed their official duties in a regular manner; and that

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[8] *Id*. at 93-94.

[9] *Id*. at 93.

the chain of custody of the seized drugs had remained intact, thereby preserving the integrity, identity and value of the drugs as evidence.

Issue

With Diaz having meanwhile expressly informed the Court that he was no longer appealing his convictions, only Velasco's appeal remains to be resolved.[10] The sole issue is whether or not the CA erred in finding Velasco guilty beyond reasonable doubt of the crime charged in Criminal Case No. CR-06-8539.

Ruling of the Court

The appeal has merit.

To establish the crime of illegal sale of dangerous drugs, the following elements must concur: (a) the identity of the buyer and the seller, object and the consideration of the sale; and (b) the delivery of the thing sold and the payment for it.[11] The Prosecution must prove that the transaction or sale of dangerous drugs actually took place, coupled with the presentation in court of evidence of the thing sold, which is the *corpus delicti.*[12] The Prosecution must then establish with the same exacting degree of certitude as that required for sustaining a conviction that the substance illegally sold was the very substance adduced in court.[13] In that regard, the requirement for ensuring the chain of custody becomes essential as it ensures that unnecessary doubts respecting the identity of the evidence are thereby minimized if not altogether removed.[14]

Section 21, paragraph 1, of R.A. No. 9165 and Section 21 (a), Article II of its Implementing Rules and Regulations (IRR) are relevant.

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[10] *Rollo*, p. 19.

[11] *People v. Adrid,* G.R. No. 201845, March 6, 2013, 692 SCRA 683*,* 697.

[12] *Cruz v. People,* G.R. No. 164580, February 6, 2009, 578 SCRA 147, 154.

[13] *People v. Adrid, supra*, note 11.

[14] *Id*.

Section 21, paragraph 1, of R.A. No. 9165 reads:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

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Section 21 (a), Article II of the IRR of R.A. No. 9165 states:

x x x x x x x x x

(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, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

The procedures outlined under the foregoing provisions were undeniably not followed by the members of the apprehending team. They did not mark and photograph the seized drugs, or make an inventory of the seized drugs immediately upon confiscation at the place of the buy-bust operation and in the presence of Velasco, a representative from the media and the Department of Justice, and an elected public official who should then have signed the copies of the inventory and be given a copy thereof.

Although the last paragraph of Section 21(a) of the IRR has set a saving mechanism such that the non-compliance with the required procedures would not automatically invalidate the seizure and custody of the dangerous drugs recovered or seized, the applicability of the saving mechanism is conditioned upon the rendering by the apprehending team of a justification for such non-compliance. Otherwise, the failure to render the justification will create doubt as to the identity and the evidentiary value of the drugs presented as evidence in court.

It is notable that the apprehending officers who had initial custody of the drugs did not reveal why the requisite inventory, marking and photographing were done only after transporting of the seized dangerous drugs from the point of the confiscation of the drugs to the Calapan Police Station, and why the same were done in the presence only of the barangay chairman. The failure to justify on the part of the arresting team could only mean that the important links in the chain of custody were absent, and this constituted a fatal flaw in the incrimination of Velasco. Indeed, the apprehending officers had to explain during the trial the failure to justify. At the minimum, such justification would bring the arrest of Velasco back on the road of regularity.

The last paragraph of Section 21(a) of the IRR provides a saving mechanism to ensure that not every case of non-compliance irreversibly prejudices the State's evidence. It is significant to note, however, that the application of the saving mechanism to any particular situation is expressly conditioned upon the State rendering a fitting or suitable explanation of

the lapse or gap in the compliance with the procedures.[15] The explanation should at least disclose to the trial court the reason or reasons for the lapse or gap in compliance with the procedure considering that every step in the procedure is an essential link in the chain of custody.

It is noteworthy, too, that the police officers had sufficient time to ensure the presence of the representative of the media and the DOJ at the seizure and confiscation of the illegal drugs in light of their assertion that they had conducted a surveillance operation at least two weeks following the report of the police asset in July 2006. Nevertheless, they still failed to faithfully comply with the procedural safeguards, and, worse, they did not offer any explanation for their non-compliance.

The regularity of the performance of official duty on the part of the arresting officers during the buy-bust operation and its aftermath cannot be presumed when the records do not contain any explanation why the various requirements of Section 21 of R.A. No. 9165 were not complied with. Hence, the incrimination of the accused was doubtful, and his acquittal of the charge of illegal selling of dangerous drugs on the ground of reasonable doubt should follow.

In every prosecution for the sale of dangerous drugs prohibited under R.A. No. 9165, the State, not the accused, carried the heavy burden of justifying at the trial the lapses or gaps in the chain of custody. Without the justification, the chain of custody is not shown to be unbroken; hence, the integrity of the evidence of the *corpus delicti* was not preserved. The result is that a doubt about whether the evidence presented to the trial court was the substance that was the subject of the illegal sale arose. The accused could not be justifiably found and held guilty of the offense charged in the face of such doubt. The acquittal of the accused should follow.[16]

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[15] *People v. Sanchez,* G.R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

[16] *People v. Geronimo,* G.R. No. 180447, August 23, 2017.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 27, 2014 in CA-G.R. CR-HC No. 05655; **ACQUITS** accused **ALVIN VELASCO y HUEVOS** on the ground that his guilt was not established beyond reasonable doubt; and **ORDERS** his immediate release from confinement at the New Bilibid Prison in Muntinlupa City unless there are other lawful causes warranting his continuing confinement.

The Court **DIRECTS** the Director of the Bureau of Corrections to implement the immediate release of **ALVIN VELASCO y HUEVOS**, and to report on his compliance within 10 days from receipt.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 220884. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH AGALOT *y* RUBIO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE APPELLATE COURT, RESPECTED.— It is well-settled that the factual findings and evaluation of witnesses' credibility and testimony should be entitled to great respect unless it is shown that the trial court may have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance. The assessment of the credibility of witnesses is a task most properly within the domain of trial

courts. The rule is even more strictly applied if the appellate court has concurred with the trial court.

2. ID.; ID.; ID.; ID.; STRICTLY CONFORMED WITH ARE THE THREE (3) GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— Strictly conform[ed] with [are] the three (3) guiding principles in reviewing rape cases, *viz*: *(*a*)* an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; *(*b*)* considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and *(*c*)* the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

3. CRIMINAL LAW; RAPE; ELEMENTS; FORCE AND INTIMIDATION, DISCUSSED.— For a charge of rape under Article 266-A(1) of Republic Act (*R.A.*) No. 8353 to prosper, it must be proven that: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. The gravamen of rape under Article 266-A (1) is carnal knowledge of a woman against her will or without her consent. On the one hand, jurisprudence imparts the following definitions of "force" and "intimidation," to wit: Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. "Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol."

4. REMEDIAL LAW; EVIDENCE; TESTIMONY; WHEN A RAPE VICTIM'S TESTIMONY IS CREDIBLE AND SUFFICIENTLY ESTABLISHES THE ELEMENTS OF THE CRIME, IT MAY BE ENOUGH BASIS FOR CONVICTION.— The basic rule is that when a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of

rape. The records reveal that the testimony of AAA, though she was only a child, was full of details which she credibly narrated because these were the truth. Mindful that the identity of the offender is crucial in the success of the prosecution of an offense, the Court notes AAA's unshakable and consistent positive identification of the accused-appellant as the one who raped her despite the gruelling cross-examination by the defense. x x x [Moreso when] corroborated by the medical findings of the examining physician, as in the present case.

5. ID.; ID.; ALIBI AND DENIAL; WEAK DEFENSES THAT CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE VICTIM AS TO WHO RAPED HER.— The defense of alibi and denial proffered by the accused-appellant were inherently weak and which cannot prevail over the positive identification by AAA that it was the accused-appellant who raped her. His denial, which was not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. For the defense of alibi to prosper, the accused-appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.

6. CRIMINAL LAW; RAPE; NOT NEGATED BY FAILURE TO SHOUT FOR HELP.— To extricate himself from liability, the accused-appellant asserted that AAA never made any effort to ask or shout for help from her companions. The assertion of the accused-appellant is without merit. AAA testified that she did not shout for help because only DDD, who is crippled, and her nephews and nieces, who were small children, were at home. Surely, even if she shouted for help her nephews and nieces would not have understood the situation she was in or knew how they could have helped her. Likewise, accused-appellant was armed with a knife and had threatened AAA that he would stab her if she resisted. It must be emphasized that enlightened precedent teaches that the workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, others may faint, and still others

may be shocked into insensibility even if there may be a few who may openly welcome the intrusion. Confronted with the risk of being stabbed by the accused-appellant and feeling helpless as there was no one who could have helped her that time, AAA miserably endured the hideous acts committed against her by the accused-appellant.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF RAPE VICTIM; NOT AFFECTED BY MINOR INCONSISTENCIES IN TESTIMONY.— Granting for the sake of argument that there was an inconsistency in AAA's testimony, it must be stressed that the supposed inconsistency, not being an element of the crime, does not diminish the credibility of AAA's declarations. In the same vein, jurisprudence dictates that inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Most significantly, "(I)naccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget."

8. CRIMINAL LAW; RAPE; NOT NEGATED BY THE ABSENCE OF SEMEN IN THE VICTIM'S VAGINAL AREA.— [T]he absence of semen in AAA's vaginal area does not rule out a finding of rape. The presence or absence of spermatozoa is immaterial because the presence of spermatozoa is not an element of rape. It must be remembered that it is the credible disclosure of AAA that the accused-appellant raped her that is the most important proof of the commission of the crime.

9. ID.; ID.; PROPER PENALTY AND DAMAGES.— Considering that under Art. 266 (B) of R.A. No. 8353, the penalty to be imposed upon accused-appellant is *reclusion perpetua*, he shall no longer be eligible for parole, as provided for in Sec. 3 of R.A. No. 9346, pursuant to R.A. No. 4180, otherwise known as the Indeterminate Sentence Law, as amended. Following the decision in *People v. Jugueta*, the Court modifies the award by the trial court of the civil indemnity and damages to AAA as follows: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; and exemplary damages of ₱75,000.00. The civil

indemnity and the moral and exemplary damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This resolves the appeal of accused-appellant Joseph Agalot *y* Rubio from the 13 July 2015 Decision[1] of the Court of Appeals (*CA*), Twenty-Second Division, in CA G.R. CR-H.C. No. 01204-MIN which affirmed the 24 April 2013 Judgment[2] of the Regional Trial Court (*RTC*), Branch 7, Dipolog City, in Criminal Case No. 11118 finding him guilty of Rape in relation to Republic Act (*R.A.*) No. 7610, as amended.

THE FACTS

Accused-appellant was charged with rape in relation to R.A. No. 7610 committed as follows:

That on April 7, 2002 at about 3:00 o'clock in the afternoon, at [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation did then and there willfully, unlawfully, and feloniously have carnal knowledge with one AAA, a girl 12 years of age without her consent and against her will.

CONTRARY TO LAW.[3]

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[1] *Rollo*, pp. 3-19. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting.

[2] Records, pp. 117-128. Penned by Judge Rogelio D. Laquihon.

[3] *Id*. at 1.

When arraigned, accused-appellant pleaded not guilty; hence, trial on the merits ensued.

To prove its case, the prosecution presented AAA and Dr. Ramonita Mandin (*Dr. Mandin*) of the Dr. Jose Rizal Memorial Hospital, Dapitan City.

For the defense, accused-appellant and Nonito Palpagan (*Palpagan*) testified.

Version of the Prosecution

When her parents separated, AAA,[4] who was only six years old, was left by her father at the house of his sister BBB and her spouse CCC to take care of their crippled grandson, DDD. Accused-appellant is the father of DDD.[5]

On 7 April 2002 at about 3:00 p.m., AAA, then already twelve years old, was left at home with accused-appellant, DDD, and her nephews and nieces. AAA was taking care of the child of accused-appellant's sister when accused-appellant told her to get a calendar from his brother's house. AAA complied but unknown to her accused-appellant had followed her to his brother's house. Accused-appellant then told AAA to go upstairs but when she refused, he dragged her upstairs, which incident was witnessed by EEE, a niece. When the accused-appellant and AAA were inside a room on the second floor, DDD told the accused-appellant that he would tell CCC about this.[6]

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[4] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: *Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances*). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 ("*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*"); R.A. No. 8508 ("*Rape Victim Assistance and Protection Act of 1998*"); R.A. No. 9208 ("*Anti-Trafficking in Persons Act of 2003*"); R.A. No. 9262 ("*Anti-Violence Against Women and their Children Act of 2004*"); and R.A. No. 9344 ("*Juvenile Justice and Welfare Act of 2006*").

[5] TSN, 10 December 2002, p. 8.

[6] *Id*. at 3-5 and 13.

The accused-appellant, then armed with a hunting knife, made AAA lie down and if she refused, he threatened that he would stab her. After AAA lay down, accused-appellant removed his clothes, undressed her, and mounted her. While holding the knife, he inserted his penis into her vagina and made a push and pull movement. AAA cried because she felt pain. After having carnal knowledge of AAA, accused-appellant left.[7]

AAA told BBB and CCC that their son, accused-appellant, raped her but they did not believe her. AAA proceeded to accused-appellant's sister, FFF, and told her what had happened. FFF and her husband accompanied AAA to the hospital for a medical examination.[8]

The physical examination conducted on AAA by Dr. Mandin showed the following:

> P.E. - Linear abrasion at midclavicular line, 4th ICS, left
>
> Perineal Exam:
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> Vulva — Erythema noted, at rt. and left labia majora
> Abrasion noted at 4 o'clock position
> Admits examining finger (little finger) with pain
> Cervical swab sent for spermatozoa examination
> RESULT: Negative[9]

Version of the Defense

According to the accused-appellant, on 7 April 2002, at about 3:00 p.m., he was in his house together with his two children, nephews, nieces, and AAA. He was then cooking bananas when he asked AAA to fetch water. She complied but when it took her a long time to come back, he went out and found her at the basketball court where she was playing with her slippers. He got a guava branch which he used to whip her but because she still did not want to go home, he dragged her towards the house.[10]

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

[8] *Id*. at 7.

[9] Records, p. 31, Exh. "A".

[10] TSN, 22 March 2005, pp. 5-6.

For his part Palpagan testified that CCC was his friend thus, he knew accused-appellant. On 7 April 2002 at about 1:00 p.m., he and the accused-appellant rode a *habalhabal* going to the cockpit. Upon arriving there, he went inside while the accused-appellant stayed outside. At around 5:00 p.m. and after having won at the cockfight, he, together with the accused-appellant and Bernardo Cadoc, proceeded to Bagting to buy chicken feeds and thereafter to a videoke house for drinks. They were done drinking at 9:00 p.m. and by 12:00 midnight they went to the house of his uncle, Melchor Palpagan (*Melchor*), with the intent to continue their drinking spree. A few minutes thereafter, the policemen came and arrested the accused-appellant.[11]

The Ruling of the RTC

The RTC held that the prosecution was able to prove that the accused-appellant had carnal knowledge of AAA against her will or without her consent through force. It held the fact that AAA testified that she felt pain when she was raped by the accused-appellant could only mean there was penetration by the penis of her vagina. Moreover, AAA's testimony was corroborated by the findings of Dr. Mandin who conducted the medical examination within twenty-four hours from the time the incident took place. The RTC further held that the prompt filing of the case against the accused-appellant was an indication that AAA's accusation was true. AAA's testimony was consistent throughout the trial and replete with details which only a real victim of sexual assault could narrate.[12]

On the one hand, accused-appellant simply denied the accusation against him contrary to the testimony of Palpagan. The RTC resolved the case against accused-appellant as follows:

> WHEREFORE, judgment is hereby rendered finding accused Joseph R. Agalot guilty beyond reasonable doubt as principal by direct participation of the crime of simple rape committed against AAA under paragraph (l)(a), Art. 266-A of the Revised Penal Code, as

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[11] TSN, 29 June 2010, pp. 3-6.

[12] Records, pp. 122-125.

amended. Consequently, he is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the private complainant the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages. With costs against the accused.

SO ORDERED.[13]

Aggrieved with the decision of the RTC, the accused-appellant appealed to the CA.

The Ruling of the CA

The CA ruled that the appeal lacked merit. It held that all the elements of the offense charged were sufficiently proven by the prosecution. It held that the evidence on record supports the judgment of conviction of the accused-appellant of the offense charged. Thus, the dispositive portion of the CA's decision reads:

WHEREFORE, the foregoing considered, the appeal is hereby DENIED. The assailed Judgment of the trial court is AFFIRMED *in toto*.

SO ORDERED.[14]

ISSUE

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

OUR RULING

The appeal is without merit.

The findings of the trial court when affirmed by the appellate court are binding with the Court.

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[13] *Id*. at 128.

[14] *Rollo*, p. 19.

It is well-settled that the factual findings and evaluation of witnesses' credibility and testimony should be entitled to great respect unless it is shown that the trial court may have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.[15] The assessment of the credibility of witnesses is a task most properly within the domain of trial courts.[16] The rule is even more strictly applied if the appellate court has concurred with the trial court.[17] As amply explained by the Court:

> Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[18]

Strictly conforming with the three (3) guiding principles in reviewing rape cases, *viz*: *(a)* an accusation of rape can be made

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[15] *People v. Francica*, G.R. No. 208625, 6 September 2017.

[16] *People v. Gerola*, G.R. No. 217973, 19 July 2017.

[17] *People v. Labraque*, G.R. No. 225065, 13 September 2017.

[18] *People v. Gerola*, *supra* note 16.

with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; *(b)* considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and *(c)* the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense,[19] the Court undertook a scrupulous review of the records of this case but found nothing that would validly support a conclusion that the trial and the appellate courts had overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance that would justify it not to accord weight and respect to these courts' factual findings.

The elements of rape were sufficiently proven by the prosecution.

For a charge of rape under Article 266-A(1)[20] of Republic Act (*R.A.*) No. 8353[21] to prosper, it must be proven that: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. The gravamen

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[19] *People v. Rubillar*, G.R. No. 224631, 23 August 2017.

[20] Article 266-A. Rape: *When and How Committed*.— Rape is committed:

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

a) Through force, threat, or intimidation;

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

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

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

[21] Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for Other Purposes" dated 30 September 1997.

of rape under Article 266-A(1) is carnal knowledge of a woman against her will or without her consent.[22] On the one hand, jurisprudence[23] imparts the following definitions of "force" and "intimidation," to wit:

> Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident. "Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol." (citations omitted)

That the offender had carnal knowledge of AAA and that he was able to accomplish his act through force and intimidation was established through the following testimony of AAA, to wit:

Q. At about 3:00 o'clock in the afternoon of April 7, 2002, what happened?
A. At that time I was taking care of the baby in the cradle, after that, he told me to get the calendar from the other house.

Q. You mean, there is another house aside from the house you are staying?
A. Yes, sir.

Q. How far is the house from BBB?
A. Very near.

Q. Can you point from where you are sitting?
A. More or less 15 meters away.

Q. And by the way, you said you were taking care of the child, rocking the cradle, whose baby was that?
A. The baby of the sister of Joseph.

x x x x x x x x x

Q. You said he commanded you to get the calendar from the other house, did you heed his request?

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[22] *People v. Corpuz*, G.R. No. 208013, 3 July 2017.

[23] *People v. Tionloc*, G.R. No. 212193, 15 February 2017.

A. Yes, sir.

Q. **When you were there what happened?**
A. **He wanted me to go upstairs.**

Q. **Did you go upstairs?**
A. **No, sir.**

Q. **Why?**
A. **He wanted me to go upstairs but I don't want to go with him but he dragged me towards the back of the house.**

x x x x x x x x x

Q. So you go to the house, where did you proceed when he brought you upstairs?
A. Inside the room.

x x x x x x x x x

Q. You said he brought you there, did you consent that you should be brought there?
A. If I will not follow, I [was] also afraid of him.

Q. **Why?**
A. **Because he has a knife.**

Q. **He has a knife?**
A. **Yes, sir.**

Q. **He forcibly brought you there?**
A. **Yes, sir.**

Q. **Did he hold your hand?**
A. **Yes, sir.**

x x x x x x x x x

Q. **When you were inside the room, what did he do to you?**
A. **He let me lie down.**

Q. **Did you heed his command?**
A. **If I will not follow his order, he [will] really stab me.**

Q. **Did he say to you that if you will not follow, he will stab you?**
A. **Yes, sir.**

Q. Because of that, you lie down.
A. Yes, sir.

Q. Then what did he do next?
A. He took off his clothes.

Q. What else did he take off?
A. He took off his pants and briefs.

Q. After he took off his pants and brief, what did he do to you?
A. He also undressed me.

Q. What were you wearing at that time?
A. Shirt.

Q. He took off your panty?
A. Yes, sir.

Q. Did he succeed in removing your panty?
A. Yes, sir.

Q. **After that, what did he do?**
A. **He mounted me.**

Q. **What else did he do?**
A. **He placed his penis inside my vagina.**

Q. **What did you feel then?**
A. **I felt pain.**

Q. **Why?**
A. **I felt pain on my vagina because he inserted his penis inside my vagina.**

Q. **You mean to say that he was able to penetrate?**
A. **Yes, sir.**

Q. **When you felt that his organ was able to enter your private part, what did he do?**
A. **He made a push and pull movement.**

Q. **How long did he do that when you say that he made a push and pull movement?**
A. **It took him a long time to make a push and pull movement and afterwards, he went out.**

Q. **You mean, he was able to have his organ penetrated in your private part?**
A. **Yes, sir.**

Q. How about when he was making a push and pull movement?
A. I also cried because it was very painful.

Q. Were you able to say something?
A. I did not say anything because he did not allow me to say anything.

Q. **When he was mounting you and let his penis enter your private part, where was his knife at that time?**
A. **He was holding it.**[24] (emphases supplied)

The basic rule is that when a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape.[25] The records reveal that the testimony of AAA, though she was only a child, was full of details which she credibly narrated because these were the truth. Mindful that the identity of the offender is crucial in the success of the prosecution of an offense,[26] the Court notes AAA's unshakable and consistent positive identification of the accused-appellant as the one who raped her despite the gruelling cross-examination by the defense.

Dr. Mandin testified that when she did a perineal examination of AAA she noted erythema or redness caused by force or pressure on her right and left labia majora, and abrasion of the vulva at 4 o'clock position. Upon internal examination, the examining finger was admitted with pain.[27] Settled is the rule that a rape victim's account is sufficient to support a conviction for rape if it is straightforward, candid, and corroborated by the medical findings of the examining physician,[28] as in the present case.

Moreover, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong

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[24] TSN, 10 December 2002, pp. 4-7.

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

[26] *People v. Corpuz*, 714 Phil. 337, 344 (2013).

[27] TSN, 10 December 2012, pp. 5-7.

[28] *People v. Lumaho*, 744 Phil. 233, 243 (2014).

done to her being.[29] "When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity."[30]

AAA's credibility was further fortified by her prompt report to BBB and CCC, and FFF and her husband, of the accused-appellant's carnal knowledge of her. She even readily submitted herself to a medical examination. Extant also from the records is AAA's sworn statement[31] which was taken before the Dapitan City Police Station detailing the gruesome acts committed against her by the accused-appellant. These facts confirm that AAA did not have the luxury of time to fabricate a rape story.[32] A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[33]

Significantly, nothing from the records would indicate that AAA had ill motive in testifying against the accused-appellant, her first cousin. For sure, AAA was indebted to the family of the accused-appellant as she had been staying with them since she was six years old, albeit she was tasked in return to take care of DDD and her young nephews and nieces. There is thus reason to apply the well-settled jurisprudence that where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl having been the victim of a sexual assault cannot be discarded.[34]

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[29] *People v. Tubillo*, G.R. No. 220718, 21 June 2017.

[30] *People v. Tuballas*, G.R. No. 218572, 19 June 2017.

[31] Records, p. 3.

[32] *People v. Gunsay*, G.R. No. 223678, 5 July 2017.

[33] *People v. Tuballas*, *supra* note 30.

[34] *People v. Tabayan*, 736 Phil. 543, 557 (2014).

The defense raised by the accused-appellant was inherently weak.

The defense of alibi and denial proffered by the accused-appellant were inherently weak and which cannot prevail over the positive identification by AAA that it was the accused-appellant who raped her. His denial, which was not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[35]

Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut.[36] For the defense of alibi to prosper, the accused-appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[37]

The Court readily notes the inconsistencies in the testimony of accused-appellant and his witness Palpagan as to his whereabouts in the afternoon of 7 April 2002. The accused-appellant testified that he was at home with his two children and nephews and nieces as well as AAA whom he asked to fetch water. Palpagan on the one hand stated that the accused-appellant was with him at a cockpit and that they had a drinking spree until 9:00 p.m. which they continued until 12:00 midnight at the house of Melchor. These blatant inconsistencies easily put to naught the alibi tendered by the accused-appellant to disentangle himself from the consequences of his acts, as he himself failed to prove that it was impossible for him to have been physically present at the scene of the crime at the time of its commission.

To extricate himself from liability, the accused-appellant asserted that AAA never made any effort to ask or shout for

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

[36] *People v. Amar*, G.R. No. 223513, 5 July 2017.

[37] *People v. Primavera*, G.R. No. 223138, 5 July 2017.

help from her companions.[38] The assertion of the accused-appellant is without merit.

AAA testified that she did not shout for help because only DDD, who is crippled, and her nephews and nieces, who were small children, were at home.[39] Surely, even if she shouted for help her nephews and nieces would not have understood the situation she was in or knew how they could have helped her. Likewise, accused-appellant was armed with a knife and had threatened AAA that he would stab her if she resisted.[40] It must be emphasized that enlightened precedent teaches that the workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.[41] Confronted with the risk of being stabbed by the accused-appellant and feeling helpless as there was no one who could have helped her that time, AAA miserably endured the hideous acts committed against her by the accused-appellant.

According to the accused-appellant, the testimony of AAA had glaring inconsistencies which rendered it incredible. He averred that AAA testified that DDD had not noticed them because DDD was inside the room; but AAA later stated that DDD had told the accused-appellant that he would report him to CCC.[42] The claim of the accused does not deserve any weight.

Noteworthy is that other than this alleged inconsistency, accused-appellant was not able to proffer any other contradicting statements from AAA. However, a reading of the testimony of AAA will show that what DDD was not able to witness was the fact that the accused-appellant dragged AAA to the second

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[38] CA *rollo*, p. 36.

[39] TSN, 10 December 2002, p. 14.

[40] *Id*.

[41] *People v. Amar*, *supra* note 36.

[42] CA *rollo*, p. 36.

floor. DDD was inside a room that time and it was EEE who witnessed the incident. It was when the accused-appellant and AAA were already inside the room that DDD told his father that he would report him to CCC. Clearly, there was no inconsistency in AAA's testimony.

Granting for the sake of argument that there was an inconsistency in AAA's testimony, it must be stressed that the supposed inconsistency, not being an element of the crime, does not diminish the credibility of AAA's declarations.[43] In the same vein, jurisprudence dictates that inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony.[44] Most significantly, "(I)naccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget."[45]

The accused-appellant pathetically tried to find issue as to the medical finding that the erythema and the abrasion on AAA's vulva could have been caused by pressure and that the cervical swab was negative for spermatozoa.[46] It is true that the erythema and the abrasion on the vulva could have been caused by pressure from some other object, but this does not likewise discount the truth that the cause thereof could be the penetration of the penis. Similarly, the absence of semen in AAA's vaginal area does not rule out a finding of rape. The presence or absence of spermatozoa is immaterial because the presence of spermatozoa is not an element of rape.[47] It must be remembered that it is the credible disclosure of AAA that the accused-appellant

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[43] *People v. Divinagracia, Sr.*, G.R. No. 207765, 26 July 2017.

[44] *People v. Gerola*, *supra* note 16.

[45] *People v. Tuballas*, *supra* note 30.

[46] CA *rollo*, p. 36.

[47] *People v. Manalili*, 716 Phil. 763, 774 (2013).

raped her that is the most important proof of the commission of the crime.[48]

Considering that under Art. 266 (B) of R.A. No. 8353, the penalty to be imposed upon accused-appellant is *reclusion perpetua*, he shall no longer be eligible for parole, as provided for in Sec. 3 of R.A. No. 9346,[49] pursuant to R.A. No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

Following the decision in *People v. Jugueta*,[50] the Court modifies the award by the trial court of the civil indemnity and damages to AAA as follows: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; and exemplary damages of ₱75,000.00. The civil indemnity and the moral and exemplary damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

The Court commiserates with the misfortune that befell AAA. When she was only six years old, her parents separated and she was made to live with her aunt. At this tender age, AAA should have been enjoying her childhood and busying herself with her studies; instead she was made to take care of her crippled nephew in exchange for a roof over her head. At the age of twelve, she was only in grade three and was taking care of her young nephews and nieces. It was also at this age that she was robbed of her virginity, probably, considering her situation, the only precious possession she dearly held in her life. What made her tribulation worse was that her wrongdoer was her cousin, whose crippled child she had been taking care of since she was six years old. The Court admires AAA, who despite her troubles and lonely life, had the courage to fight for her right and seek justice for the wrong committed against her.

WHEREFORE, the appeal is **DISMISSED.** Accused-appellant Joseph Agalot *y* Rubio is hereby found **GUILTY** beyond

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[48] *People v. Agudo*, G.R. No. 219615, 7 June 2017.

[49] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" dated 24 June 2006.

[50] G.R. No. 202124, 5 April 2016, 788 SCRA 331.

reasonable doubt of Rape under Art. 266-A 1(a) of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is further ordered to pay AAA ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. The civil indemnity and moral and exemplary damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 220892. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENEDICT[*] GOMEZ *y* RAGUNDIAZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; STRAIGHTFORWARD AND CATEGORICAL TESTIMONY OF THE VICTIM AND HER POSITIVE IDENTIFICATION OF APPELLANT PREVAIL OVER THE LATTER'S UNCORROBORATED AND SELF-SERVING DENIAL.— x x x [T]he straightforward and categorical testimony of "AAA" and her positive identification of appellant proved that the latter had carnal knowledge of "AAA" against her will and without her consent. As such, her testimony must prevail over the uncorroborated and self-serving denial of appellant. Moreover, "AAA's" credibility is bolstered

[*] Benidict in some parts of the records.

by her prompt report of the incident to her mother a day after it transpired, and by their immediate action for "AAA" to undergo a medico-legal examination. These matters only proved that "AAA" did not have the luxury of time to fabricate a rape story.

2. ID.; APPEALS; NO REASON TO DISTURB THE UNIFORM FINDINGS OF THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS THAT APPELLANT WAS GUILTY OF SIMPLE RAPE AND IN IMPOSING THE PENALTY OF *RECLUSION PERPETUA*; AWARDS OF CIVIL INDEMNITY, MODIFIED.— x x x [T]he Court sees no cogent reason to disturb the uniform findings of the RTC and the CA that appellant was guilty of simple rape and in imposing upon him the penalty of *reclusion perpetua*. Such is the case since there was no showing that the trial court, in assessing the credibility of the witnesses in relation to their testimonies, had overlooked, misapprehended or misconstrued any relevant fact that would affect the outcome of the case. The Court, however, deems it necessary to modify the awards for civil indemnity, as well as moral and exemplary damages which should be increased to ₱75,000.00 each pursuant to prevailing jurisprudence.

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.*:

Before the Court is an appeal on the August 20, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05742, which affirmed the July 9, 2012 Decision[2] of the Regional Trial Court (RTC), Branch 225 of Quezon City, finding appellant

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[1] CA *rollo*, pp. 88-101; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of the Court), and Samuel H. Gaerlan.

[2] Records, pp. 260-267; penned by Acting Judge Cleto R. Villacorta III.

Benedict Gomez *y* Ragundiaz (appellant) guilty beyond reasonable doubt of simple rape.

Factual Antecedents

In an Information dated January 24, 2007, appellant was charged with rape, defined under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. 8353.[3] The accusatory portion of the Information read:

> That on or about the 20th day of January 2007, in Quezon City, Philippines, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously sexually assault one ["AAA,"][4] a minor, 15 years of age, by then and there inserting his penis into her vagina against her will and without her consent, to the damage and prejudice of the said offended party.
>
> CONTRARY TO LAW.[5]

When arraigned, appellant pleaded "Not Guilty"[6] to the charge against him.

Subsequently, the parties stipulated on the following facts:

1. The [appellant] here present in Court is the same person charged in the Information. — Admitted.
2. Ben[e]dict Gomez [y] Ragundiaz is the real and complete name of the accused. — Admitted.

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[3] THE ANTI-RAPE LAW OF 1997.

[4] "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).

[5] Records, p. 1.

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

3. Private complainant [AAA] is a minor, 15 years of age, at the time of the commission of the alleged crime. — Admitted.

x x x x x x x x x

6. In the evening of January 22, 2007, [appellant] was arrested by Barangay Protection and Security Officers of Brgy. [XXX], Quezon City. — Admitted.

7. The initial investigation was conducted thereafter by the police officers. — Admitted.[7]

After the pre-trial was terminated, trial on the merits ensued.

Version of the Prosecution

On January 20, 2007, "BBB" invited "AAA" to the birthday party of their classmate, "CCC",[8] to be held at "BBB's" house. At about 3:00 p.m. of the same day, "AAA", "BBB", "BBB's" brothers, Glen and Mark Anthony (Mark), Pinky, Neil Iliw-Iliw (Neil), Abe, Angeline, and Macky were having a drinking session at the nearby house of Pinky.[9]

"AAA" was the one serving liquor to the group but Mark replaced her when she felt dizzy after drinking 10 shots of "Matador." Mark gave her another glass of liquor which made her lose consciousness. Upon waking up, "AAA" found herself naked with appellant on top of her and his penis inside her vagina. "AAA" pushed appellant twice but to no avail. She realized that, aside from appellant, a guy unknown to her was lying beside her while Neil was standing near the door of the room where she was lying and Ronald Severino (Ronald) even held her hand when she started to struggle upon seeing appellant on top of her. Not too long thereafter, "AAA" again lost consciousness.[10]

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[7] *Id*. at 28.

[8] TSN, May 22, 2008, pp. 3, 5.

[9] TSN, April 3, 2008, pp. 8, 10-11; May 22, 2008, p. 7.

[10] TSN, April 3, 2008, pp. 11-16.

When she woke up at about 5:00 a.m. the following day, "AAA" found herself lying outside Neil's house. Joe, the brother of Neil, was with her. "AAA," still feeling weak, felt pain in her vagina, which was bleeding. Meanwhile, Joe told her that Mark, Glen, Neil, Ronald, Macky, Dexter, and Talibao had carnal knowledge of her. After learning of these things, "AAA" went to "BBB's" house to get her ("AAA") things. Thereat, "BBB" confirmed what Joe relayed to "AAA."[11]

On January 22, 2007, "AAA" told her mother about what had happened.[12] On January 23, 2007, she submitted herself to a medico-legal examination[13] at the Crime Laboratory at Camp Crame, Quezon City. Such examination revealed "[a]nogenital findings is diagnostic of recent blunt force or penetrating trauma"[14] upon her.

During trial, "AAA" admitted having executed an Affidavit[15] retracting her accusation against appellant. She, however, testified that she only executed it under duress. She explained that she owed money to appellant's family. Because of this, appellant's girlfriend and parents forced "AAA" to execute said Affidavit. She added, "*iyong pirma ko daw po iyong kailangan tapos isulat ko lang daw iyong sasabihin nila*."[16] Initially, "AAA" refused to abide by the instruction. However, she was told to pay in full her debt of ₱500.00. Because she had no money, and she was also told that she would not be allowed to go home, she was constrained to execute the Affidavit.[17]

Version of the Defense

Appellant and "AAA" were classmates and former sweethearts. In the afternoon of January 20, 2007, they went to "CCC's"

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[11] *Id*. at 16-19.

[12] *Id*. at 19.

[13] Records, pp. 13, 35.

[14] *Id*. at 33.

[15] *Id*. at 138.

[16] TSN, May 22, 2008, p. 16.

[17] *Id*. at 24-25.

house for her birthday. Appellant immediately left to change clothes as he was still in his school uniform. He only returned to "CCC's" house at about 5:30 p.m. of the same day.[18] Upon returning, appellant joined "AAA's" group, which was having a drinking session. At about 6:00 p.m. of even date, he asked permission to leave and accompany "DDD". After bringing "DDD" home, appellant also went home.[19]

Appellant denied having carnal knowledge of "AAA." He also denied that "AAA" was awakened because he was on top of her. He averred that "AAA" was still mad at him because, when they were sweethearts, he had other girlfriends aside from her.[20]

Ruling of the Regional Trial Court

In its July 9, 2012 Decision, the RTC found appellant guilty as charged, the decretal portion of the Decision reading as follows:

> WHEREFORE, accused Benedict Gomez y Ragundiaz is found guilty beyond a reasonable doubt of simple rape as defined under Art. 266-A, The Revised Penal Code. He is sentenced to suffer imprisonment with the duration of *reclusion perpetua* pursuant to Art. 266-B, The Revised Penal Code. He is ordered to pay ["AAA"] ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus interest of 6% per annum on each of the amounts reckoned from the finality of this Decision, and the costs of suit.
>
> SO ORDERED.[21]

The RTC held that "AAA" positively identified appellant as the one who raped her. It stressed that "AAA's" testimony was consistent with her out-of-court statements that she saw appellant on top of her; felt his penis inside her vagina; and, he had sexual intercourse with her.

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[18] TSN, June 8, 2011, pp. 3-5, 10.

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

[20] *Id*. at 13.

[21] Records, p. 267.

The RTC decreed that "AAA's" testimony was clear and untainted, and could only have been given by one who underwent such a harrowing experience. On the other hand, it found appellant's denial uncorroborated, and his claim that "AAA" was merely angry at him unsubstantiated.

Ruling of the Court of Appeals

On appeal, the CA affirmed the RTC Decision.

Like the RTC, it gave credence to "AAA's" positive identification of appellant as the person who raped her. The CA also concurred with the finding of the RTC that appellant was guilty of simple rape and in imposing the penalty of *reclusion perpetua* on appellant considering the absence of any modifying circumstances in this case. It likewise sustained the awards of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, and the imposition of interest at the rate of 6% *per annum* on all damages awarded until the same were fully paid.

Hence, this appeal.

The People of the Philippines, through the Office of the Solicitor-General, and appellant filed their respective Manifestations[22] that they would no longer file their Supplemental Briefs as the briefs filed with the CA thoroughly discussed all the issues in the case.

Our Ruling

The appeal lacks merit.

The CA correctly affirmed the RTC Decision convicting appellant of simple rape. The trial court properly ruled that the prosecution established beyond reasonable doubt that appellant had carnal knowledge of the victim, "AAA;" and, such act was committed through force or intimidation upon her.[23]

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[22] *Rollo*, pp. 23-31.

[23] *People v. Gunsay*, G.R. No. 223678, July 5, 2017.

"AAA" clearly testified that when she was awakened on January 20, 2007, she found herself naked and appellant, who was also naked, was on top of her. During that time, appellant's penis was inside her. "AAA" pushed him twice but to no avail; and, a certain Ronald even held her hands preventing her from moving; and, after a while, she lost consciousness.

Indeed, the straightforward and categorical testimony of "AAA" and her positive identification of appellant proved that the latter had carnal knowledge of "AAA" against her will and without her consent. As such, her testimony must prevail over the uncorroborated and self-serving denial of appellant. Moreover, "AAA's" credibility is bolstered by her prompt report of the incident to her mother a day after it transpired, and by their immediate action for "AAA" to undergo a medico-legal examination. These matters only proved that "AAA" did not have the luxury of time to fabricate a rape story.[24]

Given these, the Court sees no cogent reason to disturb the uniform findings of the RTC and the CA that appellant was guilty of simple rape and in imposing upon him the penalty of *reclusion perpetua*. Such is the case since there was no showing that the trial court, in assessing the credibility of the witnesses in relation to their testimonies, had overlooked, misapprehended or misconstrued any relevant fact that would affect the outcome of the case.[25]

The Court, however, deems it necessary to modify the awards for civil indemnity, as well as moral and exemplary damages which should be increased to ₱75,000.00 each pursuant to prevailing jurisprudence.[26]

WHEREFORE, the appeal is **DISMISSED.** The assailed August 20, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05742, which affirmed the Decision of the Regional

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[24] *Id*.

[25] *People v. Gabriel*, G.R. No. 213390, March 15, 2017.

[26] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 383.

Trial Court, Branch 225 of Quezon City, finding appellant Benedict Gomez *y* Ragundiaz guilty beyond reasonable doubt of simple rape, is **AFFIRMED with MODIFICATION** in that the awards of civil indemnity, moral damages, and exemplary damages are respectively increased to ₱75,000.00.

SO ORDERED.

Carpio[**] and *Leonardo-de Castro*[***] *(Acting Chairperson), JJ.*, concur.

Sereno, C.J. and *Tijam, J.*, on official leave.

FIRST DIVISION

[G.R. No. 222654. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO GARIN *y* OSORIO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF MINOR VICTIMS ARE GENERALLY GIVEN FULL WEIGHT AND CREDENCE, FOR YOUTH AND IMMATURITY ARE CONSIDERED BADGES OF TRUTH AND SINCERITY.— Jurisprudence consistently holds that testimonies of minor victims are generally given full weight and credence as the court considers their youth and immaturity as badges of truth and sincerity. In this case, the Court agrees with the CA that there was no reason to doubt the veracity of the testimony of the minor victim as her testimony

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[**] Designated as additional member per October 24, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[***] Per Special Order No. 2536 dated February 20, 2018.

was "straightforward, detailed, consistent, and without any artificiality or pretension that would tarnish its credence." Moreover, her testimony was corroborated by the medical findings that there were abrasions and redness on the minor victim's vaginal area.

2. ID.; ID.; ID.; IN-COURT IDENTIFICATION OF THE OFFENDER IS ESSENTIAL ONLY WHEN THERE IS QUESTION OR DOUBT ON WHETHER THE ONE ALLEGED TO HAVE COMMITTED THE CRIME IS THE SAME PERSON WHO IS CHARGED IN THE INFORMATION AND SUBJECT OF THE TRIAL.— [T]he fact that there was no in-court identification was of no moment. In *People v. Quezada*, the Court already ruled that such is not always necessary as the "[i]n-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial." In this case, there was no doubt since the parties already stipulated on the identity of appellant. This was done in order to protect "AAA," the minor victim, from being traumatized. In fine, there is no doubt that appellant was the perpetrator of the crime.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; QUALIFIED WHEN THE VICTIM IS A CHILD BELOW SEVEN YEARS OLD; PENALTY IN CASE AT BAR.— The Information charged appellant with rape through sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code (RPC) and the same is punishable with *reclusion temporal* if committed with any of the aggravating/ qualifying circumstances mentioned in Article 266-B of the RPC. In this case, the Information specifically mentioned that "AAA" was a four-year old minor; "AAA's" age was likewise established during trial. Thus, the qualifying circumstance in paragraph 5 of Article 266-B of the RPC, *i.e.*, when the victim is a child below seven years old, should be considered in the imposition of the penalty. *Reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years. There being no other modifying circumstance, the penalty must be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor*, which ranges from six (6) years and one (1) day to twelve (12) years. Thus, the proper imposable penalty upon appellant should be eight (8) years

and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. Thus, the maximum period of the indeterminate penalty imposed by the CA must be modified.

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 Romeo Garin *y* Osorio from the December 4, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01223-MIN, affirming with modification the April 20, 2013 Judgment[2] of the Regional Trial Court (RTC) of Butuan City, Branch 1, in Criminal Case No. 14892, finding the appellant guilty beyond reasonable doubt of rape through sexual assault in relation to Republic Act (RA) No. 7610.

The Factual Antecedents

Appellant was charged under the following Information:

That at more or less 1:20 x x x in the afternoon of December 25, 2010 at Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force, threat or intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge [of] "AAA,"[3] a four (4) year old

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[1] *Rollo*, pp. 3-15; penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Edgardo T. Lloren and Ronaldo B. Martin.

[2] CA *rollo*, pp. 38-51; penned by Judge Eduardo S. Casals.

[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

minor by inserting his finger into her vagina against her will resulting to mental, emotional and psychological trauma, to the damage and prejudice of said "AAA," x x x.

CONTRARY TO LAW: (Article 266-A, paragraph 2 of the Revised Penal Code as amended by RA 8353 in relation to RA 7610)[4]

When arraigned, appellant pleaded not guilty to the crime charged.[5]

During the pre-trial conference, the following facts were stipulated and agreed upon by the parties:

1. The defense admitted the identity of the [appellant] as named in the Information;

2. The defense admitted that the victim "AAA" [was] a 4-year old minor; and
3. The defense admitted the date of the incident on December 25, 2010.[6]

Version of the Prosecution

During the trial, the prosecution presented the testimonies of "AAA," her mother "BBB," witness "FFF," and Dr. Wenceslina L. Caseñas.

The evidence of the prosecution was as follows:

Private complainant "AAA" is a minor aged four (4) when the crime occurred. She testified that on December 25, 2010 she went out of their house to go to the house of her Auntie "CCC" to see the new bike of her cousin "DDD". The house of her aunt is near the

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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).

[4] Records, p. 1.

[5] *Rollo*, p. 4.

[6] *Id.*

house of her friend "EEE," where appellant x x x was. "AAA" said that she was not able to go to the house of "DDD" to see his bike because appellant took her and placed her on his lap. x x x That while she was on the lap of appellant, the latter put his finger inside her vagina and she felt pain. She ran away but appellant chased her and caught her. Appellant then covered her mouth and boxed her in the stomach. x x x.

"BBB," mother of "AAA," testified that she woke up at around 2:30 in the afternoon and found that "AAA" was not home. She asked "FFF" to look for "AAA," and at around 3 o'clock in the afternoon, "FFF" and "AAA" got home. "BBB" immediately realized that something was wrong because her daughter looked pale, was cold to the touch, and looked as if she just cried. When "BBB" asked her what was wrong, "AAA" at first refused to say anything and just cried. "BBB" then embraced "AAA" and asked her again who she was with. "AAA" answered that she was with the [appellant]. "BBB" asked "AAA" if [appellant] did something to her. It was then that "AAA" told her that [appellant] put his finger [into] her vagina. Distraught, "BBB" decided to immediately report the incident to the Women and Children Protection Desk and thereafter brought her daughter "AAA" to the Butuan Medical Center to have her genitalia examined. The doctor-in-charge, Dra. Liong, refused to examine "AAA" because according to her she has a lot of patients. So on December 28, 2010 or three days after the incident "BBB" brought "AAA" again to the Butuan Medical Center where she was examined. x x x[7]

Version of the Appellant

The defense, on the other hand, presented the testimonies of appellant and his mother.

In his defense, appellant denied the accusation against him and claimed that he was with his friends at the time the alleged incident happened. However, on cross-examination, he admitted that at around 2:00 o'clock in the afternoon of December 25, 2010, when he was on his way home, "AAA," who was in the veranda of the house of "GGG," called him and invited him to play; that while he was playing with "AAA," his mother came and asked for money; that when his mother left, he continued

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

to play with "AAA;" and that after playing with "AAA," "FFF" took "AAA" home.[8]

Appellant's mother testified that she saw her son playing with the minor victim when she dropped by to ask for money from him; that when she was there, she did not see "FFF;" that in the evening of that day, three police officers and a policewoman went to their house to look for his son but he was not at home; and that she later learned that her son had been apprehended for stealing money and cellphone from the store of "BBB."[9]

Ruling of the Regional Trial Court

On April 20, 2013, the RTC rendered a Judgment finding the appellant guilty of the charge against him, the dispositive portion of which read:

> WHEREFORE, after weighing carefully the evidence presented, this court finds [appellant] guilty beyond reasonable doubt of the crime of Rape in relation to RA 7610 as provided under Article 266-A, paragraph 2 of the Revised Penal Code as amended by RA 8353 in relation to RA 7610.
>
> Accordingly, he is sentenced to suffer imprisonment of Reclusion Perpetua and to pay private complainant the sum of ₱50,000.00 as moral damages, plus ₱50,000.00 as civil indemnity and exemplary damages of ₱25,000.00 without subsidiary imprisonment in case of insolvency.
>
> He shall serve his sentence at Davao Prison and Penal Farms, Panabo City, Davao del Norte. In the service of his sentence, he shall be credited with the full time benefit of his preventive imprisonment if he agrees in writing to abide by the same disciplinary rules imposed upon convicted prisoners[;] otherwise[,] if not he shall only be credited with 4/5 of his preventive imprisonment pursuant to Article 29 of [the] Revised Penal Code as amended.
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> SO ORDERED.[10]

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[8] *Id*. at 5.

[9] CA *rollo*, p. 46.

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

Ruling of the Court of Appeals

Appellant elevated the case to the CA.

On December 4, 2015, the CA rendered the assailed Decision, affirming appellant's conviction but modifying the penalty and civil indemnity imposed in this wise:

> WHEREFORE, the appeal is DENIED. The Judgment dated April 20, 2013 of the Regional Trial Court, Branch 1, Butuan City in Criminal Case No. 14892 finding [appellant] GUILTY beyond reasonable doubt of qualified rape, is hereby AFFIRMED, with MODIFICATION, as follows:
>
> 1. [Appellant] is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor,* as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum.
>
> 2. He is likewise ordered to pay "AAA" the amounts of ₱30,000.00 as civil indemnity ex delicto, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages for qualified rape through sexual assault.
>
> SO ORDERED.[11]

Hence, appellant filed the instant appeal.

The Court required both parties to file their respective supplementary briefs;[12] however, they opted not to file the same.[13]

The Court's Ruling

The appeal lacks merit.

Appellant claims that he should be acquitted as the prosecution was not able to prove the accusations against him beyond reasonable doubt. He likewise puts in issue the fact that there was no in-court identification.

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[11] *Rollo*, pp. 14-15.

[12] *Id*. at 21-22.

[13] *Id*. at 23-25; 31-34.

The Court does not agree.

Jurisprudence consistently holds that testimonies of minor victims are generally given full weight and credence as the court considers their youth and immaturity as badges of truth and sincerity.[14]

In this case, the Court agrees with the CA that there was no reason to doubt the veracity of the testimony of the minor victim as her testimony was "straightforward, detailed, consistent, and without any artificiality or pretension that would tarnish its credence."[15] Moreover, her testimony was corroborated by the medical findings that there were abrasions and redness on the minor victim's vaginal area.

Also, the fact that there was no in-court identification was of no moment. In *People v. Quezada*,[16] the Court already ruled that such is not always necessary as the "[i]n-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial."[17]

In this case, there was no doubt since the parties already stipulated on the identity of appellant. This was done in order to protect "AAA," the minor victim, from being traumatized.

In fine, there is no doubt that appellant was the perpetrator of the crime.

The Information charged appellant with rape through sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code (RPC) and the same is punishable with *reclusion temporal* if committed with any of the aggravating/qualifying circumstances

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[14] *People v. Brioso,* G.R. No. 209344, June 27, 2016, 794 SCRA 562, 574-575.

[15] *Rollo,* p. 11.

[16] 425 Phil. 877 (2002).

[17] *Id*. at 889.

mentioned in Article 266-B of the RPC. In this case, the Information specifically mentioned that "AAA" was a four-year old minor; "AAA's" age was likewise established during trial. Thus, the qualifying circumstance in paragraph 5 of Article 266-B of the RPC, *i.e.*, when the victim is a child below seven years old, should be considered in the imposition of the penalty. *Reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years. There being no other modifying circumstance, the penalty must be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor*, which ranges from six (6) years and one (1) day to twelve (12) years. Thus, the proper imposable penalty upon appellant should be eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. Thus, the maximum period of the indeterminate penalty imposed by the CA must be modified.

Anent the civil liabilities, we quote with approval the pronouncement of the CA, *viz.*:

> As to civil liabilities, the damages awarded in the form of civil indemnity in the amount of Php50,000.00 and moral damages, also in the amount of Php50,000.00 must be reduced to Php30,000.00, in line with current jurisprudence. Also, the amount of exemplary damages in the amount of Php25,000.00 must be increased to Php30,000.00
>
> In addition, interest at the rate of 6% *per annum* shall be imposed on all damages awarded from the date of finality of this judgment until fully paid, likewise pursuant to prevailing jurisprudence.[18]

WHEREFORE, premises considered, the appeal is **DISMISSED.** The December 4, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01223-MIN, finding appellant Romeo Garin *y* Osorio guilty beyond reasonable doubt of rape through sexual assault is **AFFIRMED with MODIFICATION** that he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to

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[18] *Rollo*, p. 14.

fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson)* and *Reyes, Jr.,*[**] *JJ.,* concur.

Sereno, C.J. and *Tijam, J.,* on official leave.

SECOND DIVISION

[G.R. No. 229092. February 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAUL MANANSALA *y* MANINANG,** *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 this case,

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[*] Per Special Order No. 2536 dated February 20, 2018.

[**] Designated as additional member per November 29, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

Manansala was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.

3. **ID.; ID.; PROCEDURE WHICH THE POLICE OFFICERS MUST FOLLOW WHEN HANDLING 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, prior to its amendment by RA 10640, 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.

4. **ID.; ID.; ID.; NON-COMPLIANCE, UNDER JUSTIFIABLE GROUNDS, WILL NOT RENDER INVALID THE SEIZURE**

AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THEIR INTEGRITY AND EVIDENTIARY VALUE 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 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**. 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 evidentiary 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.**

5. ID.; ID.; ID.; THE PROCEDURE IS A MATTER OF SUBSTANTIVE LAW; NOT A SIMPLE PROCEDURAL TECHNICALITY.— The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Section 21 of RA 9165. x x x **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**. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances.

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 Raul Manansala *y* Maninang (Manansala) assailing the Decision[2] dated November 27, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07080, which affirmed the Judgment[3] dated September 5, 2014 of the Regional Trial Court of Calamba City, Branch 37 (RTC) in Crim. Case Nos. 16329-2009-C and 16330-2009-C finding Manansala 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 two (2) Informations[5] filed before the RTC charging Manansala 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:

Crim. Case No. 16329-2009-C
(For violation of Section 5, Article II of RA No. 9165)

That on or about 11:30 a.m. of 07 March 2009 at Brgy. Parian, Calamba City and within the jurisdiction of this Honorable Court,

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[1] See Notice of Appeal dated December 18, 2015; *rollo*, 16-17.

[2] *Id*. at 2-15. Penned by Associate Justice Socorro B. Inting with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla concurring.

[3] CA *rollo*, pp. 16-25. Penned by Presiding Judge Caesar C. Buenagua.

[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 10, 2009. See records (Crim. Case No. 16329-2009-C), pp. 1-2; and records (Crim. Case No. 16330-2009-C), pp. 1-1-A.

the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer a one (1) plastic sachets (sic) of Methamphetamine Hydrochloride, otherwise known as "shabu", a dangerous drug, having a total weighing (sic) 0.02 grams.

CONTRARY TO LAW.[6]

Crim. Case No. 16330-2009-C
(For violation of Section 11, Article II of RA No. 9165)

That on or about 11:30 a.m. of 07 March 2009 at Brgy. Parian, Calamba City 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 possess one (1) plastic sachets (sic) of Methamphetamine Hydrochloride, otherwise known as "shabu", a dangerous drug, having a total weigh of 0.01 grams, in violation of the aforementioned law.

CONTRARY TO LAW.[7]

The prosecution alleged that on March 7, 2009, a buy-bust team composed of Police Senior Inspector Jaime V. Pederio, Police Inspector Jose Mari Pena, Police Officer (PO) 2 Dela Rosa (PO2 Dela Rosa) and PO2 Renato Magadia, Jr.[8] (PO2 Magadia) was formed, in response to an information given by a confidential agent that Manansala was selling *shabu* at Barangay Parian, Calamba City. After conducting a pre-operation procedure and coordinating with the Philippine Drug Enforcement Agency (PDEA), as well as the barangay officials of Parian, the buy-bust team together with the confidential agent, proceeded to the target area. As soon as Manansala was identified, PO2 Magadia, the designated poseur-buyer, approached Manansala and asked if he could purchase *shabu*. Manansala asked how much money PO2 Magadia had and in turn, the latter gave the marked ₱500.00 bill, while Manansala simultaneously handed

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[6] Records (Crim. Case No. 16329-2009-C), p. 1.

[7] Records (Crim. Case No. 16330-2009-C), p. 1.

[8] "PO1 Renato Magadia, Jr." in his *Sinumpaang Salaysay* dated March 7, 2009; records (Crim. Case No. 16329-2009-C), pp. 6-7.

over one (1) plastic sachet of suspected *shabu*. After inspecting the same, PO2 Magadia introduced himself as a police officer and arrested Manansala. Subsequently, a preventive search was conducted on Manansala to ensure that he had no firearms. Not finding any, Manansala was ordered to empty his pockets which yielded another plastic sachet of suspected *shabu*. Upon confiscation and marking of the items at the place of arrest, PO2 Magadia brought Manansala to the Parian Barangay Hall where a blotter of the incident was made. Thereafter, Manansala was taken to J.P. Hospital for medical examination, and then to the police station where PO2 Magadia prepared a request for laboratory examination of the seized items. After securing the letter-request, PO2 Magadia delivered the said items to the crime laboratory where it was received by forensic chemist Lalaine Ong Rodrigo who confirmed that they tested positive for the presence of *methamphetamine hydrochloride*, a dangerous drug.[9]

For his part, Manansala denied the charges against him, claiming that at around eleven (11) o'clock in the morning of March 7, 2009, he was at home doing the laundry with his daughter, when two (2) persons entered, pointed a gun at him, and made him board a black car. He averred that he was later transferred to a police mobile and interrogated about a certain "Iko." When he replied in the negative, he was returned to the black car and brought to the Parian Barangay Hall where two (2) officers told the barangay officials that they recovered from his possession the ₱500.00 bill and a *tawas*-like substance.[10]

The RTC Ruling

In a Judgment[11] dated September 5, 2014, the RTC ruled as follows: (*a*) in Crim. Case No. 16329-2009-C, Manansala was found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and, accordingly, sentenced to suffer the

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[9] See *rollo*, pp. 3-4. See also Chemistry Report No. D-093-09 dated March 8, 2009; records (Crim. Case No. 16329-2009-C), p. 8.

[10] See *rollo*, pp. 4-5.

[11] CA *rollo*, pp. 16-25.

penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. 16330-2009-C, Manansala was likewise found guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00.[12]

The RTC held that the prosecution sufficiently established all the elements of Illegal Sale of Dangerous Drugs as it was able to prove that: (*a*) one (1) sachet of *shabu*was sold during the buy-bust operation; *(b)* Manansala was positively identified by PO2 Magadia as the seller of the said dangerous drug; and (*c*) the said dangerous drug was presented and duly identified in court as the subject of the sale. Also, the RTC observed that the essential elements of Illegal Possession of Dangerous Drugs were established since another plastic sachet of *shabu* was recovered from Manansala during the preventive search.[13] On the contrary, Manansala's denial and defense of frame-up were given scant consideration for lack of substance.[14]

Furthermore, the RTC declared that the integrity and evidentiary value of the seized items were properly preserved from the time of their seizure by PO2 Magadia until their turnover to the crime laboratory.[15]

Aggrieved, Manansala appealed[16] to the CA.

The CA Ruling

In a Decision[17] dated November 27, 2015, the CA affirmed Manansala's conviction for the crimes charged.[18] It ruled that

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[12] *Id*. at 24.

[13] See *id*. at 19-20.

[14] See *id*. at 18-20.

[15] See *id*. at 20-24.

[16] See Notice of Appeal dated September 8, 2014; *id*. at 26.

[17] *Rollo*, pp. 2-15.

[18] See *id*. at 14.

all the elements of the crimes of Illegal Sale and Possession of Dangerous Drugs were duly proven by the prosecution through PO2 Magadia's detailed narration of the incident. It further held that the confidential informant need not be presented in order to successfully hold Manansala liable.[19] More importantly, the CA admitted that while the requirements under Section 21 of RA 9165 were not perfectly adhered to by the police officers, considering the absence of representatives from the media, the Department of Justice (DOJ), and any elected public official during the inventory and photography of the seized drugs, the integrity and evidentiary value of the same were shown to have been duly preserved as PO2 Magadia was its custodian from the time of their confiscation until presentation in court as evidence.[20]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Manansala's conviction for Illegal Sale and Illegal Possession of Dangerous Drugs.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[21] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[22]

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[19] See *id*. at 6-12.

[20] See *id*. at 12-13.

[21] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

In this case, Manansala was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[23] Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[24]

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.[25]

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.[26] Under the said section, prior to its amendment by RA 10640,[27]

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[23] *People v. Sumili,* 753 Phil. 342, 348 (2015).

[24] *People v. Bio*, 753 Phil. 730, 736 (2015).

[25] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[26] *People v. Sumili*, *supra* note 23, at 349-350.

[27] 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:

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

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SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1)The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x"

(24) hours from confiscation for examination.[28] In the case of *People v. Mendoza*,[29] 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."[30]

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.[31] 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**.[32] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody

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[28] See Section 21 (1) and (2), Article II of RA 9165.

[29] 736 Phil. 749 (2014).

[30] *Id.* at 764; emphases and underscoring supplied.

[31] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[32] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[33] In *People v. Almorfe*,[34] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[35] Also, in *People v. De Guzman*,[36] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[37]

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 Manansala.

An examination of the records reveals that while the prosecution was able to show that the seized items were marked by PO2 Magadia immediately upon confiscation at the place of arrest and in the presence of Manansala, the same was not done in the presence of any elected public official, as well as a representative from the DOJ and the media. Despite the failure to observe these requirements, no justifiable ground was given to explain such lapse. Additionally, records are bereft of evidence showing that a physical inventory of the seized items was made or that photographs of the same were taken.

The prosecution itself admitted these lapses when PO2 Magadia testified that:

[Prosecutor Joyce M. Barut]: Are you aware Police Officer Magadia of the provisions of Section 21, RA 9165 particularly the preparations

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[33] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[34] 631 Phil. 51 (2010).

[35] *Id*. at 60.

[36] 630 Phil. 637 (2010).

[37] *Id*. at 649.

of inventory and the taking of photographs of the accused and the items?

[PO2 Magadia]: Yes, ma'am.

Q: Were you able to comply with the provisions?

A: No ma'am.

Q: Why not?

A: Because commotion already happened that is why we just made a blotter on the barangay, ma'am.

Q: Did you take photographs of the accused and the items confiscated?

A: No ma'am.

Q: Why not?

A: Because we do not have any camera at that time, ma'am.

x x x x x x x x x[38]
(Underscoring supplied)

The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Section 21 of RA 9165.[39] Needless to state, the barangay blotter, which is merely a recording of the incident, is not equivalent to or a substitute for a physical inventory that accounts and lists down in detail the items confiscated from the accused. Besides, "[e]ntries in official records, as in the case of a police blotter, are only *prima facie* evidence of the facts therein stated" and are "[n]ot necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries."[40] Neither

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[38] TSN, May 8, 2014, p. 14.

[39] See *Lescano v. People*, G.R. No. 214490, January 13, 2016, 781 SCRA 73, 92-93, citing *People v. Garcia*, 599 Phil. 416, 429 (2009). See also *People v. Pagaduan*, 641 Phil. 432, 448-449 (2010).

[40] *People v. San Gabriel*, 323 Phil. 102, 111 (1996).

can the Court excuse the alleged absence of a camera as a justifiable reason for non-compliance with the photography rule, since the cause of such absence was never explained. Nor does the plain allegation that the "commotion had already happened" — without explaining its compelling nature — dispense with the necessity for the seized items to be properly inventoried. **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**.[41] Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances. Since this was not the case here, the Court is impelled to conclude that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised. Consequently, Manansala'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. Order is too high a price for the loss of liberty. x x x.[42]

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[41] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[42] *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 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 November 27, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 07080 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Raul Manansala *y* Maninang 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*, and *Reyes, Jr., JJ.*, concur.

Caguioa, J., on official leave.

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[*] Acting Chief Justice per Special Order No. 2535 dated February 20, 2018.

SECOND DIVISION

[A.C. No. 11829. February 26, 2018]

MARIA ROMERO, *complainant, vs.* **ATTY. GERONIMO R. EVANGELISTA, JR.,** *respondent.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE AGAINST REPRESENTING CONFLICTING INTEREST.— Part of the lawyer's duty to his client is to avoid representing conflicting interests." x x x The rule against conflict of interest also "prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases," since the representation of opposing clients, even in unrelated cases, "is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing which the Court cannot allow." The only exception is provided under Canon 15, Rule 15.03 of the CPR — if there is a written consent from all the parties after full disclosure. x x x With Atty. Evangelista's admission that he retained clients who have cases against Adela without all the parties' written consent, it is clear that he has violated *Canon* 15, Rule 15.03 of the CPR. Adela's non-participation in the filing of the instant complaint is immaterial, since it is stated under Section 1, Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 that, "[p]roceedings for the disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or upon the filing of a verified complaint of any person before the Supreme Court or the Integrated Bar of the Philippines (IBP)."

R E S O L U T I O N

REYES JR., *J.*:

For the Court's resolution is a Complaint[1] for disbarment filed by Maria Romero (Maria) with the Integrated Bar of the

[1] *Roll*o, pp. 2-14.

Philippines (IBP) against Atty. Geronimo R. Evangelista, Jr. (Atty. Evangelista), for his alleged violation of several provisions[2] of the Code of Professional Responsibility (CPR) and Canon 6[3] of the Canons of Professional Ethics.

The Facts

In her Complaint, Maria alleged that in several cases, Atty. Evangelista represented her and her aunt Adela A. Romero (Adela), in their individual capacities and as Heirs of the Late Adela Aguinaldo Vda. De Romero. However, Atty. Evangelista subsequently represented the Spouses Joseph and Rosalina Valles in suits against Adela, enumerated as follows:

1. Civil Case No. 319 (Forcible Entry with Damages) – Adela Romero *vs.* Spouses Joseph and Rosalina Valles, Municipal Circuit Trial Court, First Judicial Region, Tuba-Sablan, Benguet[4]

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

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

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

[3] 6. Adverse influence and conflicting interests.

It is a duty of a lawyer at the time of the retainer to disclose to the client all the circumstances of his relations to the parties and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidence forbids also subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

[4] *Rollo*, pp. 42-43.

2. Civil Case No. 13-CV-2940 (Recovery of Possession and Ownership with Damages) – Adela Romero *vs.* Spouses Joseph and Rosalina Valles, Regional Trial Court, First Judicial Region, Branch 10, Benguet Province[5]

3. Civil Case No. 12-CV-2880 – Adela Romero *vs.* Spouses Joseph and Rosalina Valles, First Judicial Region, Branch 10, La Trinidad, Benguet[6]

In his Answer,[7] Atty. Evangelista admitted that he had handled cases involving the properties of the Romero clan, but not a single case for Maria.[8] He explained that: a) there was never a lawyer-client relationship between him and Maria; b) his professional services were never retained by Maria nor did he receive any privileged information regarding Maria's cases; and c) Maria never paid him any legal fee.[9]

Atty. Evangelista also contended that Adela is not a complainant in the disbarment case against him nor is there any proof that she authorized Maria to file a complaint on her (Adela's) behalf.[10]

Report and Recommendation of the IBP

In the Report and Recommendation[11] dated February 27, 2015, the IBP-Commission on Bar Discipline (CBD) found Atty. Evangelista to have represented conflicting interests and recommended that he be meted the penalty of suspension from the practice of law for one year.

The IBP-CBD noted that Atty. Evangelista, who once lawyered for Adela, had accepted and handled legal actions against her.

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[5] *Id*. at 44-45.

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

[7] *Id*. at 80-85.

[8] *Id*. at 81.

[9] *Id*. at 80.

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

[11] *Id*. at 289-290.

In his defense, Atty. Evangelista argued that Adela herself did not file a complaint against him. But, according to the IBP-CBD, Adela's participation in the filing of the action is not necessary since Atty. Evangelista's culpability had been established by documentary evidence on record.[12]

In its Resolution[13] dated June 6, 2015, the IBP-Board of Governors adopted and approved *in toto* the Report and Recommendation of the IBP-CBD. Atty. Evangelista filed a motion for reconsideration,[14] praying for the mitigation of his penalty. The motion was denied in IBP Resolution No. XXII-2017-794[15] dated January 27, 2017.

Issue

Whether Atty. Evangelista is guilty of representing conflicting interests

The Court's Ruling

After a judicious review of the records, the Court concurs with the IBP's findings, except for the recommended penalty.

"The relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests."[16] In *Hornilla vs. Salunat*,[17] the Court explained the concept of conflict of interest, *viz*:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue

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[12] *Id*. at 290.

[13] *Id*. at 288.

[14] *Id*. at 291-292.

[15] *Id*. at 355-356.

[16] *Ylaya v. Atty. Gacott*, 702 Phil. 390, 415 (2013).

[17] 453 Phil. 108 (2003).

or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.[18]

The rule against conflict of interest also "prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases,"[19] since the representation of opposing clients, even in unrelated cases, "is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing which the Court cannot allow."[20] The only exception is provided under Canon 15, Rule 15.03 of the CPR — if there is a written consent from all the parties after full disclosure.[21] "Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree."[22]

With Atty. Evangelista's admission that he retained clients who have cases against Adela without all the parties' written consent, it is clear that he has violated *Canon* 15, Rule 15.03

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[18] *Id*. at 111.

[19] *Mabini Colleges, Inc. represented by Marcel N. Lukban, et al. v. Atty. Pajarillo*, 764 Phil. 352, 358 (2015).

[20] *Atty. Nuique v. Atty. Sedillo*, 715 Phil. 304, 315 (2013).

[21] *Supra* note 16, at 415.

[22] *Gonzales v. Cabucana, Jr.*, 515 Phil. 296, 304 (2006).

of the CPR. Adela's non-participation in the filing of the instant complaint is immaterial, since it is stated under Section 1, Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 that, "[p]roceedings for the disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or upon the filing of a verified complaint of any person before the Supreme Court or the Integrated Bar of the Philippines (IBP)."

Considering that this is Atty. Evangelista's first offense in his more than 30 years of practice,[23] the Court finds a six-month suspension from the practice of law to be an adequate and appropriate sanction against him. In *Atty. Nuique vs. Atty. Sedillo*,[24] the Court ordered the suspension of Atty. Eduardo Sedillo from the practice of law for six (6) months, upon a finding that he represented opposing clients in unrelated cases. In *Tulio vs. Atty. Buhangin*,[25] the Court similarly imposed the penalty of suspension for a period of six (6) months against Atty. Gregory Buhangin, who, aside from failing to comply with the orders of the IBP, also filed a complaint against his former client in representation of such client's siblings, involving legal matters which the former entrusted to him.

WHEREFORE, in view of the foregoing, the Court finds Atty. Geronimo R. Evangelista, Jr. **GUILTY** of representing conflicting interests in violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility and is **SUSPENDED** from the practice of law **for a period of six (6) months**, effective upon receipt of this Resolution, with a **STERN WARNING** that a commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

Let copies of this Resolution be entered in the personal record of Atty. Geronimo R. Evangelista, Jr. as a member of the Philippine Bar and furnished to the Office of the Bar Confidant,

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[23] *Rollo*, p. 292

[24] *Supra* note 20, at 317.

[25] A.C. No. 7110, April 20, 2016, 790 SCRA 508, 519.

the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Perlas-Bernabe, JJ.,* concur.

Caguioa, J., on wellness leave.

THIRD DIVISION

[G.R. No. 200088. February 26, 2018]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **AIRLINE PILOTS ASSOCIATION OF THE PHILIPPINES, SOTICO T. LLOREN, RONALDO V. CUNANAN, LEONCIO H. MANARANG, JR., VICTOR N. AGUILAR, RODOLFO M. MEDINA, RENATO A. FLESTADO, ROMEO L. LORENZO, WESLEY V. TATE, SALVADOR S. ARCEO, JR., MARIANO V. NAVARETTE, JR., WILLIAM Z. CENZON, LIBERATE D. GUTIZA, MANUEL F. FORONDA, ISMAEL C. LAPUS, JR., RAQUELITO L. CAMACHO, JOHN JOSEPH V. DE GUZMAN, EFREN L. PATTUGALAN, JIMMY JESUS D. ARRANZA, PAUL DE LEON, ANTONIO A. CAYABA, DIOSDADO S. JUAN, JR., ORLANDO A. DEL CASTILLO, DEOGRACIAS C. CABALLERO, JR., and FLORENDO R. UMALI,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; THE LABOR ARBITER (LA) AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC); JURISDICTION IN CLAIMS FOR DAMAGES REQUIRES A REASONABLE

CAUSAL CONNECTIONS BETWEEN THE CLAIM ASSERTED AND EMPLOYER-EMPLOYEE RELATIONS. — Under Article 217 [now Article 224] of the Labor Code, as amended by Section 9 of R.A. No. 6715, the LA and the NLRC have jurisdiction to resolve cases involving claims for damages arising from employer-employee relationship, x x x It is settled, however, that not every controversy or money claim by an employee against the employer or vice-versa falls within the jurisdiction of the labor arbiter. Intrinsically, civil disputes, although involving the claim of an employer against its employees, are cognizable by regular courts. To determine whether a claim for damages under paragraph 4 of Article 217 is properly cognizable by the labor arbiter, jurisprudence has evolved the "reasonable connection rule" which essentially states that the claim for damages must have reasonable causal connection with any of the claims provided for in that article. A money claim by a worker against the employer or vice-versa is within the exclusive jurisdiction of the labor arbiter only if there is a "reasonable causal connection" between the claim asserted and employee-employer relations. Only if there is such a connection with the other claims can the claim for damages be considered as arising from employer-employee relations. Absent such a link, the complaint will be cognizable by the regular courts. x x x Jurisprudence dictates that where the plaintiff's cause of action for damages arose out of or was necessarily intertwined with an alleged unfair labor practice, the jurisdiction is exclusively with the labor tribunal. Likewise, where the damages separately claimed by the employer were allegedly incurred as a consequence of strike or picketing of the union, such complaint for damages is deeply rooted in the labor dispute between the parties and within the exclusive jurisdiction of the labor arbiter. Consequently, the same should be dismissed by ordinary courts for lack of jurisdiction.

2. ID.; LABOR DISPUTE; WHEN THE SECRETARY OF DOLE (SOLE) ASSUMED JURISDICTION AND DECIDED THE LABOR DISPUTE BETWEEN THE PHILIPPINE AIRLINES (PAL) AND AIRLINE PILOTS ASSOCIATION OF THE PHILIPPINES (ALPAP), THE CLAIM FOR DAMAGES WAS DEEMED INCLUDED AND DECIDED THEREIN; A LATER COMPLAINT FOR DAMAGES RUNS COUNTER TO THE RULE AGAINST SPLIT JURISIDICTION AND THE SAME BARRED UNDER THE

DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENT. — [T]he Secretary of DOLE (SOLE) assumed jurisdiction over the labor dispute between PAL and the respondents on 23 December 1997. In this regard, it is settled that the authority of the SOLE to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom. It has also been opined that when the very reason for the SOLE's assumption of jurisdiction is the declaration of strike, any issue regarding the strike is not merely incidental to but is essentially involved in the labor dispute itself. x x x Consequently, when the SOLE assumed jurisdiction over the labor dispute, the claim for damages was deemed included therein. Thus, the issue on damages was also deemed resolved when the SOLE decided the main controversy in its 1 June 1999 resolution declaring the illegality of the strike and the loss of employment status of the striking officers of ALPAP, as well as when the case was finally settled by this Court in its 10 April 2002 Resolution in G.R. No. 152306. This is true even if the respective resolutions of the SOLE, CA, and this Court were silent with respect to the damages. To insist that PAL may recover the alleged damages through its complaint before the LA would be to sanction a relitigation of the issue of damages separately from the main issue of the legality of the strike from which it is intertwined. This runs counter to the proscription against split jurisdiction – the very principle invoked by PAL. Likewise, PAL's claim for damages is barred under the doctrine of immutability of final judgment. Under the said doctrine, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

APPEARANCES OF COUNSEL

Michael Jourdan J. Navarro for petitioner.
Antonio & Revilla Law Firm for respondents.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the reversal of the 26 August 2011 Decision[1] and 05 January 2012 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 113985, which affirmed with modification the 27 April 2009[3] and 26 February 2010[4] Resolutions of the National Labor Relations Commission (*NLRC*) in NLRC LAC No. 036558-03 (RA-10-08), which likewise affirmed with modification the 22 April 2008 Decision[5] of the Labor Arbiter (*LA*) in NLRC NCR No. 04-04906-03.

THE FACTS

The present case arose from a labor dispute between petitioner Philippine Airlines, Inc. (*PAL*) and respondent Airline Pilots' Association of the Philippines (*ALPAP*), a duly registered labor organization and the exclusive bargaining agent of all commercial pilots of PAL. On 9 December 1997, ALPAP filed with the Department of Labor and Employment (*DOLE*) a notice of strike alleging that PAL committed unfair labor practice. On 23 December 1997, the Secretary of DOLE (*SOLE*) assumed jurisdiction over the dispute and thereafter prohibited ALPAP from staging a strike and committing any act that could exacerbate the dispute.[6]

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[1] *Rollo*, pp. 39-63; penned by Associate Justice Ramon A. Cruz, and concurred in by Associate Justice Jose C. Reyes, Jr., and Associate Justice Antonio L. Villamor.

[2] *Id*. at 64-65.

[3] *Id*. at 162-167; penned by Commissioner Perlita B. Velasco, and concurred in by Presiding Commissioner Gerardo C. Nograles, and Commissioner Romeo L. Go.

[4] *Id*. at 169-170.

[5] *Id*. at 148-161; penned by Labor Arbiter Daisy G. Cauton-Barcelona.

[6] *Id*. at 80-82, Order dated 23 December 1997 issued by then Secretary of Labor and Employment Leonardo A. Quisumbing.

Despite the prohibition by the SOLE, ALPAP staged a strike on 5 June 1998. A return-to-work order[7] was issued by the SOLE on 7 June 1998, but ALPAP defied the same and went on with their strike. Consequently, on 1 June 1999, the SOLE issued a resolution[8] which declared the illegality of the strike staged by ALPAP and the loss of employment status of the officers who participated in the strike.

The SOLE's resolution was upheld by the CA in CA-G.R. SP No. 54880.[9] The matter was eventually elevated to this Court in G.R. No. 152306. In a Resolution,[10] dated 10 April 2002, the Court dismissed ALPAP's petition for failure to show that the CA committed grave abuse of discretion or a reversible error. The resolution attained finality on 29 August 2002.[11]

On 22 April 2003, or almost eight (8) months from the finality of the Court's 10 April 2002 Resolution, PAL filed before the LA a complaint[12] for damages against ALPAP, as well as some of its officers and members.

PAL alleged, among others, that on 6 June 1998, the second day of the illegal strike conducted by ALPAP, its striking pilots abandoned three (3) PAL aircraft, as follows: (i) PR 730 bound for Paris, France, at Bangkok, Thailand; (ii) PR 741 bound for Manila, at Bangkok, Thailand; and (iii) PR 104 bound for Manila, at San Francisco, California, U.S.A. Because of the deliberate and malicious abandonment of the said flights, its passengers were stranded, and rendered PAL liable for violation of its contract of carriage. Thus, PAL was compelled to incur expenses

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[7] *Id*. at 95-96; Order dated 7 June 1998 issued by then Secretary of Labor and Employment Cresenciano B. Trajano.

[8] *Id*. at 115-121; issued by then Secretary of Labor and Employment Bienvenido E. Laguesma.

[9] *Id*. at 125-139; CA Decision dated 22 August 2001.

[10] *Id*. at 143.

[11] *Id*. at 145.

[12] *Id*. at 66-74.

by way of hotel accommodations, meals for the stranded passengers, airport parking fees, and other operational expenses. PAL further alleged that its operation was crippled by the illegal strike resulting in several losses from ticket refunds, extraordinary expenses to cope with the shutdown situation, and lost income from the cancelled domestic and international flights. PAL claimed that, as a result of the illegal strike, it suffered actual damages in the amount of ₱731,078,988.59. PAL further prayed that it be awarded ₱300,000,000.00 and ₱3,000,000.00 as exemplary damages and attorney's fees, respectively.

The LA Ruling

In its decision, dated 22 April 2008, the LA dismissed PAL's complaint. It ruled that it had no jurisdiction to resolve the issue on damages. It noted that the SOLE did not certify the controversy for compulsory arbitration to the NLRC nor in any occasion did the parties agree to refer the same to voluntary arbitration under Article 263(h) of the Labor Code. Hence, jurisdiction to resolve all issues arising from the labor dispute, including the claim for damages arising from the illegal strike, was left with the SOLE to the exclusion of all other fora.

The LA further ruled that PAL's cause of action had already been barred by prescription. It opined that since the complaint was premised on the illegality of the strike held by the respondents, the accrual of PAL's cause of action should be reckoned either on 5 June 1998, the first day of the strike, or on 7 June 1998, when the respondents defied the SOLE's return-to-work order. Hence, PAL's 22 April 2003 complaint was filed beyond the 3-year prescriptive period set forth in Article 291 of the Labor Code. The LA suggested, however, that PAL's cause of action may be treated as an independent civil action in another forum. The dispositive portion reads:

> WHEREFORE, the complaint is DISMISSED for lack of merit.
>
> SO ORDERED.[13]

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[13] *Id*. at 161.

Aggrieved, PAL elevated an appeal to the NLRC.

The NLRC Ruling

In its resolution, dated 27 April 2009, the NLRC affirmed with modification the LA's 22 April 2008 decision. It ruled that labor tribunals have no jurisdiction over the claims interposed by PAL. It opined that the reliefs prayed for by PAL should have been ventilated before the regular courts considering that they are based on the tortuous acts allegedly committed by the respondents. It explained that the airline pilots' refusal to fly their assigned aircrafts constitutes breach of contractual obligation which is intrinsically a civil dispute. The dispositive portion of the resolution states:

> WHEREFORE, except for the MODIFICATION that the phrase "for lack of merit" in the dispositive portion is deleted therefrom, the appealed Decision is hereby AFFIRMED.
>
> SO ORDERED.[14]

PAL moved for reconsideration, but the same was denied by the NLRC in its resolution, dated 26 February 2010.

Unconvinced, PAL filed a petition for certiorari under Rule 65 of the Rules of Court before the CA.

The CA Ruling

In its assailed Decision, dated 26 August 2011, the CA partially granted PAL's petition. It ruled that while the NLRC correctly sustained the LA's dismissal of the complaint for lack of jurisdiction, it declared that the NLRC gravely abused its discretion when it affirmed the LA's pronouncement that PAL's cause of action had already prescribed.

The appellate court concurred with the NLRC's opinion that exclusive jurisdiction over PAL's claim for damages lies with the regular courts and not with the SOLE. It ratiocinated that while Article 263(g) of the Labor Code vests in the SOLE the

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[14] *Id*. at 168.

authority to resolve all questions and controversies arising from a labor dispute over which it assumed jurisdiction, said authority must be interpreted to cover only those causes of action which are based on labor laws. Stated differently, causes of action based on an obligation or duty not provided under the labor laws are beyond the SOLE's jurisdiction. It continued that only those issues that arise from the assumed labor dispute, which has a direct causal connection to the employer-employee relationship between the parties, will fall under the jurisdiction of the SOLE. It pointed out that the damages caused by the wilful acts of the striking pilots in abandoning their aircraft are recoverable under civil law and are thus within the jurisdiction of the regular courts.

Further, the appellate court held that PAL's cause of action accrued only on 29 August 2002, the date when this Court's resolution sustaining the finding of the strike's illegality had attained finality. The dispositive portion of the assailed decision reads:

> WHEREFORE, premises considered, the Petition for *Certiorari* is PARTIALLY GRANTED. The April 27, 2009 and February 26, 2010 NLRC Resolutions are MODIFIED as follows:
>
> 1) The complaint for damages arising from the illegal strike claimed by the petitioner lies not within the jurisdiction of the DOLE Secretary or the Labor Arbiter but with the regular courts; and
>
> 2) Petitioner's cause of action for damages has not yet prescribed.
>
> No costs.
>
> SO ORDERED.[15]

PAL moved for partial reconsideration but the same was denied by the CA in its assailed Resolution, dated 5 January 2012

Hence, this petition.

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[15] *Id.* at 59.

THE ISSUE

WHETHER THE NLRC AND THE LABOR ARBITER HAVE JURISDICTION OVER PAL'S CLAIMS AGAINST THE RESPONDENTS FOR DAMAGES INCURRED AS A CONSEQUENCE OF THE LATTER'S ACTIONS DURING THE ILLEGAL STRIKE.

THE COURT'S RULING

The petition is partially meritorious.

Labor tribunals have jurisdiction over actions for damages arising from a labor strike.

Under Article 217 [now Article 224] of the Labor Code, as amended by Section 9 of R.A. No. 6715, the LA and the NLRC have jurisdiction to resolve cases involving claims for damages arising from employer-employee relationship, to wit:

> ART. 217. Jurisdiction of Labor Arbiters and the Commission—(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or nonagricultural:
>
> **1. Unfair labor practice cases;**
> 2. Termination disputes;
> 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
> **4. Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations;**
> **5. Cases arising from any violation of Article 264 of this Code including questions involving the legality of strikes and lockouts; and**
> 6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00)

> regardless of whether accompanied with a claim for reinstatement.
>
> [emphases supplied]

It is settled, however, that not every controversy or money claim by an employee against the employer or vice-versa falls within the jurisdiction of the labor arbiter.[16] Intrinsically, civil disputes, although involving the claim of an employer against its employees, are cognizable by regular courts.[17]

To determine whether a claim for damages under paragraph 4 of Article 217 is properly cognizable by the labor arbiter, jurisprudence has evolved the "reasonable connection rule" which essentially states that the claim for damages must have reasonable causal connection with any of the claims provided for in that article. A money claim by a worker against the employer or vice-versa is within the exclusive jurisdiction of the labor arbiter only if there is a "reasonable causal connection" between the claim asserted and employee-employer relations. Only if there is such a connection with the other claims can the claim for damages be considered as arising from employer-employee relations.[18] Absent such a link, the complaint will be cognizable by the regular courts.

The appellate court was of the opinion that, applying the reasonable connection rule, PAL's claims for damages have no relevant connection whatsoever to the employer-employee relationship between the parties. Thus, the claim is within the exclusive jurisdiction of the regular courts. It explained that Article 217 of the Labor Code does not include a claim for damages wherein the employer-employee relation is merely incidental, and where the claim is largely civil in character.

The appellate court is mistaken.

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[16] *Halagueña v. Philippine Airlines, Inc.*, 617 Phil. 502, 514 (2009).

[17] *Dai-chi Electronics Manufacturing Corporation v. Hon. Martin S. Villarama, Jr.*, 308 Phil. 287, 294 (1994).

[18] *Id*. at 292.

The Court agrees with PAL that its claim for damages has reasonable connection with its employer-employee relationship with the respondents. Contrary to the pronouncements made by the appellate court, PAL's cause of action is not grounded on mere acts of *quasi-delict*. The claimed damages arose from the illegal strike and acts committed during the same which were in turn closely related and intertwined with the respondents' allegations of unfair labor practices against PAL. This could not even be disputed as even the appellate court recognized this fact. In its 26 August 2011 Decision, the CA made the following statements:

> The damages caused by the willful act of the **striking pilots** in abandoning their aircrafts, together with the passengers and cargo, which resulted in injury to petitioner's business is recoverable under civil law.[19] [emphasis supplied]
>
> x x x x x x x x x
>
> 1) The **complaint for damages arising from the illegal strike** claimed by petitioner lies not within the jurisdiction of the DOLE Secretary or the Labor Arbiter but with the regular courts; x x x[20] [emphasis supplied]

Since the loss and injury from which PAL seeks compensation have reasonable causal connection with the alleged acts of unfair labor practice, a claim provided for in Article 217 of the Labor Code, the question of damages becomes a labor controversy and is therefore an employment relationship dispute.

This issue is not novel. It has been previously decided by the Court in several cases.

In *Goodrich Employees Association v. Hon. Flores*,[21] the Court stressed the rule that cases involving unfair labor practices are within the jurisdiction of the Court of Industrial Relations (*CIR*), the labor tribunal at that time. The Court further emphasized

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[19] *Rollo*, p. 52.

[20] *Id.* at 59.

[21] 165 Phil. 279 (1976).

that where the subject matter is within the exclusive jurisdiction of the CIR, it must be deemed to have jurisdiction over all incidental matters connected to the main issue.

Thus, in *Holganza v. Hon. Apostol*,[22] the Court reaffirmed the exclusive jurisdiction of the labor tribunal over actions for damages arising from labor controversies. In the said case, the Social Security System (*SSS*) filed with the then Court of First Instance (*CFI*) of Rizal a complaint for damages with writ of preliminary attachment against several of its employees. It alleged that it sustained damages as a consequence of the picketing carried on by its striking employees during a strike held against it. The striking employees moved for the dismissal of the complaint on the ground of lack of jurisdiction, but the trial court denied the same. Eventually, the issue reached this Court which opined that the trial court is devoid of any jurisdiction to entertain the said complaint for damages. In so ruling, the Court declared that exclusive jurisdiction over disputes of this character belonged to the then CIR. To hold otherwise would be to sanction split jurisdiction which is obnoxious to the orderly administration of justice.

A similar controversy arose in *Philippine Long Distance Telephone Company v. Free Telephone Workers Union*.[23] The Court reiterated the rule that regular courts are devoid of any jurisdiction over claims for damages arising from a labor strike, thus:

> It is clear from the records that the subject complaint for damages is intertwined with or deeply rooted from the 1964 certified labor dispute between appellant and appellees. As can be gleaned from the aforesaid complaint, appellant is claiming against appellees damages it allegedly sustained as a consequence of the strikes declared by the appellees. It is therefore obvious in the light of the established jurisprudence as aforestated that the lower court, Court of First Instance of Manila, Branch XII, did not have jurisdiction over the aforesaid

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[22] 166 Phil. 655 (1977).

[23] 201 Phil. 611 (l982).

complaint for damages; hence, all the proceedings taken therein are void for lack of jurisdiction.[24]

The rule stands even if the strike is illegal. In *Antipolo Highway Lines Employees Union v. Hon. Aquino*.[25] Francisco De Jesus, the owner of Antipolo Highway Lines (*AHL*), instituted a complaint for damages with injunction against AHL Employees Union (*AHLEU*) and its officers before the CFI of Rizal. De Jesus alleged that AHLEU staged a strike and posted picket lines along AHL's compound, thereby preventing its employees from performing their work and causing it to suffer losses and damages from the non-operation of its buses. The Court ruled that the trial court lacked jurisdiction over the complaints for damages and injunction because the illegal strike and picket which allegedly caused damages to De Jesus were mere incidents of the labor dispute between the parties, to wit:

> Although it was artfully made to appear that the suit was one for damages that did not divest the Court of Industrial Relations of its jurisdiction. The Complaint itself, in paragraph 5, adverted to an "illegal strike" and "picket lines," which are but mere incidents or consequences of the unfair labor practice complained against by petitioner Union. In other words, it is clear that the cause of action for damages "arose out of or was necessarily intertwined with" an alleged unfair labor practice committed by DE JESUS in refusing to sit at the bargaining table. It is still the labor court, therefore, that has jurisdiction, particularly under the principle that split jurisdiction is not to be countenanced for being "obnoxious to the orderly administration of justice."[26]

Indeed, the aforecited cases were decided by this Court under R.A. No. 875 or the Industrial Peace Act. The Court is also not unmindful of the fact that R.A. No. 875 had been completely superseded in 1974 by Presidential Decree (P.D.) No. 442 or the Labor Code of the Philippines. Nevertheless, it could not

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[24] *Id*. at 612.

[25] 181 Phil. 420 (1979).

[26] *Id*. at 428.

be denied that the underlying rationale for the rule finds application even with the effectivity of the Labor Code. As in the Industrial Peace Act, splitting of jurisdiction is abhorred under the Labor Code.[27]

A case in point is *National Federation of Labor v. Hon. Eisma*,[28] decided by the Court under the provisions of the Labor Code. In case, as in those cited, the employer, Zamboanga Wood Products, Inc., filed, before the CFI of Zamboanga City, a complaint for damages against the officers and members of the labor union. The employer alleged that it incurred damages because the union officers and members blockaded the road leading to its manufacturing division, thus preventing customers and suppliers free ingress to or egress from their premises. The labor union, however, contended that jurisdiction over the controversy belongs to the labor arbiter because the acts complained of were incidents of picketing by the defendants who were then on strike against the employer.

The Court ruled in favor of the labor union and nullified the proceedings before the trial court. The Court opined that the complaint for damages is deeply rooted in the labor dispute between the parties and thus should be dismissed by the regular court for lack of jurisdiction. The Court stressed that the wordings of Article 217 of the Labor Code is explicit and clear enough to mean that exclusive jurisdiction over suits for damages arising from a strike belongs to the labor arbiter, thus:

> Article 217 is to be applied the way it is worded. The exclusive original jurisdiction of a labor arbiter is therein provided for explicitly. It means, it can only mean, that a court of first instance judge then, a regional trial court judge now, certainly acts beyond the scope of the authority conferred on him by law when he entertained the suit for damages, arising from picketing that accompanied a strike. That was squarely within the express terms of the law. Any deviation cannot therefore be tolerated. So it has been the constant ruling of this Court even prior to *Lizarraga Hermanos v. Yap Tico*, a 1913

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[27] *Bañez v. Valdevilla*, 387 Phil. 601, 608 (2000).

[28] 212 Phil. 382 (1984).

decision. The ringing words of the *ponencia* of Justice Moreland still call for obedience. Thus, "The first and fundamental duty of courts, in our judgment, is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them." It is so even after the lapse of sixty years.[29] [Citations omitted]

Jurisprudence dictates that where the plaintiff's cause of action for damages arose out of or was necessarily intertwined with an alleged unfair labor practice, the jurisdiction is exclusively with the labor tribunal. Likewise, where the damages separately claimed by the employer were allegedly incurred as a consequence of strike or picketing of the union, such complaint for damages is deeply rooted in the labor dispute between the parties and within the exclusive jurisdiction of the labor arbiter. Consequently, the same should be dismissed by ordinary courts for lack of jurisdiction.[30]

From the foregoing, it is clear that the regular courts do not have jurisdiction over PAL's claim of damages, the same being intertwined with its labor dispute with the respondents over which the SOLE had assumed jurisdiction. It is erroneous, therefore, for the CA to even suggest that PAL's complaint should have been ventilated before the trial court.

A separate complaint for damages runs counter to the rule against split jurisdiction.

While there is merit in the contention that regular courts do not have jurisdiction over claims for damages arising from a labor controversy, the Court opines that PAL could no longer recover the alleged damages.

It must be recalled that the SOLE assumed jurisdiction over the labor dispute between PAL and the respondents on 23 December 1997. In this regard, it is settled that the authority

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[29] *Id*. at 388.

[30] *Id*. at 388-389.

of the SOLE to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom.[31] It has also been opined that when the very reason for the SOLE's assumption of jurisdiction is the declaration of strike, any issue regarding the strike is not merely incidental to but is essentially involved in the labor dispute itself.[32]

It bears emphasis, even at the risk of being repetitious, that it is beyond question that the issue on damages is a controversy which arose from the labor dispute between the parties herein. Consequently, when the SOLE assumed jurisdiction over the labor dispute, the claim for damages was deemed included therein. Thus, the issue on damages was also deemed resolved when the SOLE decided the main controversy in its 1 June 1999 resolution declaring the illegality of the strike and the loss of employment status of the striking officers of ALPAP, as well as when the case was finally settled by this Court in its 10 April 2002 Resolution in G.R. No. 152306. This is true even if the respective resolutions of the SOLE, CA, and this Court were silent with respect to the damages.

To insist that PAL may recover the alleged damages through its complaint before the LA would be to sanction a relitigation of the issue of damages separately from the main issue of the legality of the strike from which it is intertwined. This runs counter to the proscription against split jurisdiction — the very principle invoked by PAL.

Likewise, PAL's claim for damages is barred under the doctrine of immutability of final judgment. Under the said doctrine, a decision that has acquired finality becomes immutable

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[31] *PHILTRANCO Service Enterprise, Inc. v. PHILTRANCO Workers Union-Association of Genuine Labor Organizations*, 728 Phil. 99, 111 (2014), citing *LMG Chemicals Corporation v. The Secretary of the Department of Labor and Employment*, 408 Phil. 701, 703 (2001).

[32] *PHILCOM Employees Union v. Philippine Global Communications*, 527 Phil. 540, 553 (2006).

and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it is made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[33]

Whether the damages claimed by PAL are recoverable and to what extent would depend on the evidence in the illegal strike case which had long attained finality.[34] PAL's recovery, therefore, would entail a relitigation of the illegal strike case. The subject claim for damages would ultimately require the modification of a final judgment. This cannot be done. The dismissal of the present petition as well as the complaint for damages is therefore in order.

In any event, PAL only has itself to blame for this blunder. It was already aware that it had sustained damages even before the SOLE issued its resolution. It must be remembered that the damages allegedly sustained by PAL were incurred as a consequence of the acts committed by the respondents on the second day of the strike on 6 June 1998, or almost a year prior to the issuance of the SOLE's resolution. However, PAL did not assert its claim during the proceedings before the SOLE and, instead, acted on it only after the decision on the main case attained finality. This is a grave error on the part of PAL.

The proper recourse for PAL should have been to assert its claim for damages before the SOLE and, as aptly stated by the LA, to elevate the case to the CA when the SOLE failed to rule on the matter of damages. The 22 April 2008 LA decision, therefore, deserves reinstatement insofar as it dismissed PAL's 22 April 2003 complaint for lack of jurisdiction for the reason that the SOLE has exclusive jurisdiction over the same. Thus, the Court quotes with approval the following pronouncements by the LA:

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[33] *Gadrinab v. Salamanca*, 736 Phil. 279, 292-293 (2014).

[34] *Leoquinco v. Canada Dry Bottling Co. of the Philippines, Inc., Employees Association*, 147 Phil. 488, 498 (1971).

The respondents maintain that the complainant simply slept on its rights when it failed to elevate the matter of damages to the Court of Appeals. In this regard, we find the argument of the respondents availing considering that upon the assumption of jurisdiction of the Secretary of Labor over the labor disputes at PAL, all other issues had been subsumed therein including the claim for damages arising from the strike. This is clear from the language of Article 263(g) of the Labor Code granting the Secretary to order the "dismissal or loss of employment status or payment by the locking-out employer of back wages, damages and other affirmative relief even criminal prosecution against either or both."

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There is no quarrel regarding the jurisdiction of labor arbiters to rule on the legality of strikes and lock-outs under Article 217(a)(4) but this refers to strikes or lock-outs in establishments that are not indispensable to national interest. However, if in his opinion the dispute affects industries imbued with national interest, the Secretary of Labor who has the authority, may assume jurisdiction over the dispute and may opt to hear the same until its final disposition as is obtaining at bar, or to certify the same for compulsory arbitration to the NLRC, where it is the Commission that will hear and dispose of the certified cases under Rule VIII of the Revised Rules of the NLRC. Even in voluntary arbitration, should the disputants agree to submit the dispute to voluntary arbitration, the Voluntary Arbitrator is not precluded from awarding damages.

As the issue on the illegality of the strikes of June 5, 1998 has already been passed upon by the Secretary of Labor when he assumed jurisdiction to the exclusion of all others, all incidents arising from the main issue of the legality of the strike are presumed to have been ruled upon because they are deemed subsumed by the assumption by the Secretary of Labor.[35]

In sum, the Court finds meritorious PAL's claim that the CA erred in its decision. Indeed, the CA erred when it ruled that regular courts have jurisdiction to entertain claims for damages arising from strike as the same violates the proscription against splitting of jurisdiction. The Court, however, also finds

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[35] *Rollo*, pp. 157-158.

that the LA was already divested of its jurisdiction to entertain PAL's claim for damages as such issue was deemed included in the issue of legality of strike of which the SOLE had assumed jurisdiction, pursuant to the rule against splitting of jurisdiction. Unfortunately, for PAL's failure to raise the claim during the pendency of the illegal strike case before the SOLE, the same is deemed waived.

WHEREFORE, the 26 August 2011 Decision and 5 January 2012 Resolution of the Court of Appeals (*CA*) in CA-G.R. SP No. 113985 are **SET ASIDE**. The 22 April 2008 Decision of the Labor Arbiter is **REINSTATED** insofar as it dismissed the 22 April 2003 Complaint filed by Philippine Airlines, Inc. in NLRC NCR No. 04-04906-03 for lack of jurisdiction.

SO ORDERED.

Bersamin (Acting Chairperson), Leonen, Tijam,[*] and *Gesmundo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 214587. February 26, 2018]

JOSEPHINE P. DELOS REYES and JULIUS C. PERALTA, represented by their Attorney-in-fact, J.F. JAVIER D. PERALTA, *petitioners, vs.* **MUNICIPALITY OF KALIBO, AKLAN, its SANGGUNIANG BAYAN and MAYOR RAYMAR A. REBALDO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; QUIETING OF TITLE; IN AN ACTION

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[*] Designated additional Member per Raffle dated 15 January 2018.

THEREFOR, THE PLAINTIFF MUST HAVE LEGAL OR EQUITABLE TITLE TO, OR INTEREST IN, THE SUBJECT PROPERTY.— In order that an action for quieting of title may prosper, the plaintiff must have legal or equitable title to, or interest in, the property which is the subject matter of the action. While legal title denotes registered ownership, equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed. Likewise, the plaintiff must show that the deed, claim, encumbrance, or proceeding that purportedly casts a cloud on their title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

2. **ID.; ID.; RIGHT OF ACCESSION; AN ACCRETION DOES NOT AUTOMATICALLY BECOME REGISTERED LAND JUST BECAUSE THE LOT THAT RECEIVES SUCH ACCRETION IS COVERED BY A TORRENS TITLE.—** It must be noted that the Peraltas, the petitioners in the instant case, are not even registered owners of the area adjacent to the increment claimed, much less of the subject parcels of land. Only the late Juanito became the registered owner of Lot 2076-A, the lot next to the supposed accretion. Assuming that the petitioners are Juanito's rightful successors, they still did not register the subject increment under their names. It is settled that an accretion does not automatically become registered land just because the lot that receives such accretion is covered by a Torrens Title. Ownership of a piece of land is one thing; registration under the Torrens system of that ownership is another. Ownership over the accretion received by the land adjoining a river is governed by the Civil Code; imprescriptibility of registered land is provided in the registration law. Registration under the Land Registration and Cadastral Act does not vest or give title to the land, but merely confirms and, thereafter, protects the title already possessed by the owner, making it imprescriptible by occupation of third parties. But to obtain this protection, the land must be placed under the operation of the registration laws, wherein certain judicial procedures have been provided.

3. **ID.; ID.; EQUITABLE TITLE; DERIVED THROUGH A VALID CONTRACT OR RELATION.—** It is settled that equitable title is defined as a title derived through a valid contract or relation, and based on recognized equitable principles, or

the right in the party, to whom it belongs, to have the legal title transferred to him. In order that a plaintiff may draw to himself an equitable title, he must show that the one from whom he derives his right had himself a right to transfer.

4. ID.; ID.; RIGHT OF ACCESSION; ACCRETION; REQUISITES FOR DEPOSIT OF SOIL TO BE CONSIDERED ACCRETION.— Article 457 of the Civil Code of the Philippines, under which the Peraltas claim ownership over the disputed parcels of land, provides: Art. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters. Accretion is the process whereby the soil is deposited along the banks of rivers. The deposit of soil, to be considered accretion, must be: (a) gradual and imperceptible; (b) made through the effects of the current of the water; and (c) taking place on land adjacent to the banks of rivers.

5. REMEDIAL LAW; EVIDENCE; FINDINGS OF THE DENR ON THE CLASSIFICATION OF LAND AS PART OF THE PUBLIC DOMAIN, RESPECTED.— [B]y reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies, like the DENR, are in a better position to pass judgment on the same, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. Hence, the questionable character of the land, which could most probably be part of the public domain, indeed bars Jose from validly transferring the increment to any of his successors.

6. CIVIL LAW; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; PARTY CLAIMING OWNERSHIP BY VIRTUE OF TAX DECLARATIONS MUST ALSO PROVE ACTUAL POSSESSION OF THE SUBJECT PROPERTY.— Any person who claims ownership by virtue of tax declarations must also prove that he has been in actual possession of the property. Thus, proof that the property involved had been declared for taxation purposes for a certain period of time, does not constitute proof of possession, nor is it proof of ownership, in the absence of the claimant's actual possession of said property.

7. REMEDIAL LAW; EVIDENCE; PREPONDERANCE OF EVIDENCE REQUIRED IN CIVIL CASES.— [I]n civil cases, the party having the burden of proof must do so with a preponderance of evidence, with plaintiff having to rely on the strength of his own evidence and not upon the defendant's weakness. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence." Succinctly put, it only requires that evidence be greater or more convincing than the opposing evidence.

APPEARANCES OF COUNSEL

Duque Odosis Tezon Bravo Encinas Law Offices for petitioners.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review seeking to annul and set aside the Decision[1] of the Court of Appeals (*CA*) Cebu, Nineteenth (19th) Division, dated September 28, 2012, and its Resolution[2] dated August 28, 2014 in CA-G.R. CEB-CV No. 00700 which reversed and set aside the Decision[3] of the Regional Trial Court (*RTC*), Branch 6 of Kalibo, Aklan on February 22, 2005 in Civil Case No. 5440, thereby declaring the subject properties as part of public land.

The factual and procedural antecedents, as evidenced by the records of the case, are the following:

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[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edgardo L. Delos Santos and Zenaida T. Galapate-Laguilles; concurring; *rollo*, pp. 35-53.

[2] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edgardo L. Delos Santos and Ma. Luisa Quijano Padilla; concurring; *id*. at 55-63.

[3] Penned by Judge Niovady M. Marin; *id*. at 91-100.

Lot No. 2076 of the Kalibo Cadastre, with a total area of 101,897 square meters (*sq.m.*), was covered by Original Certificate of Title (*OCT*) No. 24435 RO-831, and registered in the name of Ana O. Peralta. Upon her demise, her property passed on to her brother, Jose Peralta, who caused registration of the same in his name under Transfer Certificate of Title (*TCT*) No. T-5547, issued on January 13, 1975. Jose later had the property divided into Lots 2076-A and 2076-B, and sold the latter portion. Lot 2076-A, on the other hand, remained in Jose's name and was registered under TCT No. 6166 on November 17, 1975.

In the meantime, allegedly through accretion, land was added to Lot No. 2076. Said area was first occupied by and declared for taxation purposes (Tax Declaration No. 6466) in the name of Ambrocio Ignacio in 1945. He was the Peraltas' tenant, but he later executed a Quitclaim of Real Property in Jose's favor for the amount of ₱70.44 on March 14, 1955. When Jose died, Lot 2076-A, together with the supposed area of accretion, was transferred to his son, Juanito Peralta. While TCT T-13140 was issued for Lot 2076-A on September 1, 1983, the area of accretion was apportioned and registered under Tax Declaration Nos. 21162-A, 21163-A, 21164-A, and 21165-A in the names of siblings Juanito, Javier Peralta, Josephine delos Reyes, and Julius Peralta. Subsequently, Juanito likewise died.

On the other hand, the Municipality of Kalibo, through its then Mayor Diego Luces and the members of its *Sangguniang Bayan*, sought to convert more or less four (4) hectares of said area of accretion into a garbage dumpsite. On November 10, 1992, Juanito, in his capacity as his siblings' representative, opposed said project in a letter. For failure to get a favorable response from the mayor's office, he wrote a formal protest to the Secretary of the Department of Environment and Natural Resources (*DENR*) on October 2, 1997.

Despite the Peraltas' opposition, the Municipality of Kalibo continued the project under the justification that the contested property is actually part of the public domain. Moreover, the DENR's Environmental Compliance Certificate (*ECC*) showed that the project would not harm the dumpsite's neighboring

areas, including the water systems. Thus, the municipality built a retaining wall on the property facing the Aklan river in 1996. More of the structures were built on the area from 1997 to 1998. Later, the area was enclosed with a perimeter fence.

On January 26, 1998, the Peraltas filed a Complaint[4] for quieting of title over the two (2) portions of accretion declared in their names for taxation purposes.

The Peraltas' prayer for an injunctive writ against the construction of the dumpsite was denied, but on February 22, 2005, the RTC of Kalibo, ruled in their favor, thus:

> **WHEREFORE,** in view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiffs and against the defendants declaring the aforedescribed parcels of land as an accretion and not a public land. Defendants are also ordered to cease and desist from occupying that portion of the garbage dumpsite with an area of 31,320 square meters, indicated in Parcels I, II and III of Annex A of the Commissioner's Report (*Exh. "13"*) which are within Lots 3 and 4 of plaintiffs' property.
>
> No award for damages and attorney's fees for want of evidence to support the same.
>
> Costs against the defendants.
>
> SO ORDERED.[5]

Undaunted, the Municipality of Kalibo brought the matter to the CA Cebu. On September 28, 2012, the CA granted its appeal and reversed the assailed RTC ruling, hence:

> IN LIGHT OF THE FOREGOING, the appeal is GRANTED. The assailed February 22, 2005 Decision of the Regional Trial Court, Branch 6 of Kalibo, Aklan in Civil Case No. 5440 is hereby REVERSED and SET ASIDE.
>
> SO ORDERED.[6]

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[4] Records, pp. 1-4.

[5] *Rollo*, p. 100.

[6] *Id.* at 52.

The Peraltas then filed a Motion for Reconsideration, but the same was denied in a Resolution dated August 28, 2014. Hence, the instant petition.

The main issue in this case is whether or not the CA committed an error when it reversed the RTC, which declared the subject parcels of land as accretion and not part of the public domain.

The Court rules in the negative.

In order that an action for quieting of title may prosper, the plaintiff must have legal or equitable title to, or interest in, the property which is the subject matter of the action. While legal title denotes registered ownership, equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed.[7] Likewise, the plaintiff must show that the deed, claim, encumbrance, or proceeding that purportedly casts a cloud on their title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[8]

It must be noted that the Peraltas, the petitioners in the instant case, are not even registered owners of the area adjacent to the increment claimed, much less of the subject parcels of land. Only the late Juanito became the registered owner of Lot 2076-A, the lot next to the supposed accretion. Assuming that the petitioners are Juanito's rightful successors, they still did not register the subject increment under their names. It is settled that an accretion does not automatically become registered land just because the lot that receives such accretion is covered by a Torrens Title. Ownership of a piece of land is one thing; registration under the Torrens system of that ownership is another. Ownership over the accretion received by the land adjoining a river is governed by the Civil Code; imprescriptibility of registered land is provided in the registration law. Registration under the Land Registration and Cadastral Act does not vest or give title to the land, but merely confirms and, thereafter, protects

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[7] *Mananquil v. Moico*, 699 Phil. 120, 122 (2012).

[8] *IVQ Landholdings, Inc. v. Barbosa*, G.R. No. 193156, January 18, 2017.

the title already possessed by the owner, making it imprescriptible by occupation of third parties. But to obtain this protection, the land must be placed under the operation of the registration laws, wherein certain judicial procedures have been provided.[9]

If at all, whatever rights the Peraltas derived from their predecessors-in-interest respecting the area in question came only from the quitclaim of real property executed by Ignacio in Jose's favor in 1955. There is no concrete evidence showing any right of title on Ignacio's part for him to be able to legally and validly cede the property to Jose. What the quitclaim merely proves is that Ignacio had forfeited any claim or interest over the accretion in Jose's favor. It is settled that equitable title is defined as a title derived through a valid contract or relation, and based on recognized equitable principles, or the right in the party, to whom it belongs, to have the legal title transferred to him. In order that a plaintiff may draw to himself an equitable title, he must show that the one from whom he derives his right had himself a right to transfer.[10] Considering the aforementioned facts, the plaintiffs have neither legal nor equitable title over the contested property.

Moreover, even the character of the land subject of the quitclaim is highly questionable. Ignacio, who was purportedly the first occupant of the area in 1945 and who was also in the best position to describe the lot, stated that "the said parcel of swampy land is an integral expansion or continuity of the said Cadastral Lot No. 2076, formed by a change of the shoreline of the Visayan Sea, which shoreline has receded towards the North, thus, leaving the swampy or parcel of land described in the immediately preceding paragraph which accrues to the owner of said right of said Cadastral Lot No. 2076 (Torrens

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[9] *Reynante v. CA*, 284 Phil. 84, 91 (1992).

[10] *Heirs of Enrique Diaz v. Virata*, G.R. No. 162037, November 29, 2006, citing *PVC Investment & Management Corporation v. Borcena*, 507 Phil. 668, 681 (2005), citing *Ballantine's Law Dictionary*, 2nd Ed., pp. 441-442 and *Harris v. Mason*, 120 Tenn. 668, 25 L.R.A. (N.S.) 1011, 1020, 115 S.W. Rep. 1146.

Title No. 24435), Jose O. Peralta by right of lawful accretion or accession."[11]

Article 457 of the Civil Code of the Philippines, under which the Peraltas claim ownership over the disputed parcels of land, provides:

> Art. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

Accretion is the process whereby the soil is deposited along the banks of rivers. The deposit of soil, to be considered accretion, must be: (a) gradual and imperceptible; (b) made through the effects of the current of the water; and (c) taking place on land adjacent to the banks of rivers.[12]

Here, Ignacio characterized the land in question as swampy and its increase in size as the effect of the change of the shoreline of the Visayan Sea, and not through the gradual deposits of soil coming from the river or the sea. Also, Baltazar Gerardo, the Officer-in-Charge of the Community Environment and Natural Resources Office of the Bureau of Lands, found upon inspection in 1987 that the subject area was predominantly composed of sand rather than soil.[13] One of the plaintiffs, Javier, also testified that in 1974 or 1976, the Visayan Sea was around one (1) kilometer from the land in question, and in 2003, the distance already became around three (3) kilometers, giving the impression that the increment was actually the result of additional area of sand deposits left by the sea when it had receded, and not by gradual deposits of soil or sediment caused by the action of water. In addition, the DENR has remained firm and consistent in classifying the area as land of the public domain for being part of either the Visayan Sea of the Sooc Riverbed and is reached by tide water. Further, the Sheriff's

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[11] *Rollo*, p. 43.

[12] *Republic v. Santos*, 698 Phil. 275, 283 (2012).

[13] *Rollo*, p. 47.

Report dated July 13, 1998 shows that when he conducted an ocular inspection of the area, part of it was reached by the tide. At around 11:30 a.m., he was able to measure the deepest portion of the high tide at around nineteen (19) inches, and its wideness at five (5) meters near the concrete wall.[14]

Indeed, by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies, like the DENR, are in a better position to pass judgment on the same, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant.[15] Hence, the questionable character of the land, which could most probably be part of the public domain, indeed bars Jose from validly transferring the increment to any of his successors.

Indubitably, the plaintiffs are merely successors who derived their alleged right of ownership from tax declarations. But neither can they validly rely on said tax declarations and the supposed actual, open, continuous, exclusive, and notorious possession of the property by their predecessors-in-interest. Any person who claims ownership by virtue of tax declarations must also prove that he has been in actual possession of the property. Thus, proof that the property involved had been declared for taxation purposes for a certain period of time, does not constitute proof of possession, nor is it proof of ownership, in the absence of the claimant's actual possession of said property.[16] In the case at bar, the Peraltas failed to adequately prove their possession and that of their predecessors-in-interest.

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[14] *Id.* at 51.

[15] *Summit One Condominium Corporation v. Pollution Adjudication Board and Environmental Management Bureau - National Capital Region*, G.R. No. 215029, July 5, 2017.

[16] *Heirs of Oclarit v. CA*, 303 Phil. 256, 265 (1994); citing *De Luna v. CA*, 287 Phil. 299, 304 (1992).

Verily, in civil cases, the party having the burden of proof must do so with a preponderance of evidence, with plaintiff having to rely on the strength of his own evidence and not upon the defendant's weakness. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence." Succinctly put, it only requires that evidence be greater or more convincing than the opposing evidence.[17] Since the Peraltas must first establish their legal or equitable title to or interest in the property in order for their action for quieting of title may prosper, failure to do so would mean lack of cause of action on their part to pursue said remedy.

WHEREFORE, **PREMISES CONSIDERED,** the Court **DENIES** the petition, and **AFFIRMS** the Decision of the Court of Appeals Cebu, Nineteenth (19th) Division, dated September 28, 2012, and Resolution dated August 28, 2014 in CA-G.R. CEB-CV No. 00700.

SO ORDERED.

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

Caguioa, J., on wellness leave.

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[17] *BPI v. Mendoza*, G.R. No. 198799, March 20, 2017.

FIRST DIVISION

[G.R. No. 220451. February 26, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN BUGTONG *y* AMOROSO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT ON THE CREDIBILITY OF THE WITNESS, WHEN SO AFFIRMED BY THE COURT OF APPEALS, IS BINDING AND CONCLUSIVE UPON THE COURT, EXCEPT WHEN THE TRIAL COURT HAD OVERLOOKED OR MISCONSTRUED MATERIAL CIRCUMSTANCES, WHICH IF PROPERLY CONSIDERED WOULD CHANGE THE OUTCOME OF THE CASE.— As a rule, the trial court's assessment on the credibility of the witness, when so affirmed by the CA, is binding and conclusive upon the Court. However, this rule allows certain exceptions such as when the trial court had overlooked or misconstrued material circumstances, which if properly considered would change the outcome of the case. Here, the Court finds that the RTC and the CA misapprehended relevant facts. As such, said exception applies warranting the dismissal of the charge against accused-appellant.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2000 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — For a charge of illegal sale of dangerous drugs to prosper, the prosecution must prove: (1) the identity of the buyer, and seller, of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the sold item, and its payment. Further, it is crucial that the integrity of the seized drug be preserved; in this regard, the prosecution must prove an unbroken chain of custody over the subject illegal drug. This means that every link in the chain of its custody, from the time of its confiscation until its presentation in court, must be established.

3. ID.; ID.; SECTION 21 ARTICLE II THEREOF; CHAIN OF CUSTODY RULE; LINKS IN THE CHAIN OF CUSTODY.

— As a general rule, there are four links in the chain of custody of the recovered item: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) its turnover by the apprehending officer to the investigating officer; (3) the investigating officer's turnover thereof to the forensic chemist for examination; and, (4) its submission by the forensic chemist to the court.

4. **ID.; ID.; ID.; ID.; ID.; IMMEDIATE MARKING OF THE SEIZED ITEM, PURPOSE THEREOF; FAILURE TO IMMEDIATELY MARK THE SPECIMEN CONSTITUTES A MISSING LINK IN THE CHAIN OF CUSTODY; AS SUCH, THERE WAS NO ASSURANCE THAT THE ITEM SUBSEQUENTLY TURNED OVER TO THE CRIME LABORATORY, AND EVENTUALLY PRESENTED IN COURT, WAS THE SAME ONE RECOVERED FROM THE ACCUSED-APPELLANT.—** As starting point of the chain of custody, the immediate marking of the specimen is necessary because it serves as reference for and by the subsequent handlers of the item. Marking is also used to distinguish the subject item from any similar or related evidence from their seizure until their disposal after the proceedings. More particularly, marking refers to the placement by the apprehending officer or the poseur-buyer of one's initials or signature or any identifying signs on the specimen. It must be done in the presence of the apprehended violator of law, and immediately upon his or her apprehension. Here, the supposed marking on the seized item may have been deemed as its identifying sign had it not been that SPO1 Puasan and P/Supt. Baldevieso both testified having made the same marking on the specimen. x x x. [B]oth SPO1 Puasan and P/Supt. Baldevieso claimed to have placed the markings "AB" on the sachet. Notably, the records did not indicate that there were two "AB" markings on the specimen. Based on the surrounding circumstances, the Court finds it more plausible and logical to conclude that it was P/Supt. Baldevieso who placed the "AB" marking considering that "AB" were her initials. Besides, it would be rather odd for P/Supt. Baldevieso to use a mark similar to the one that was already previously placed in the seized item. The purpose of placing a mark was precisely to distinguish it from similar items and to indicate that said item had been under her temporary custody. On such premise, the assertion of SPO1 Puasan that she marked the seized item with "AB" immediately after confiscation is without merit.

In fine, the evidence tends to show that SPO1 Puasan did not mark the seized sachet at the outset. Evidently, such failure to immediately mark the specimen constitutes a missing link in the chain of custody. With such missing link, there was no assurance that the item subsequently turned over to the Crime Laboratory, and eventually presented in court, was the same one recovered from the accused-appellant.

5. ID.; ID.; ID.; ID.; ID.; TO ESTABLISH THE CHAIN OF CUSTODY, TESTIMONY ABOUT EVERY LINK IN THE CHAIN MUST BE MADE; NOT COMPLIED WITH IN CASE AT BAR.— [I]n *People v. Hementiza*, the Court stressed that, to establish the chain of custody, testimony about every link in the chain must be made. This means that every person who touched the item must describe his or her receipt thereof, what transpired while the same was in one's possession, and its condition when delivered to the next link. This requirement was, however, not complied with here. P/Supt. Baldevieso testified that a certain PO1 Cachila received the seized item and the request for its laboratory examination; that PO1 Cachila likewise recorded such receipt in the Crime Laboratory's logbook; and that PO1 Cachila turned over the specimen to him (P/Supt. Baldevieso). Unfortunately, PO1 Cachila did not testify in court to confirm the receipt and turnover of the seized item thus creating another gap in the chain of custody. Consequently, it cannot be determined with certainty whether the item supposedly turned over by PO1 Cachila to P/Supt Baldevieso was the same item received by PO1 Cachila from SPO1 Puasan.

6. ID.; ID.; ID.; ID.; WHILE NON-COMPLIANCE WITH SECTION 21 OF RA 9165, UNDER JUSTIFIABLE REASONS, SHALL NOT RENDER VOID THE SEIZURE OF THE ITEMS, THE PROSECUTION MUST NONETHELESS EXPLAIN ITS FAILURE TO ABIDE BY SUCH PROCEDURAL REQUIREMENT, AND SHOW THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM WAS PRESERVED.— x x x [T]he prosecution failed to show that the buy-bust team physically inventoried and photographed the seized item in the presence of the witnesses required under Section 21, RA 9165. While such requirement, under justifiable reasons, shall not render void the seizure of the subject item, the prosecution must

nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved. Here, no such explanation was offered by the prosecution for its non-compliance with Section 21 of RA 9165. "It is a matter of judicial notice that buy-bust operations are 'susceptible to police abuse, the most notorious of which is its use as a tool for extortion."' Such being the case, procedural safeguards, including those specified under Section 21 , RA 9165, are provided in order to protect the innocent from abuse, and to ensure the preservation of the integrity of the evidence.

7. ID.; ID.; ID.; GUILT OF ACCUSED-APPELLANT FOR ILLEGAL SALE OF DANGEROUS DRUGS NOT PROVED BEYOND REASONABLE DOUBT, AS LAPSES AND GAPS IN THE CHAIN OF CUSTODY OF THE SEIZED SPECIMEN COMPROMISED THE INTEGRITY AND EVIDENTIARY VALUE OF THE RECOVERED ITEM.— Considering all the x x x lapses and gaps in the chain of custody of the seized specimen, the possibility that the integrity and evidentiary value of the recovered item had been compromised is not remote. Hence, accused-appellant's guilt for illegal sale of dangerous drugs has not been proved beyond reasonable doubt.

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.*:

On appeal is the December 22, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 01461, which affirmed the March 21, 2012 Decision[2] of the Regional Trial

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[1] CA *rollo*, pp. 100-109; penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhoseph Y. Lopez.

[2] Records, pp. 378-389; penned by Judge Delano F. Villarruz.

Court of Roxas City, Branch 16 (RTC) finding accused-appellant Allan Bugtong *y* Amoroso (accused-appellant) guilty beyond reasonable doubt of the illegal sale of dangerous drugs, as defined under Section 5, Article II of Republic Act No. 9165 (RA 9165).[3]

Factual Antecedents

Accused-appellant was charged with the illegal sale of dangerous drugs in an Information[4] dated January 21, 2009, reading as follows:

> That on or about the 10th day of January 2009, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to SPO1 MA. NANETTE PUASAN (a PNP 'poseur buyer'), one (1) small sachet of suspected Methamphetamine Hydrochloride or 'shabu' weighing 0.03 [gram], a dangerous drug, without the authority to sell and distribute the same.
>
> CONTRARY TO LAW.[5]

Accused-appellant pleaded "Not Guilty"[6] to the charge against him.

Trial on the merits thereafter ensued.

Version of the Prosecution

SPO1 Ma. Nanette Puasan (SPO1 Puasan) twice conducted surveillance against accused-appellant at his house located at Legaspi,[7] Ilaya, Roxas City[8] during which she saw accused-appellant give something to someone, who gave him something in return.[9]

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[3] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

[4] Records, pp. 1-2.

[5] *Id*. at 1.

[6] *Id*. at 30.

[7] TSN, March 9, 2010, pp. 5-6.

[8] TSN, October 26, 2010, p. 2.

[9] TSN, March 9, 2010, p. 6

PO2 Rodel Ibañez (PO2 Ibañez) also conducted a surveillance on accused-appellant.[10]

Thus, on January 10, 2009, at about 10:30 a.m. Chief of Police Leo Batiles formed a team of police officers to conduct a buy-bust operation on accused-appellant, and which team was composed of SPO4 Efren Clavaton, PO3 Antonio Buenvenida, PO3 Jose Dexter Paulin (PO3 Paulin), PO2 Samuel Deliña (PO2 Deliña), PO2 Ibañez, and SPO1 Puasan,[11] who was designated as the poseur-buyer. The marked money was recorded in the police blotter, which was signed by PO2 Lenie de los Santos.[12]

At about 5:30 p.m. of the same day, the buy-bust team proceeded to the target area. SPO1 Puasan and the police asset waited in front of the Banica Elementary School while the rest of the buy-bust team positioned themselves nearby. When accused-appellant arrived in front of the school, the police asset introduced SPO1 Puasan to him as a buyer of *shabu*. SPO1 Puasan gave accused-appellant one ₱100.00 bill, and one ₱200.00 bill. In turn, accused-appellant gave SPO1 Puasan a sachet of *shabu.* After checking the item, SPO1 Puasan raised her hand, the team's pre-assigned signal that she already bought *shabu*. PO2 Ibañez then approached accused-appellant and recovered from him the marked money. Thereafter, PO2 Ibañez arrested accused-appellant,[13] and turned over the marked money to SPO1 Puasan.[14] SPO1 Puasan immediately placed the marking "AB" on the item sold to her by accused-appellant. She also promptly made an inventory of said item and marked money recovered from accused-appellant.[15] The buy-bust team then brought accused-appellant to the police station. SPO1 Puasan kept the confiscated item inside a locker accessible only to her.

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[10] TSN, June 29, 2010, p. 6.

[11] *Id*. at 5, 7.

[12] TSN, March 9, 2010, pp. 9, 13.

[13] *Id*. at 10-15.

[14] TSN, June 29, 2010, p. 13.

[15] TSN, March 9, 2010, pp. 14-16.

The following day, January 11, 2009, SPO1 Puasan personally brought the seized item, together with the Request for its examination, to the PNP[16] Crime Laboratory at Camp Delgado, Iloilo City[17] and turned over the same to a certain PO1 Cachila. After recording them in the logbook, PO1 Cachila turned over the Request and the specimen consisting of one small transparent plastic sachet suspected to contain *shabu* to Police Superintendent Angela L. Baldevieso (P/Supt. Baldevieso), then Forensic Chemist of the Crime Laboratory.[18]

SPO1 Puasan identified in court the marked money and the sachet of *shabu* she bought from accused-appellant. She stressed that said sachet was the one she bought from accused-appellant as it bore the marking "AB" she placed thereon after the buy-bust.[19]

Likewise, P/Supt. Baldevieso presented in court the specimen and confirmed that it gave a positive result for methamphetamine hydrochloride or *shabu*. She stated that the specimen presented in court was the same one she received on January 11, 2009 as evidenced by the markings she placed on the plastic containing the specimen. These markings were the control number, D-011-09; the weight of the specimen, 0.03 gram; and her initials "AB".[20]

Version of the Defense

Accused-appellant averred that, prior to his detention, he worked as a singer/entertainer in restaurants, bars, and discos. On January 10, 2009, at around 5:30 p.m., while walking towards Banica Elementary School to fetch his son, a familiar motorcycle often ridden by one PO Tony Besana suddenly stopped by his side. PO3 Paulin alighted from it, and held his (accused-

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[16] Philippine National Police.

[17] TSN, March 9, 2010, p. 18.

[18] TSN, August 20, 2009, pp. 4, 6-7.

[19] TSN, March 9, 2010, p. 14.

[20] TSN, August 20, 2009, pp. 8-9.

appellant's) neck. PO2 Ibañez, who was with PO3 Paulin, then poked accused-appellant with a firearm, and searched his body and pockets. Afterwards, PO2 Ibañez and PO3 Paulin pushed him inside the sidecar of the motorcycle.[21]

PO2 Ibañez and PO3 Paulin brought accused-appellant to the police station where he was interrogated by PO2 Deliña, PO2 Ibañez, and PO3 Paulin. PO3 Paulin then took some objects from his drawer, placed them on the desk, and asked accused-appellant to identify which one belonged to him. In reply, accused-appellant told the police officers that what they were doing was wrong and that he could get back at them. Consequently, PO3 Paulin slapped accused-appellant. The police officers thereafter imprisoned him.[22]

Ruling of the Regional Trial Court

The RTC found accused-appellant guilty as charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The RTC gave credence to SPO1 Puasan and PO2 Ibañez's positive identification of him as the one who sold to SPO1 Puasan a sachet of *shabu*. It also gave weight to the confirmation of P/Supt. Baldevieso that the item seized from accused-appellant contained *shabu*. It added that the marked money recorded in the morning of January 10, 2009 at the Desk Office Report was recovered by PO2 Ibañez from accused-appellant after the buy-bust.

Moreover, the RTC held that the presumption that the police officers were regularly performing their duties must prevail as there was no showing that they had any ill motive to testify against accused-appellant.

On appeal, accused-appellant argued that the prosecution failed to establish the unbroken chain custody of the seized item. Thus, he posited that the RTC erred in finding him guilty of illegal sale of dangerous drugs.

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[21] TSN, October 26, 2010, pp. 5-8.

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

Ruling of the Court of Appeals

The CA affirmed the RTC ruling. It held that there was no gap or break in the chain of custody of the seized item in this case.

According to the CA, SPO1 Puasan had initial custody of the subject drug when she, as poseur buyer, received the sachet of *shabu* from accused-appellant; immediately after the arrest of accused-appellant, SPO1 Puasan marked and made an inventory receipt of said item at the crime scene, in the presence of accused-appellant; and, thereafter, she brought the seized *shabu* at the police station, together with accused-appellant, for proper documentation.

The CA also noted that at the police station, a request for examination was made; SPO1 Puasan placed the sachet of *shabu* inside her locker, which was accessible only to her; the following day, she personally delivered the confiscated item and the request for examination to the Crime Laboratory which were duly received by PO1 Cachila, who turned them over to P/Supt. Baldevieso; in turn, P/Supt. Baldevieso placed a masking tape on the sachet and marked it with "D-011-09" as its control number; and, "0.03 gram" corresponding to the weight of the confiscated item, and her initials "AB." The CA stressed that P/Supt. Baldevieso identified in court said item that was found positive for *shabu*.

Based on the foregoing, the CA decreed that the integrity and evidentiary value of the confiscated *shabu* were preserved.

Our Ruling

The appeal has merit.

As a rule, the trial court's assessment on the credibility of the witness, when so affirmed by the CA, is binding and conclusive upon the Court. However, this rule allows certain exceptions such as when the trial court had overlooked or misconstrued material circumstances, which if properly considered would change the outcome of the case.[23] Here, the

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[23] *People v. Lumudag*, G.R. No. 201478, August 23, 2017.

Court finds that the RTC and the CA misapprehended relevant facts. As such, said exception applies warranting the dismissal of the charge against accused-appellant.

For a charge of illegal sale of dangerous drugs to prosper, the prosecution must prove: (1) the identity of the buyer, and seller, of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the sold item, and its payment. Further, it is crucial that the integrity of the seized drug be preserved; in this regard, the prosecution must prove an unbroken chain of custody over the subject illegal drug. This means that every link in the chain of its custody, from the time of its confiscation until its presentation in court, must be established.[24]

In this case, records reveal that during the buy-bust, SPO1 Puasan acted as poseur-buyer and bought an item, suspected as *shabu*, from accused-appellant. SPO1 Puasan also identified in court accused-appellant as the person subject of the buy-bust, and the one who accepted the marked money and sold to her a sachet of suspected *shabu*. However, accused-appellant contests the very item seized from him. He argues that the same was not properly marked immediately upon seizure by SPO1 Puasan, the poseur-buyer.[25]

Stated differently, accused-appellant argues that there was a gap in the chain of custody of the seized item through the failure to properly mark it immediately after confiscation in violation of Section 21, RA 9165.

The Court agrees.

Section 21, Article II of RA 9165, as amended by RA 10640,[26] pertinently provides:

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[24] *People v. Macapundag,* G.R. No. 225965, March 13, 2017.

[25] CA *rollo*, p. 34.

[26] 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.

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 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;

As a general rule, there are four links in the chain of custody of the recovered item: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the

apprehending officer; (2) its turnover by the apprehending officer to the investigating officer; (3) the investigating officer's turnover thereof to the forensic chemist for examination; and, (4) its submission by the forensic chemist to the court.[27]

As starting point of the chain of custody, the immediate marking of the specimen is necessary because it serves as reference for and by the subsequent handlers of the item. Marking is also used to distinguish the subject item from any similar or related evidence from their seizure until their disposal after the proceedings. More particularly, marking refers to the placement by the apprehending officer or the poseur-buyer of one's initials or signature or any identifying signs on the specimen. It must be done in the presence of the apprehended violator of law, and immediately upon his or her apprehension.[28]

Here, the supposed marking on the seized item may have been deemed as its identifying sign had it not been that SPO1 Puasan and P/Supt. Baldevieso both testified having made the same marking on the specimen.

To recall, SPO1 Puasan claimed that after the buy-bust, she immediately marked the seized item by placing "AB" thereon, *viz.*:

Q I am showing to you this one (1) sachet previously marked as Exhibit "C", can you tell us [the] relation of that sachet to your testimony?
A This [was] the one that I bought from the accused.

Q How do you know that this is the very same [item] that you x x x purchased from him?
A Because I made the marking.

Q What mark did you place?
A I made a marking AB.

Q When did you place the marking?
A On that particular date and time when the buy-bust operation happened.

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[27] *People v. Del Mundo*, G.R. No. 208095, September 20, 2017.

[28] *People v. Ismael*, G.R. No. 208093, February 20, 2017.

Q In what place?
A In front of the school were the buy-bust operation happened.[29]

Similarly, P/Supt. Baldevieso herself attested that she placed the marking "AB" on the item submitted to the Crime Laboratory, in addition to "D-011-09" pertaining to its control number, and "0.03 gram" corresponding to its weight, *viz.*:

Q And why do you know that this is the very same sachet that you have received and the contents of which you examined in connection with this case against accused?
A I have my markings on the masking tape which I provided and said markings were D-011-09, the control number and the 0.03 gram, the weight of the methamphetamine hydrochloride with my initials AB were already there in this Exhibit.

Q Now, this small plastic sachet, was this placed in any container when you received the same?
A It was placed on the staple sealed transparent plastic bag with markings.

Q Showing to you this big plastic with markings on it, is that the same plastic where this Exhibit 'C' was placed when you received the same?
A Yes, Ma'am.

Q And did you place any marking on this plastic bag containing Exhibit 'C'?
A Yes ma'am, I have my markings D-011-09 our control with my initials.[30]

Thus, both SPO1 Puasan and P/Supt. Baldevieso claimed to have placed the markings "AB" on the sachet. Notably, the records did not indicate that there were two "AB" markings on the specimen. Based on the surrounding circumstances, the Court finds it more plausible and logical to conclude that it was P/Supt. Baldevieso who placed the "AB" marking considering that "AB" were her initials. Besides, it would be rather odd for P/Supt.

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[29] TSN, March 9, 2010, pp. 14-15.

[30] TSN, August 20, 2009, pp. 8-9.

Baldevieso to use a mark similar to the one that was already previously placed in the seized item. The purpose of placing a mark was precisely to distinguish it from similar items and to indicate that said item had been under her temporary custody. On such premise, the assertion of SPO1 Puasan that she marked the seized item with "AB" immediately after confiscation is without merit. In fine, the evidence tends to show that SPO1 Puasan did not mark the seized sachet at the outset. Evidently, such failure to immediately mark the specimen constitutes a missing link in the chain of custody. With such missing link, there was no assurance that the item subsequently turned over to the Crime Laboratory, and eventually presented in court, was the same one recovered from the accused-appellant.

Moreover, in *People v. Hementiza*,[31] the Court stressed that, to establish the chain of custody, testimony about every link in the chain must be made. This means that every person who touched the item must describe his or her receipt thereof, what transpired while the same was in one's possession, and its condition when delivered to the next link. This requirement was, however, not complied with here.

P/Supt. Baldevieso testified that a certain PO1 Cachila received the seized item and the request for its laboratory examination; that PO1 Cachila likewise recorded such receipt in the Crime Laboratory's logbook; and that PO1 Cachila turned over the specimen to him (P/Supt. Baldevieso). Unfortunately, PO1 Cachila did not testify in court to confirm the receipt and turn over of the seized item thus creating another gap in the chain of custody. Consequently, it cannot be determined with certainty whether the item supposedly turned over by PO1 Cachila to P/Supt Baldevieso was the same item received by PO1 Cachila from SPO1 Puasan.

Likewise, the prosecution failed to show that the buy-bust team physically inventoried and photographed the seized item in the presence of the witnesses required under Section 21, RA 9165. While such requirement, under justifiable reasons, shall

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[31] G.R. No. 227398, March 22, 2017.

not render void the seizure of the subject item, the prosecution must nonetheless explain its failure to abide by such procedural requirement, and show that the integrity and evidentiary value of the seized item was preserved. Here, no such explanation was offered by the prosecution for its non-compliance with Section 21 of RA 9165.

"It is a matter of judicial notice that buy-bust operations are 'susceptible to police abuse, the most notorious of which is its use as a tool for extortion.'"[32] Such being the case, procedural safeguards, including those specified under Section 21, RA 9165, are provided in order to protect the innocent from abuse, and to ensure the preservation of the integrity of the evidence.[33]

Considering all the foregoing lapses and gaps in the chain of custody of the seized specimen, the possibility that the integrity and evidentiary value of the recovered item had been compromised is not remote. Hence, accused-appellant's guilt for illegal sale of dangerous drugs has not been proved beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED.** The December 22, 2014 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 01461 is **REVERSED and SET ASIDE**. Accused-appellant Allan Bugtong *y* Amoroso is **ACQUITTED**. He is **ORDERED** released from detention unless other valid ground exists for his further imprisonment. The Director of the Bureau of Corrections is **DIRECTED** to report his compliance herewith within five (5) days from receipt.

SO ORDERED.

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

Tijam, J., on official leave.

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[32] *People v. Barte,* G.R. No. 179749, March 1, 2017.

[33] *Id*.

[*] Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

THIRD DIVISION

[G.R. No. 223272. February 26, 2018]

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS, SSGT. EDGARDO L. OSORIO, *petitioner, vs.* **ASSISTANT STATE PROSECUTOR JUAN PEDRO C. NAVERA; ASSISTANT STATE PROSECUTOR IRWIN A. MARAYA; ASSOCIATE PROSECUTION ATTORNEY ETHEL RHEA G. SURIL OF THE DEPARTMENT OF JUSTICE, MANILA; COLONEL ROBERT M. AREVALO, COMMANDER, HEADQUARTERS AND HEADQUARTERS SUPPORT GROUP PHILIPPINE ARMY; COLONEL ROSALIO G. POMPA, INF (GSC), PA, COMMANDING OFFICER, MP BATALLION, HHSG, PA; and CAPTAIN TELESFORO C. BALASABAS, INF PA, and/or any and all persons who may have actual custody over the person of SSgt. Edgardo L. Osorio,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; WRIT OF *HABEAS CORPUS*; TO WHAT *HABEAS CORPUS* EXTENDS; IT MAY BE AVAILED OF AS A POST-CONVICTION REMEDY OR WHEN THERE IS AN ALLEGED VIOLATION OF THE LIBERTY OF ABODE.— Rule 102, Section 1 of the Rules of Court provides: Section 1. *To what habeas corpus extends*.— Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. The "great writ of liberty" of habeas corpus "was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom." Habeas corpus is an extraordinary, summary, and equitable writ, consistent with the law's "zealous regard for personal liberty." Its primary purpose "is to inquire into all manner of involuntary restraint as distinguished from voluntary,

and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient." The restraint of liberty need not be confined to any offense so as to entitle a person to the writ. Habeas corpus may be availed of as a post-conviction remedy or when there is an alleged violation of the liberty of abode.

2. ID.; ID.; ID.; IT MAY NO LONGER BE ISSUED IF THE PERSON ALLEGEDLY DEPRIVED OF LIBERTY IS RESTRAINED UNDER A LAWFUL PROCESS OR ORDER OF THE COURT.— [A] writ of habeas corpus may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court. The restraint then has become legal. Therefore, the remedy of habeas corpus is rendered moot and academic. x x x If an accused is confined under a lawful process or order of the court, the proper remedy is to pursue the orderly course of trial and exhaust the usual remedies. This ordinary remedy is to file a motion to quash the information or the warrant of arrest based on one or more of the grounds enumerated in Rule 117, Section 3 of the Rules of Court.

3. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH; DISCUSSION.— With a motion to quash, the accused "assails the validity of a criminal complaint or information . . . for insufficiency on its face in [a] point of law, or for defects which are apparent in the face of the information." An accused filing a motion to quash "hypothetically admits the facts alleged in the information" and cannot present evidence aliunde or those extrinsic from the information. The effect of the grant of the motion to quash depends on the grounds availed of. When the defect in the complaint or information can be cured by amendment, the grant of the motion to quash will result in an order directing the amendment. If the ground is that the facts charged do not constitute an offense, the trial court shall give the prosecution "an opportunity to correct the defect by amendment." If, despite amendment, the complaint or information still suffers from the same defect, the complaint or information shall be quashed.

4. ID.; JURISDICTION; RA NO. 7055 ON CIVIL COURTS HAVING JURISDICTION OVER CRIME PUNISHED UNDER THE REVISED PENAL CODE COMMITTED BY A MEMBER OF THE ARMED FORCES OF THE PHILIPPINES.— Republic Act No. 7055, Section 1 provides

that if the accused is a member of the Armed Forces of the Philippines and the crime involved is one punished under the Revised Penal Code, civil courts shall have the authority to hear, try, and decide the case, x x x Under this Section, the only time courts-martial may assume jurisdiction is if, before arraignment, the civil court determines that the offense is "service-connected." These service-connected offenses are found in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War, x x x SSgt. Osorio was charged with kidnapping, a crime punishable under Article 267 of the Revised Penal Code. Applying Republic Act No. 7055, Section 1, the case shall be tried by a civil court, specifically by the Regional Trial Court, which has jurisdiction over the crime of kidnapping.

5. ID.; ID.; ID.; KIDNAPPING COMMITTED BY A PUBLIC OFFICER IN HIS PERSONAL CAPACITY.— [K]idnapping is not part of the functions of a soldier. Even if a public officer has the legal duty to detain a person, the public officer must be able to show the existence of legal grounds for the detention. Without these legal grounds, the public officer is deemed to have acted in a private capacity and is considered a "private individual." The public officer becomes liable for kidnapping and serious illegal detention punishable by *reclusion perpetua*, not with arbitrary detention punished with significantly lower penalties. x x x Further, since SSgt. Osorio is charged with a crime committed in a private capacity, the Sandiganbayan cannot take cognizance of the case. Under Presidential Decree No. 1606, the Sandiganbayan was created and was vested jurisdiction over crimes or offenses committed by public officers in relation to their offices.

APPEARANCES OF COUNSEL

Alentajan Law Office for petitioner.
Office of the Solicitor General for respondents.

R E S O L U T I O N

LEONEN, *J.*:

Kidnapping should never be part of the functions of a soldier. It cannot be done in a soldier's official capacity. If a soldier

nonetheless proceeds allegedly on the orders of a superior officer, the soldier shall be tried before the civil courts. The remedy of habeas corpus, on the argument that only courts-martial have jurisdiction over members of the Armed Forces, will not lie.

This resolves the Petition[1] for Review on Certiorari assailing the Resolutions of the Court of Appeals in CA-G.R. SP No. 141332 dated July 27, 2015[2] and February 22, 2016.[3] The Court of Appeals found that custody over Staff Sergeant Edgardo L. Osorio (SSgt. Osorio) was by virtue of a valid judicial process; thus, it denied SSgt. Osorio's Petition for Issuance of a Writ of Habeas Corpus.[4]

Together with his superior officer, Major General Jovito Palparan (Major General Palparan),[5] SSgt. Osorio was charged in two (2) Informations before Branch 14, Regional Trial Court, Malolos City for allegedly kidnapping University of the Philippines students Karen E. Empeño (Empeño) and Sherlyn T. Cadapan (Cadapan). The accusatory portion of these Informations read:

CRIM. CASE NO. 3905-M-2011

That on or about the 26th of June 2006, in the house of one Raquel Halili at Barangay San Miguel, Hagonoy, Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, acting as private individuals, conspiring, confederating and mutually aiding one another, did then and there, by taking advantage of nighttime and with the use of a motor vehicle, forcibly abduct **KAREN E.**

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[1] *Rollo*, pp. 10-37.

[2] *Id*. at 38-43. The Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda of the Eleventh Division, Court of Appeals, Manila.

[3] *Id*. at 44-46. The Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda of the Eleventh Division, Court of Appeals, Manila.

[4] *Id*. at 43 and 45.

[5] *Id*. at 97 and 101. SSgt. Osorio's other co-accused were Lieutenant Colonel Felipe Anotado, Jr. and Master Sergeant Rizal C. Hilario.

EMPEÑO, a female person, and deprive her of liberty by detaining her against her will first at Camp Tecson, in San Miguel, Bulacan, then subsequently in other places to include the barangay hall of Sapang, San Miguel, Bulacan; the camp of the 24th Infantry Battalion of the Philippine Army in Limay, Bataan; and, a resort/safehouse in Iba, Zambales, from June 2006 to July 2007, a period of more than three (3) days, resulting in the said female victim's continuing disappearance, to the damage and prejudice of **KAREN E. EMPEÑO** and her heirs.

CONTRARY TO LAW.[6] (Emphasis in the original)

CRIM. CASE NO. 3906-M-2011

That on or about the 26th of June 2006, in the house of one Raquel Halili at Barangay San Miguel, Hagonoy, Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused, acting as private individuals, conspiring, confederating and mutually aiding one another, did then and there, by taking advantage of nighttime and with the use of a motor vehicle, forcibly abduct **SHERLYN T. CADAPAN**, a female person, and deprive her of liberty by detaining her against her will first at Camp Tecson, in San Miguel, Bulacan, then subsequently in other places to include the barangay hall of Sapang, San Miguel, Bulacan; the camp of the 24th Infantry Battalion of the Philippine Army in Limay, Bataan; and, a resort/safehouse in Iba, Zambales, from June 2006 to July 2007, a period of more than three (3) days, resulting in the said female victim's continuing disappearance, to the damage and prejudice of **SHERLYN T. CADAPAN** and her heirs.

CONTRARY TO LAW.[7] (Emphasis in the original)

Warrants of arrest were issued against SSgt. Osorio on December 19, 2011.[8]

The next day, at about 3:00 p.m., SSgt. Osorio was arrested by Colonel Herbert Yambing, the Provost Marshall General of the Armed Forces of the Philippines. SSgt. Osorio was turned over to the Criminal Investigation and Detection Unit Group

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[6] *Id*. at 98.

[7] *Id*. at 102.

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

in Camp Crame, Quezon City and was detained in Bulacan Provincial Jail. He was later transferred to the Philippine Army Custodial Center in Fort Bonifacio, Taguig City where he is currently detained.[9]

Contending that he was being illegally deprived of his liberty, SSgt. Osorio filed a Petition[10] for Habeas Corpus before the Court of Appeals on July 21, 2015. Impleaded as respondents were Presiding Judge Teodora Gonzales of Branch 14, Regional Trial Court, Malolos City, Bulacan, the judge who issued the warrants of arrest; Assistant State Prosecutors Juan Pedro Navera and Irwin A. Maraya, and Associate Prosecution Attorney Ethel Rhea G. Suril, who filed the Informations for kidnapping and illegal detention; and Colonel Robert M. Arevalo, Colonel Rosalio G. Pompa, and Captain Telesforo C. Balasabas, SSgt. Osorio's superiors.[11]

SSgt. Osorio mainly argued that courts-martial, not a civil court such as the Regional Trial Court, had jurisdiction to try the criminal case considering that he was a soldier on active duty and that the offense charged was allegedly "service-connected." In the alternative, SSgt. Osorio argued that the Ombudsman had jurisdiction to conduct preliminary investigation and the Sandiganbayan had jurisdiction to try the case because among his co-accused was Major General Palparan, a public officer with salary grade higher than 28.[12]

SSgt. Osorio added that he could not be charged with the felony of kidnapping and serious illegal detention because under Article 267 of the Revised Penal Code,[13] the felony may only

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[9] *Id*. at 12, as admitted in the Petition for Review on *Certiorari*.

[10] *Id*. at 49-74.

[11] *Id*. at 49.

[12] *Id*. at 55-60.

[13] REV. PEN. CODE, Art. 267 provides:

Art. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

be committed by a private individual, not a ranking officer of the Armed Forces of the Philippines.[14] Lastly, he claimed deprivation of due process because he was allegedly charged without undergoing proper preliminary investigation.[15]

The Court of Appeals held that SSgt. Osorio's confinement was "by virtue of a valid judgment or a judicial process[.]"[16] Under Republic Act No. 7055, Section 1, a crime penalized under the Revised Penal Code, even if committed by a member of the Armed Forces of the Philippines, is to be tried "by the proper civil court." The only exception to this rule is when the crime is "service-connected," i.e., those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War,[17] in which case, the courts-martial have jurisdiction. Since the crime of kidnapping and serious illegal detention is punished under the Revised Penal Code and is not "service-connected," the Regional Trial Court of Malolos City properly took cognizance of the case and, consequently, the warrants of arrest against SSgt. Osorio were issued under a valid judicial process.

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1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[14] *Rollo,* pp. 53-54.

[15] *Id.* at 65-66.

[16] *Id.* at 41.

[17] Comm. Act No. 408.

As to SSgt. Osorio's other arguments, the Court of Appeals said that they "should be resolved through other appropriate remedies such as a motion to quash." According to the Court of Appeals, habeas corpus is not a "writ of error," and questions relating to procedure or merits of the case cannot be addressed in habeas corpus proceedings.[18]

In its July 27, 2015 Resolution,[19] the Court of Appeals denied SSgt. Osorio's Petition for Habeas Corpus. SSgt. Osorio's Motion for Reconsideration was likewise denied in the Court of Appeals February 22, 2016 Resolution.[20]

On April 20, 2016, SSgt. Osorio filed his Petition for Review on Certiorari.[21] Upon the directive of this Court, respondents, through the Office of the Solicitor General, filed their Comment[22] on the Petition.

SSgt. Osorio maintains that he is being illegally deprived of his liberty because he was charged with an "inexistent offense." He argues that kidnapping and serious illegal detention can only be committed by a private person, not by a member of the Armed Forces of the Philippines.[23]

Given that he is a soldier on active duty, SSgt. Osorio adds that only courts-martial have jurisdiction to hear, try, and decide a criminal case against him. In the alternative, SSgt. Osorio argues that the Ombudsman and Sandiganbayan, not the Department of Justice or the Regional Trial Court, have jurisdiction to conduct preliminary investigation and to hear, try, and decide the criminal case because one of his co-accused, Major General Palparan, was an officer in the Philippine Army with a rank higher than colonel and with a salary grade of 28.[24]

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[18] *Rollo,* p. 43.

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

[20] *Id.* at 44-46.

[21] *Id.* at 10-37.

[22] *Id.* at 145-173.

[23] *Id.* at 14-17.

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

Lastly, SSgt. Osorio claims that he was deprived of his right to due process of law because no preliminary investigation was allegedly conducted in this case.[25]

Respondents counter that a public officer such as SSgt. Osorio may be charged under Article 267 of the Revised Penal Code on kidnapping and serious illegal detention. A public officer detaining a person without authority is acting in a private, not official, capacity. Since kidnapping is not part of the duties of an officer of the Armed Forces of the Philippines, respondents argue that SSgt. Osorio acted in a private capacity when he took part in illegally detaining Empeño and Cadapan.[26]

On the issue of jurisdiction, respondents argue that the Regional Trial Court properly took cognizance of the case. Under Republic Act No. 7055, Section 1, members of the Armed Forces of the Philippines charged with crimes or offenses punished under the Revised Penal Code "shall be tried by the proper civil court." The only exception is when the crime is "service-connected," in which case, courts-martial assume jurisdiction. Considering that kidnapping is not a "service-connected" offense, SSgt. Osorio was properly charged before a civil court.[27]

Lastly, respondents argue that no writ of habeas corpus should be issued in this case. Respondents contend that habeas corpus "does not extend beyond an inquiry into the jurisdiction of the court by which it was issued and the validity of the process upon its face."[28] Habeas corpus, being an extraordinary remedy, "will not issue where the person alleged to be restrained of his [or her] liberty is in custody of an officer under a process issued by the court which has jurisdiction to do so."[29]

The principal issue for this Court's resolution is whether or not a writ of habeas corpus is petitioner SSgt. Edgardo L. Osorio's

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

[26] *Id.* at 148-153.

[27] *Id.* at 153-166.

[28] *Id.* at 167.

[29] *Id.*

proper remedy. Subsumed in the resolution of this issue are the following: first, whether or not a civil court may take cognizance of a criminal case against a soldier on active duty; and, second, whether or not a public officer may be charged with kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, considering that the provision speaks of "any private individual."

This Petition must be denied.

I

Rule 102, Section 1 of the Rules of Court provides:

> Section 1. *To what habeas corpus extends*. — Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

The "great writ of liberty"[30] of habeas corpus "was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom."[31] Habeas corpus is an extraordinary,[32] summary,[33] and equitable writ, consistent with the law's "zealous regard for personal liberty."[34] Its primary purpose "is to inquire

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[30] *Morales, Jr. v. Enrile*, 206 Phil. 466, 495 (1983) [Per *J*. Concepcion, Jr., *En Banc*].

[31] *Villavicencio v. Lukban*, 39 Phil. 778, 788 (1919) [Per *J*. Malcolm, *En Banc*].

[32] *De Villa v. Director, New Bilibid Prisons*, 485 Phil. 368, 381 (2004) [Per *J*. Ynares-Santiago, *En Banc*]; *Calvan v. Court of Appeals*, 396 Phil. 133, 144 (2000) [Per *J*. Vitug, Third Division].

[33] *Mangila v. Pangilinan*, 714 Phil. 204, 209 (2013) [Per *J*. Bersamin, First Division], citing *Caballes v. Court of Appeals*, 492 Phil. 410, 422 (2005) [Per *J*. Callejo, Sr., Second Division]; *Saulo v. Brig. Gen. Cruz, etc.*, 105 Phil. 315, 320-321 (1959) [Per *J*. Concepcion, *En Banc*], citing 25 Am. Jur., p. 245.

[34] *Villavicencio v. Lukban*, 39 Phil. 778, 789 (1919) [Per *J*. Malcolm, *En Banc*].

into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient."[35]

The restraint of liberty need not be confined to any offense so as to entitle a person to the writ. Habeas corpus may be availed of as a post-conviction remedy[36] or when there is an alleged violation of the liberty of abode.[37]

In *In re: Salibo v. Warden*,[38] this Court allowed the issuance of the writ due to mistaken identity. Instead of Butukan S. Malang, authorities arrested and detained one Datukan Malang Salibo (Salibo) for his alleged participation in the Maguindanao Massacre. Salibo, having proved that he was not the accused Butukan S. Malang named in the arrest warrant, and that he was in Mecca for the Hajj pilgrimage at the time of the incident, was ordered released. To detain a person, when he has proven that he is not the person accused of the crime, is a deprivation of liberty without due process of law.

Habeas corpus, therefore, effectively substantiates the implied autonomy of citizens constitutionally protected in the right to liberty in Article III, Section 1 of the Constitution.[39] With liberty being a constitutional right, courts must apply a conscientious

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[35] *Id*. at 790.

[36] See *Gumabon, et al. v. Director of the Bureau of Prisons*, 147 Phil. 362 (1971) [Per *J*. Fernando, *En Banc*], *Conde v. Rivera and Unson*, 45 Phil. 650 (1924) [Per *J*. Malcolm, *En Banc*], and *Ganaway v. Quillen*, 42 Phil. 805 (1922) [Per *J*. Malcolm, *En Banc*].

[37] *Villavicencio v. Lukban*, 39 Phil. 778 (1919) [Per *J*. Malcolm, *En Banc*]; *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919) [Per *J*. Malcolm, *En Banc*].

[38] 757 Phil. 630, 644-645 (2015) [Per *J*. Leonen, Second Division].

[39] CONST., Art. III, Sec. 1 provides:

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

and deliberate level of scrutiny so that the substantive right to liberty will not be further curtailed in the labyrinth of other processes.[40]

However, a writ of habeas corpus may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court.[41] The restraint then has become legal.[42] Therefore, the remedy of habeas corpus is rendered moot and academic.[43] Rule 102, Section 4 of the Rules of Court provides:

> Section 4. *When writ not allowed or discharge authorized.* — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

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[40] See *Gumabon, et al. v. Director of the Bureau of Prisons*, 147 Phil. 362 (1971) [Per *J.* Fernando, *En Banc*].

[41] See *In Re: Petition for Habeas Corpus of Villar v. Director Bugarin,* 224 Phil. 161, 170 (1985) [Per *C.J.* Makasiar, *En Banc*], *Celeste v. People*, 142 Phil. 308, 312 (1970) [Per *J.* Fernando, *En Banc*], *Santiago v. Director of Prisons*, 77 Phil. 927, 930-931 (1947) [Per *J.* Tuason, *En Banc*], *Quintos v. Director of Prisons*, 55 Phil. 304, 306 (1930) [Per *J.* Malcolm, *En Banc*], and *Carrington v. Peterson*, 4 Phil. 134, 138 (1905) [Per *J.* Johnson, *En Banc*].

[42] *In the Matter of the Petition for Habeas Corpus of Harvey v. Hon. Santiago*, 245 Phil. 809, 816 (1988) [Per *J.* Melencio-Herrera, Second Division], citing *Cruz v. Gen. Montoya*, 159 Phil. 601, 604-605 (1975) [Per *J.* Fernando, Second Division].

[43] *Integrated Bar of the Philippines v. Hon. Ponce Enrile*, 223 Phil. 561, 580 (1985) [Per *J.* Melencio-Herrera, *En Banc*]; *In the Matter of the Petition for Habeas Corpus of Harvey v. Hon. Santiago*, 245 Phil. 809, 816 (1988) [Per *J.* Melencio-Herrera, Second Division], citing *Beltran v. P.C. Capt. Garcia*, 178 Phil. 590, 594 (1979) [Per *Acting C.J.* Fernando, *En Banc*].

If an accused is confined under a lawful process or order of the court, the proper remedy is to pursue the orderly course of trial and exhaust the usual remedies.[44] This ordinary remedy is to file a motion to quash the information or the warrant of arrest[45] based on one or more of the grounds enumerated in Rule 117, Section 3 of the Rules of Court:

Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;
(b) That the court trying the case has no jurisdiction over the offense charged;
(c) That the court trying the case has no jurisdiction over the person of the accused;
(d) That the officer who filed the information had no authority to do so;
(e) That it does not conform substantially to the prescribed form;
(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
(g) That the criminal action or liability has been extinguished;
(h) That it contains averments which, if true, would constitute a legal excuse or justification; and
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

With a motion to quash, the accused "assails the validity of a criminal complaint or information . . . for insufficiency on its face in [a] point of law, or for defects which are apparent in the face of the information."[46] An accused filing a motion to quash "hypothetically admits the facts alleged in the

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[44] *Caballes v. Court of Appeals*, 492 Phil. 410, 422 (2005) [Per *J.* Callejo, Sr., Second Division].

[45] *Integrated Bar of the Philippines v. Hon. Ponce Enrile*, 223 Phil. 561, 577 (1985) [Per *J.* Melencio-Herrera, *En Banc*]; *Bernarte v. Court of Appeals*, 331 Phil. 643, 657 (1996) [Per *J.* Romero, Second Division].

[46] *In re Salibo v. Warden*, 757 Phil. 630, 653 (2015) [Per *J.* Leonen, Second Division], citing *People v. Odtuhan*, G.R. No. 191566, July 17, 2013, 701 SCRA 506, 512 [Per *J.* Peralta, Third Division].

information" and cannot present evidence aliunde or those extrinsic from the information.[47]

The effect of the grant of the motion to quash depends on the grounds availed of. When the defect in the complaint or information can be cured by amendment, the grant of the motion to quash will result in an order directing the amendment.[48] If the ground is that the facts charged do not constitute an offense, the trial court shall give the prosecution "an opportunity to correct the defect by amendment."[49] If, despite amendment, the complaint or information still suffers from the same defect, the complaint or information shall be quashed.[50]

As an exception, the Court said in *In re: Salibo* that a motion to quash would be ineffectual because none of the grounds would have applied under the circumstances of that case. The information and warrant of arrest were issued on the premise that the accused named Butukan S. Malang and the person named Datukan Malang Salibo were the same person, a premise proven as false. An amendment from "Butukan S. Malang" to "Datukan Malang Salibo" in the information will not cure this defect.

II

In availing himself of habeas corpus, SSgt. Osorio mainly contends that the Regional Trial Court that issued the warrants for his arrest had no jurisdiction to take cognizance of the kidnapping case against him. SSgt. Osorio argues that courts-martial, not civil courts, have jurisdiction to try and decide a case against a soldier on active duty. In the alternative, SSgt. Osorio argues that the Ombudsman and Sandiganbayan should have conducted the preliminary investigation and decided the kidnapping case against him since his co-accused, Major General Palparan, had a rank higher than colonel and had salary grade 28 at the time of the commission of the offense.

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[47] *Id*.

[48] *Id*.

[49] *Rules of Court*, Rule 117, Sec. 4.

[50] *Rules of Court*, Rule 117, Sec. 4.

SSgt. Osorio's claim lacks merit. The Regional Trial Court properly took cognizance of the kidnapping case against him.

Republic Act No. 7055,[51] Section 1 provides that if the accused is a member of the Armed Forces of the Philippines and the crime involved is one punished under the Revised Penal Code, civil courts shall have the authority to hear, try, and decide the case, thus:

> Section 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civil court except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial: *Provided*, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.
>
> As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.
>
> In imposing the penalty for such crimes or offenses, the court-martial may take into consideration the penalty prescribed therefor in the Revised Penal Code, other special laws, or local government ordinances.

Under this Section, the only time courts-martial may assume jurisdiction is if, before arraignment, the civil court determines that the offense is "service-connected." These service-connected offenses are found in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War, to wit:

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[51] Entitled "An Act Strengthening Civilian Supremacy Over the Military Returning to the Civil Courts the Jurisdiction Over Certain Offenses Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees."

ARTICLE 54. Fraudulent Enlistment . . .

ARTICLE 55. Officer Making Unlawful Enlistment . . .

ARTICLE 56. False Muster . . .

ARTICLE 57. False Returns-Omission to Render Returns . . .

ARTICLE 58. Certain Acts to Constitute Desertion . . .

ARTICLE 59. Desertion . . .

ARTICLE 60. Advising or Aiding Another to Desert . . .

ARTICLE 61. Entertaining a Deserter . . .

ARTICLE 62. Absence Without Leave . . .

ARTICLE 63. Disrespect toward the President, Vice-President, Congress of the Philippines, or Secretary of National Defense . . .

ARTICLE 64. Disrespect Toward Superior Officer . . .

ARTICLE 65. Assaulting or Willfully Disobeying Superior Officer . . .

ARTICLE 66. Insubordinate Conduct Toward Non-Commissioned Officer . . .

ARTICLE 67. Mutiny or Sedition . . .

ARTICLE 68. Failure to Suppress Mutiny or Sedition . . .

ARTICLE 69. Quarrels; Frays; Disorders . . .

ARTICLE 70. Arrest or Confinement . . .

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ARTICLE 72. Refusal to Receive and Keep Prisoners . . .

ARTICLE 73. Report of Prisoners Received . . .

ARTICLE 74. Releasing Prisoner Without Proper Authority . . .

ARTICLE 75. Delivery of Offenders to Civil Authorities . . .

ARTICLE 76. Misbehaviour Before the Enemy . . .

ARTICLE 77. Subordinates Compelling Commander to Surrender . . .

ARTICLE 78. Improper Use of Countersign . . .

ARTICLE 79. Forcing a Safeguard . . .

ARTICLE 80. Captured Property to Be Secured for Public Service . . .

ARTICLE 81. Dealing in Captured or Abandoned Property . . .

ARTICLE 82. Relieving, Corresponding with, or Aiding the Enemy . . .

ARTICLE 83. Spies . . .

ARTICLE 84. Military Property — Willful or Negligent Loss, Damage or Wrongful Disposition . . .

ARTICLE 85. Waste or Unlawful Disposition of Military Property Issued to Soldiers . . .

ARTICLE 86. Drunk on Duty . . .

ARTICLE 87. Misbehaviour of Sentinel . . .

ARTICLE 88. Personal Interest in Sale of Provisions . . .

ARTICLE 89. Intimidation of Persons Bringing Provisions . . .

ARTICLE 90. Good Order to be Maintained and Wrongs Redressed . . .

ARTICLE 91. Provoking Speeches or Gestures . . .

ARTICLE 92. Dueling . . .

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ARTICLE 95. Frauds Against the Government Affecting Matters and Equipments . . .

ARTICLE 96. Conduct Unbecoming an Officer and Gentleman . . .

ARTICLE 97. General Article . . .

SSgt. Osorio was charged with kidnapping, a crime punishable under Article 267 of the Revised Penal Code.[52] Applying

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[52] REV. PEN. CODE, Art. 267 provides:

Article 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

Republic Act No. 7055, Section 1, the case shall be tried by a civil court, specifically by the Regional Trial Court, which has jurisdiction over the crime of kidnapping.[53] The processes which the trial court issued, therefore, were valid.

Contrary to SSgt. Osorio's claim, the offense he committed was not service-connected. The case filed against him is none of those enumerated under Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War.

Further, kidnapping is not part of the functions of a soldier. Even if a public officer has the legal duty to detain a person, the public officer must be able to show the existence of legal grounds for the detention. Without these legal grounds, the public officer is deemed to have acted in a private capacity and is considered a "private individual." The public officer becomes liable for kidnapping and serious illegal detention punishable by *reclusion perpetua*, not with arbitrary detention punished with significantly lower penalties.

The cases cited by respondents are on point. In *People v. Santiano*,[54] members of the Philippine National Police were convicted of kidnapping with murder. On appeal, they contended that they cannot be charged with kidnapping considering that they were public officers. This Court rejected the argument and said that "in abducting and taking away the victim, [the accused] did so neither in furtherance of official function nor in the pursuit of authority vested in them. It is not, in fine, in

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4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[53] B.P. Blg. 129, Sec. 20 in relation to Sec. 32.

[54] 359 Phil. 928 (1998) [Per *J.* Vitug, First Division].

relation to their office, but in purely private capacity, that they [committed the crime]."[55] This Court, thus, affirmed the conviction of the accused in *Santiano*.

In *People v. PO1 Trestiza*,[56] members of the Philippine National Police were initially charged with kidnapping for ransom. The public prosecutor, however, filed a motion to withdraw information before the trial court and filed a new one for robbery. According to the public prosecutor, the accused cannot be charged with kidnapping because the crime may only be committed by private individuals. Moreover, the accused argued that the detention was allegedly part of a "legitimate police operation."

The trial court denied the motion to withdraw. It examined the Pre-Operation/Coordination Sheet presented by the defense and found that it was neither authenticated nor its signatories presented in court. The defense failed to show proof of a "legitimate police operation" and, based on *Santiano,* the accused were deemed to have acted in a private capacity in detaining the victims. This Court affirmed the conviction of the police officers for kidnapping.

It is not impossible for a public officer to be charged with and be convicted of kidnapping as *Santiano* and *Trestiza* illustrated. SSgt. Osorio's claim that he was charged with an "inexistent crime" because he is a public officer is, therefore, incorrect.

Further, since SSgt. Osorio is charged with a crime committed in a private capacity, the Sandiganbayan cannot take cognizance of the case. Under Presidential Decree No. 1606, the Sandiganbayan was created and was vested jurisdiction over crimes or offenses committed by public officers in relation to their offices.[57]

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[55] *Id*. at 943.

[56] 676 Phil. 420 (2011) [Per *J*. Carpio, Second Division].

[57] PRESIDENTIAL DECREE NO. 1606, as amended, Sec. 4(b).

All told, the arrest warrants against SSgt. Osorio were issued by the court that has jurisdiction over the offense charged. SSgt. Osorio's restraint has become legal; hence, the remedy of habeas corpus is already moot and academic.[58] SSgt. Osorio's proper remedy is to pursue the orderly course of trial and exhaust the usual remedies, the first of which would be a motion to quash, filed before arraignment, on the following grounds: the facts charged do not constitute an offense; the court trying the case has no jurisdiction over the offense charged; and the officer who filed the information had no authority to do so.[59]

WHEREFORE, the Petition for Review on Certiorari is **DENIED.** The Resolutions dated July 27, 2015 and February 22, 2016 of the Court of Appeals in CA-G.R. SP No. 141332 are **AFFIRMED**.

SO ORDERED.

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

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[58] See *Salibo v. Warden*, 757 Phil. 630 (2015) [Per *J.* Leonen, Second Division].

[59] RULES OF COURT, Rule 117, Secs. 1 and 3 provide:

Section 1. *Time to move to quash*. — At any time before entering his plea, the accused may move to quash the complaint or information.

. . . . . .

Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

. . . . . .

(d) That the officer who filed the information had no authority to do so[.]

THIRD DIVISION

[G.R. No. 227336. February 26, 2018]

ROMMEL RAMOS *y* LODRONIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED BY THE LOWER COURTS, AS THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTIONS; PRESENT.— Petitioner essentially assails that the evidence presented by the prosecution did not comply with Sec. 21 of R.A. No. 9165 and the integrity and evidentiary value of the seized items were not properly preserved. The questions posited are evidently factual because it requires compromised examination of the evidence on record. Well settled is the rule that the Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts. Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. Here, two of the exceptions exist – that the judgment is based on misapprehension of facts and the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY, DEFINED; REQUIREMENTS UNDER SECTION 21 OF R.A. NO. 9165; NON-COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS SHALL NOT RENDER VOID AND INVALID THE SEIZURES OF AND CUSTODY OVER THE CONFISCATED ITEMS PROVIDED THAT SUCH NON-COMPLIANCE WERE UNDER JUSTIFIABLE GROUNDS AND THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER OR TEAM.— 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 until destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. x x x. [S]ec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory; and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.** In addition, Sec. 21 of the IRR of R.A. No. 9165 provides a saving clause which states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.**

3. ID.; ID.; ID.; ID.; THE APPREHENDING OFFICERS' COMPLIANCE WITH THE CHAIN OF CUSTODY RULE CAN BE TACKLED FOR THE FIRST TIME ON APPEAL, AS IT IS ESSENTIAL THAT THE IDENTITY OF THE

SEIZED DRUG/PARAPHERNALIA BE ESTABLISHED WITH MORAL CERTAINTY; THE APPREHENDING OFFICERS' FAILURE TO PREPARE THE REQUIRED INVENTORY AND THE TAKING OF PHOTOGRAPHS OF THE SEIZED ITEMS AT THE TIME OF CONFISCATION IS FATAL TO THE PROSECUTION'S CASE.— The prosecution completely failed to present in evidence the inventory and the photographs of the seized items because the apprehending team did not bother to conduct the same. The OSG simply gave a flimsy excuse that petitioner cannot anymore question the apprehending officers' non-compliance with Sec. 21 of R.A. No. 9165 because it is an objection to the evidence which may not be raised for the first time on appeal. The Court must emphasize that compliance with the requirement under Sec. 21 of R.A. No. 9165 forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. It is essential that the identity of the seized drug/paraphernalia be established with moral certainty, thus, the apprehending officers' compliance with the chain of custody rule can still be tackled on appeal. The lack of the inventory signed by petitioner himself or by his representative as well as by the representative of the media and the DOJ and the elected official as required by law could very well be held to mean that no dangerous drug had been seized from petitioner on that occasion. The apprehending officers' sheer failure to prepare the required inventory and the taking of photographs demonstrate their apathy to observe Sec. 21 of R.A. No. 9165.

4. **ID.; ID.; ID.; ID.; WHERE THE PROSECUTION FAILED TO RECOGNIZE ITS PROCEDURAL LAPSES AND GIVE JUSTIFIABLE GROUND FOR THE NON-COMPLIANCE OF SEC. 21 OF R.A. NO. 9165, IT LOSES THE BENEFIT OF INVOKING THE PRESUMPTION OF REGULARITY AND BEARS THE BURDEN OF PROVING — WITH MORAL CERTAINTY — THAT THE ILLEGAL DRUG PRESENTED IN COURT IS THE SAME DRUG THAT WAS CONFISCATED FROM THE ACCUSED DURING HIS ARREST. —** As a rule, strict compliance with the prescribed procedure under Sec. 21 of R.A. No. 9165 is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise. The exception found in the IRR of R.A. 9165 comes into play when strict

compliance with the prescribed procedures is not observed. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest. In this case, the prosecution failed to recognize its procedural lapses and give justifiable ground for the non-compliance of Sec. 21 of R.A. No. 9165. Particularly, they were not able to explain the absence of the required inventory and taking of photographs of the seized items at the time of confiscation.

5. ID.; ID.; ID.; ID.; INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ITEMS, HOW PRESERVED; LINKS IN THE CHAIN OF CUSTODY; NOT ESTABLISHED.— Aside from recognizing the procedural lapses and providing a justifiable ground for the non-compliance, it is also required that the prosecution should establish that the integrity and evidentiary value of the seized items were preserved in order to substantially comply with Sec. 21 of R.A. No. 9165. In *People v. Salvador,* the Court explained how the integrity and evidentiary value of the confiscated items are preserved, to wit: The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. x x x There are links that must be established in the chain of custody in a buy-bust situation, namely: *"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." The Court finds that the prosecution was not able to prove that the integrity and evidentiary value of the seized items were preserved due to several irregularities in the chain of custody.

6. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS THEREOF NOT PROVED IN CASE AT

BAR.— Given the substantive flaws and procedural lapses, serious uncertainty hangs over the identity of the seized marijuana the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of petitioner.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the January 28, 2016 Decision[1] and September 23, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 35751. The CA affirmed the April 8, 2013 Decision[3] of the Regional Trial Court of Caloocan City, Branch 120, *(RTC)* finding petitioner Rommel Ramos *y* Lodronio *(petitioner)* guilty of illegal possession of dangerous drugs.

The Antecedents

In separate informations, petitioner was charged with violating Section 11, Article II of Republic Act *(R.A.)* No. 9165 while his co-accused Rodrigo Bautista *y* Sison *(Bautista)* was charged with violating Secs. 5 and 11 thereof, which state:

Criminal Case No. C-81958 (for Accused Bautista)
Violation of Section 5, Article II, R.A. No. 9165

"That on or about the 23rd day of August 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court,

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[1] *Rollo*, pp. 35-46.

[2] *Id*. at 48-49.

[3] *Id*. at 67-79.

the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 ROLANDO MADRONERO, who posed, as buyer, MARIJUANA weighing 1.78 gram & 1.17 gram, a dangerous drug, without the corresponding license or prescription therefor, knowing the same to be such.

Contrary to law."

Criminal Case No. C-81959 (for Accused Bautista)
Violation of Section 11, Article II, R.A. No. 9165

"That on or about the 23rd day of August 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Three (3) heat-sealed transparent plastic sachets each containing MARIJUANA fruiting tops weighing 1.06 gram, 1.29 gram & 1.00 gram, when subjected for laboratory examination gave positive result to the tests for Marijuana, a dangerous drug.

Contrary to law."

Criminal Case No. C-81960 (for petitioner)
Violation of Section 11, Article II, R.A. No. 9165

"That on or about the 23rd day of August 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Two (2) heat-sealed transparent plastic sachets each containing MARIJUANA fruiting tops weighing 1.54 gram & 1.01 gram, when subjected for laboratory examination gave positive result to the tests for Marijuana, a dangerous drug.

Contrary to law."[4]

On September 8, 2009, petitioner and Bautista were arraigned and they pleaded "not guilty."[5] On September 30, 2009, petitioner posted the required bail bond and was released from custody.[6] Thereafter, trial ensued.

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[4] *Id*. at 36.

[5] *Id*. at 68.

[6] Records, p. 94.

Version of the Prosecution

The prosecution presented PCI Stella G. Ebuen *(PCI Ebuen),* PO1 Rolando Madronero *(PO1 Madronero),* PO3 Ferdinand Modina *(PO3 Modina)* and PO3 Remigio Valderama *(PO3 Valderama)* as its witnesses. Their combined testimonies tended to establish the following:

On August 23, 2009, at around 2:30 in the afternoon, an informant reported that Bautista and petitioner were selling drugs at Block 15, Raffle Street, Barangay 31, Maypajo, Caloocan City. Caloocan Chief of Police PSI Allan Emlano formed a buy-bust team, consisting of seven (7) members. PO1 Madronero was designated as the poseur-buyer.[7]

At around 4:30 in the afternoon, PO1 Madronero, PO3 Valderama, PO3 Modina and the informant went to the target area. At the designated area, PO1 Madronero and the informant approached Bautista and petitioner. Baustista asked "*Iiskor ba kayo*?" to which PO1 Madronero replied, "*Oo, halagang dos lamang*." PO1 Madronero handed two marked ₱50 bills to Bautista, who in turn gave him two (2) plastic sachets.[8]

Thereafter, PO1 Madronero performed the pre-arranged signal, introduced himself as a police officer and arrested Bautista and petitioner. PO3 Valderama then frisked Bautista and recovered the marked bills and three (3) plastic sachets containing marijuana. Meanwhile, PO3 Modina frisked petitioner and recovered from him two (2) plastic sachets.[9]

PO1 Madronero marked the two (2) sachets bought from Bautista, while PO3 Valderama marked the other three (3) plastic sachets recovered from Bautista. On the other hand, PO3 Modina marked the two (2) plastic sachets retrieved from petitioner. Bautista and petitioner, together with the recovered items were brought to the police station.[10]

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[7] *Rollo,* p. 15.

[8] *Id*.

[9] *Id*. at 15-16.

[10] *Id*. at 38.

At the station, the marked bills, the seven (7) plastic sachets and the two accused were turned over to the Investigating Officer, PO3 Lauro P. dela Cruz *(PO3 dela Cruz)*. He then placed the bills and plastic sachets in a bigger plastic container and marked the same. PO3 dela Cruz personally brought the specimens to the crime laboratory and was received by PCI Ebuen. She conducted the examination on the specimens and yielded a positive result for marijuana.[11] The two (2) plastic sachets of drugs from the sale with Bautista weighed 0.78 gram and 1.17 grams; the three (3) plastic sachets of drugs confiscated from the possession of Bautista weighed 1.06 grams, 1.29 grams and 1.00 gram; while the two (2) plastic sachets of drugs confiscated from the possession of petitioner weighed 1.54 grams and 1.01 grams.

Version of the Defense

The defense presented petitioner, Bautista, Antonio Gonzaga *(Gonzaga)* and Roel Anzen Bermudes *(Bermudes)* as its witnesses. Their testimonies state:

On August 23, 2009, Antonio Gonzaga saw petitioner sitting at the side of Talilong Talaba Street, Caloocan City. At around 6:00 to 7:00 o'clock in the afternoon, a van stopped in front of the latter and he was forced to board it. The vehicle then proceeded to Bautista's house. There, Bermudes saw five (5) men climbed the stairs to Bautista's house, with one person asking him if he knew a certain "Odeng"—Bautista's nickname.[12]

Without warning, the five (5) men searched Bautista's house and he was eventually arrested and placed inside the van. While inside, they were coerced to point other persons who were dealing drugs in exchange for their freedom. At the police station, Bautista called his mother, who went to the police station. There, PO1 Madronero demanded from her ₱50,000.00 in exchange for his freedom.[13]

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[11] *Id.* at 88.

[12] *Id.* at 16.

[13] *Id.*

The RTC Ruling

In its April 8, 2013 decision, the RTC found Bautista and petitioner guilty for the respective offenses charged against them. The trial court disregarded the allegation that the drugs were planted because it was unsubstantiated and no ill-motive on the part of the police officers was shown. It ruled that the prosecution was able to establish all the elements of illegal sale of drugs because it was proven that Bautista sold the confiscated drugs to PO1 Madronero in a buy-bust operation. The RTC also held that there was illegal possession of drugs because the dangerous drugs were confiscated from petitioner and Bautista after the valid arrest. The dispositive portion reads:

> Premises considered, this court finds and so holds that:
>
> (1) The accused Rodrigo Bautista y Sison GUILTY beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:
>
> a. In Crim. Case No. C-81958, the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00); and
>
> b. In Crim. Case No. C-81959, the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> (2) In Crim. Case No. C-81960, the accused Rommel Ramos y Lodronio GUILTY beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165, and imposes upon him the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> The drugs subject matter of these cases are hereby confiscated and forfeited in favour of the government to be dealt with in accordance with law.
>
> SO ORDERED.[14]

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[14] *Id.* at 78-79.

In its Order,[15] in view of its judgment of conviction, the RTC ordered that petitioner be taken custody by the Bureau of Jail Management and Penology, Caloocan City for his eventual transfer to the National Bilibid Prison.

Undaunted, petitioner appealed to the CA.[16] However, he did not file a bail bond pending appeal. On the other hand, Bautista did not pursue his appeal anymore.[17]

The CA Ruling

In its January 28, 2016 decision, the CA affirmed the RTC's decision. The appellate court considered the recovery of the plastic sachets of marijuana from petitioner as an incident of lawful arrest. It disagreed with petitioner's observation that the marking of the plastic sachets was dubious because it was marked with his initials notwithstanding the police officers' lack of knowledge of his full name. The CA highlighted that the informant already identified Bautista and petitioner when he went to the police station to report the illegal drug activities of the two.

In addition, the appellate court posited that failure to strictly comply with the procedure in Sec. 21 of R.A. No. 9165 was not fatal to the prosecution because the integrity and evidentiary value of the seized items were preserved. It noted that the records show how the seized items were handled from the time they were confiscated until they were presented in court. Lastly, the CA explained that coordination with the Philippine Drug Enforcement Agency *(PDEA)* is not an indispensable element of a buy-bust operation. The *fallo* of the CA decision reads:

WHEREFORE, the Appeal is DENIED. The Regional Trial Court's Decision dated April 8, 2013 is hereby AFFIRMED in toto.

SO ORDERED.[18]

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[15] Records, p. 358.

[16] *Id*. at 359.

[17] *Id*. at 367.

[18] *Rollo*, p. 46.

Petitioner moved for reconsideration but it was denied by the CA in its September 23, 2016 resolution.

Hence, this petition raising the following issues:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE THAT THE TWO (2) PLASTIC SACHETS OF MARIJUANA PRESENTED WERE THE VERY SAME ITEMS CONFISCATED.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH THE COMPLETE CHAIN OF CUSTODY.[19]

Petitioner argues that the incredible testimonies of the prosecution witnesses relative to the marking of the plastic sachets cast serious doubt on the integrity of the said items. He disagrees that the informant already identified him and Bautista by their full names when he reported the illegal drug activities in the police station because PO1 Madronero and PO3 Modina admitted that at the time the buy-bust operation was conducted, they only knew Bautista by his nickname. Petitioner cites *People v. Umipang (Umipang)*[20] where the Court acquitted accused therein for failure of the prosecution to prove the arresting officer's prior knowledge of his complete name. Thus, he believes that the integrity of the items was compromised because of the suspect circumstances surrounding the marking.

Further, petitioner argues that the several missteps the police officers committed compromised the integrity of the items seized. He highlights that: PO3 Valderama merely placed the seized items in his pocket without placing them in a separate container;

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[19] *Id.* at 19.

[20] 686 Phil. 1024 (2012).

the seized items were neither inventoried nor photographed in the presence of a representative from the Department of Justice, the media and any public official; and the buy-bust operation was not coordinated with the PDEA.

In its Comment,[21] the Office of the Solicitor General *(OSG)* countered that the questions raised by petitioner are questions of fact, which cannot be tackled in a petition for review on *certiorari* under Rule 45 of the Rules of Court; that the arresting officers knew the names of petitioner and Bautista; and that it is already too late for petitioner to assail the prosecution's compliance under Sec. 21 of R.A. No. 9165 because objections to the evidence cannot be raised for the first time on appeal.

In its Reply,[22] petitioner reiterates that the apprehending officers did not know their full names at the time of the arrest, hence, it was impossible to mark the confiscated items using their initials; that PO3 Valderama did not properly secure the seized items; and that no inventory and photograph of the seized items were conducted.

The Court's Ruling

The petition is meritorious.

As a rule, questions of fact cannot be entertained by the Court; exceptions

Petitioner essentially assails that the evidence presented by the prosecution did not comply with Sec. 21 of R.A. No. 9165 and the integrity and evidentiary value of the seized items were not properly preserved. The questions posited are evidently factual because it requires compromised examination of the evidence on record. Well settled is the rule that the Court is not a trier of facts. The function of the Court in petitions for

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[21] *Rollo,* pp. 117-130.

[22] *Id.* at 151-160.

review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.[23]

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[24]

Here, two of the exceptions exist — that the judgment is based on misapprehension of facts and the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion. As will be discussed *infra,* the CA and the RTC gravely erred in ignoring the utter failure of the prosecution to comply with the chain of custody rule under Sec. 21 of R.A. No. 9165. To finally resolve the factual dispute, the Court deems it proper to tackle the factual questions presented.

The chain of custody rule

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 until destruction. Such record of movements and custody of seized item shall include the identity and signature of the person

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[23] 750 Phil. 846, 854-855 (2015).

[24] *Carbonell v. Carbonell-Mendes,* 762 Phil. 529, 537 (2015).

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.[25] To ensure the establishment of the chain of custody, Sec. 21 (1) of RA No. 9165 specifies that:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Sec. 21 (a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 supplements Section 21 (1) of the said law, viz:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

Based on the foregoing, Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory; and photograph the same in the presence of **(1) the accused or the persons from**

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[25] Sec. 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.[26]

In addition, Sec. 21 of the IRR of R.A. No. 9165 provides a saving clause which states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.**[27]

Notably, Sec. 21 of R.A. No. 9165 was recently amended by R.A. No. 10640, which became effective on July 15, 2014, and it essentially added the provisions contained in the IRR with a few modifications, to wit:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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[26] *People v. Dahil, et al.,* 750 Phil. 212, 228 (2015).

[27] *People v. De la Cruz,* 591 Phil. 259, 271 (2008).

In the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in **(1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof.[28] In the present case, as the alleged crimes were committed on August 23, 2009, then the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply.

The apprehending team failed to observe Sec. 21 of R.A. No. 9165 and its IRR

The prosecution completely failed to present in evidence the inventory and the photographs of the seized items because the apprehending team did not bother to conduct the same. The OSG simply gave a flimsy excuse that petitioner cannot anymore question the apprehending officers' non-compliance with Sec. 21 of R.A. No. 9165 because it is an objection to the evidence which may not be raised for the first time on appeal.[29]

The Court must emphasize that compliance with the requirement under Sec. 21 of R.A. No. 9165 forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.[30] It is essential that the identity of the seized drug/paraphernalia be established with moral certainty,[31] thus, the apprehending officers' compliance with the chain of custody rule can still be tackled on appeal.

The lack of the inventory signed by petitioner himself or by his representative as well as by the representative of the media

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[28] *People v. Dela Rosa*, G.R. No. 230228, December 13, 2017.

[29] *Rollo,* p. 127.

[30] *People v. Saunar,* G.R. No. 207396, August 9, 2017.

[31] *People v. Ching,* G.R. No. 223556, October 9, 2017.

and the DOJ and the elected official as required by law could very well be held to mean that no dangerous drug had been seized from petitioner on that occasion.[32] The apprehending officers' sheer failure to prepare the required inventory and the taking of photographs demonstrate their apathy to observe Sec. 21 of R.A. No. 9165.

The prosecution failed to provide a justifiable ground for the non-compliance of Sec. 21 of R.A. No. 9165

As a rule, strict compliance with the prescribed procedure under Sec. 21 of R.A. No. 9165 is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the prescribed procedures is not observed. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[33]

In this case, the prosecution failed to recognize its procedural lapses and give justifiable ground for the non-compliance of Sec. 21 of R.A. No. 9165. Particularly, they were not able to explain the absence of the required inventory and taking of photographs of the seized items at the time of confiscation.

Glaringly, PO3 Valderama admitted that in spite of his knowledge of the requirements under Sec. 21 of R.A. No. 9165,

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[32] *Casona v. People,* G.R. No. 179757, September 13, 2017.

[33] *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, G.R. No. 206888, July 4, 2016, 795 SCRA 459.

the apprehending team failed to conduct an inventory of the seized items in the presence of petitioner, a representative from the DOJ, the media and any elected official, to wit:

Q: In other words, there was no inventory, which must be under oath, prepared by your team or the investigator in connection with this alleged recovered or confiscated evidence?
A: None, sir.

Q: Are you not aware then of the requirement of the law Section 21, paragraph 1 of Republic Act No. 9165 in connection with the preparation of the inventory in the presence [of] a media representative, a barangay official like [a] barangay chairman, or a representative from the Department of Justice [and] the accused or his counsel, are you aware then of that law or requirement?
A: Yes, sir.

Q: And you failed to comply with this requirement?
A: Yes, sir.[34]

On re-direct examination, PO3 Valderama could not explain why there was no inventory conducted on the seized drugs, viz:

Q: Mr. Witness, why did you not prepare an inventory of the confiscated evidence?
A: The duty investigator failed to do the same, sir.

Q: Have you come to know the reason why did the investigator fail to prepare the inventory of the confiscated evidence?
A: No, sir.[35]

Also, the records are bereft of the photographic copies of the seized items taken in the presence of petitioner, a representative from the DOJ, the media and any elected official. The only photographs taken were that of the marked bills[36] but there was no picture taken of the confiscated drugs. PO3 Modina

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[34] TSN, November 10, 2011, p. 20.

[35] *Id.* at 21.

[36] Records, pp. 7-8.

acknowledged that despite his considerable experience, he failed to photograph the items he allegedly seized from petitioner.[37] Similar to the inventory, the prosecution witnesses could not give a justifiable reason for the non-compliance with the taking of photographs of seized items.

Thus, the arresting officers failed to explain why the procedure under Sec. 21 was not followed. Likewise, the prosecution failed to prove the justifiable reason for such failure.

The integrity and evidentiary value of the seized items were not preserved

Aside from recognizing the procedural lapses and providing a justifiable ground for the non-compliance, it is also required that the prosecution should establish that the integrity and evidentiary value of the seized items were preserved in order to substantially comply with Sec. 21 of R.A. No. 9165. In *People v. Salvador*,[38] the Court explained how the integrity and evidentiary value of the confiscated items are preserved, to wit:

> The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. x x x
>
> There are links that must be established in the chain of custody in a buy-bust situation, namely: "*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."[39]

The Court finds that the prosecution was not able to prove that the integrity and evidentiary value of the seized items were

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[37] TSN, March 10, 2011, p. 16.

[38] 726 Phil. 389 (2014).

[39] *Id*. at 405.

preserved due to several irregularities in the chain of custody, as follows:

First, the markings placed in the seized items are marred by dubious circumstances. Marking of the seized items is crucial in proving the chain of custody because it serves to separate the marked evidence from the *corpus* of all other similar related evidence from the time they are seized until they are disposed of at the end of the proceedings.[40]

In this case, the drugs were marked with the initials of the arresting officer and the complete name of petitioner, "RRL" for Rommel Ramos *y* Lodronio, and that of Bautista, "RBS" for Rodrigo Bautista *y* Sison. It is, however, unclear whether the police officers already knew the full names of the accused at the time they were arrested and the items were subsequently marked, or only when the accused were brought to the police station.

PO1 Madronero admitted that their confidential informant did not apprise them of the complete name of Bautista, to wit:

Q: This confidential informant already informed your chief the complete name of Oden?
A: No sir.[41]

Similarly, PO3 Medina was unaware of the complete names of petitioner and Bautista before they conducted their buy-bust operation because he only referred to them with their aliases, as follows:

Q: Did you come to know from the informer who was responsible for the selling of marijuana in that area?
A: Yes, ma'am.

Q: Who?
A: Alias Odeng and alias Mel, ma'am.[42]

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[40] *Supra* note 26 at 232.

[41] TSN, June 10, 2010, p. 16.

[42] TSN, March 10, 2011, pp. 4-5.

Evidently, it was impossible for the police officers to place the initials of the complete names of petitioner and Bautista, including their middle initials, on the suspected drugs because they only knew of their aliases at the time of their seizure.

In his further testimony, PO3 Medina mentioned the name of petitioner as "Rommel Ramos"[43] but it was not categorically stated whether he knew petitioner's name before he marked the said items or only after petitioner was brought to the police station. Moreover, PO3 Medina never testified that he knew the complete name of petitioner, including his middle name, "Rommel Ramos *y* Lodronio," the initials of which was written in the confiscated drugs as "RRL." It bolsters the finding that the arresting officers could not have immediately marked the suspected items at the time of the seizure because they did not know Bautista and petitioner's complete names.

In *Umipang*, the Court acquitted therein accused because the chain of custody of the seized items was not properly established. One of the irregularities in that case was that the arresting officers marked the evidence using the initials of the complete name of the accused, including the initial of his middle name, notwithstanding their lack of knowledge of his full name, to wit:

> Evidence on record does not establish that PO2 Gasid had prior knowledge of the complete name of accused-appellant, including the middle initial, which enabled the former to mark the seized items with the latter's complete initials. This suspicious, material inconsistency in the marking of the items raises questions as to how PO2 Gasid came to know about the initials of Umipang prior to the latter's statements at the police precinct, thereby creating a cloud of doubt on the issues of where the marking really took place and whether the integrity and evidentiary value of the seized items were preserved.[44]

Second, the seized items were not properly secured upon confiscation. Aside from marking, the seized items should be

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[43] *Id*. at 10.

[44] *Supra* note 20, p. 1049.

placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.[45] The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage.[46]

In this case, PO3 Valderama testified that the pieces of seized items were only placed in his pocket while the arresting officers were on their way to the police station, to wit:

Q: Now, you said that you marked them at the scene of the crime, did you place them in another container or envelope, sealed it and marked it with your initial to preserve their integrity?
A: No, sir.

Q: Are you telling us that you just get hold of them, placed them in your pocket without placing them in another container which is supposed to be the correct manner of handling pieces of evidence confiscated or recovered at the scene of the crime?
A: Yes, sir.

Q: And again you failed to do that?
A: Yes, sir.[47]

Indeed, PO3 Valderama admitted that he did not follow the proper procedure in handling the suspected drugs confiscated at the scene of the crime. Several sachets of suspected drugs with small amounts, particularly 1.78 grams, 1.17 grams, 1.06 grams, 1.29 grams, 1.00 gram, 1.54 grams and 1.01 grams were allegedly confiscated from petitioner and Bautista. Hence, the arresting officers should have secured these items by placing them in a singular evidence bag or plastic container to avoid

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[45] *People v. Martinez*, 652 Phil. 347, 377 (2010).

[46] *Supra* note 28.

[47] TSN, November 10, 2011, pp. 18-19.

tampering, planting or alteration. It was only when the arresting officers reached the police station that the seized drugs were turned over to PO3 dela Cruz and that these different pieces of evidence were belatedly placed in a SAID-SAOTG evidence bag.[48] It must be emphasized that a more exacting standard is required of law enforcers when only a miniscule amount of dangerous drugs are alleged to have been seized from the accused.[49]

Third, the prosecution failed to establish who delivered the drugs to investigating officer, PO3 dela Cruz. The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.[50]

In this case, the investigating officer was PO3 dela Cruz. However, the prosecution's witnesses and documents did not clarify who delivered the seized drugs to the investigating officer. While the suspected drugs were in the pocket of PO3 Valderama when these were transported to the police station, he never stated in his testimony that he was the one who indorsed the said items to PO3 dela Cruz. Verily, there is doubt that the purported seized items from petitioner and Bautista were the same items investigated by PO3 dela Cruz.

In *People v. Dahil,*[51] the Court acquitted therein accused because of several irregularities in the chain of custody. One

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[48] TSN, June 10, 2010, p. 12.

[49] *Supra* note 30.

[50] *People v. Dahil,* 750 Phil. 212, 235 (2015).

[51] *Id*.

of which was that the prosecution failed to establish who turned over the seized items to the investigating officer. It was highlighted therein that it cannot conduct guesswork as to who has custody of the confiscated drugs at any given time.

Given the substantive flaws and procedural lapses, serious uncertainty hangs over the identity of the seized marijuana the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of petitioner.[52]

WHEREFORE, the petition is **GRANTED.** The January 28, 2016 Decision and September 23, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 35751 are hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of petitioner Rommel Ramos *y* Lodronio who is accordingly **ACQUITTED** of the crime charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this decision and to inform this Court of the date of the actual release from confinement of petitioner Rommel Ramos *y* Lodronio within five (5) days from receipt hereof.

SO ORDERED.

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

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[52] *Supra* note 50 at 239.

THIRD DIVISION

[G.R. No. 187423. February 28, 2018]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **EDNA MAYO ALCANTARA and HEIRS OF CRISTY MAYO ALCANTARA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (REPUBLIC ACT NO. 6657); JUST COMPENSATION; UNTIL AND UNLESS DECLARED INVALID IN A PROPER CASE, THE BASIC FORMULAS CONTAINED IN DAR ADMINISTRATIVE ORDERS PARTAKE OF THE NATURE OF STATUTES; HENCE, COURTS HAVE THE POSITIVE LEGAL DUTY TO CONSIDER, AND NOT DISREGARD, THEIR USE AND APPLICATION IN THE DETERMINATION OF JUST COMPENSATION FOR AGRICULTURAL LANDS COVERED BY R.A. NO. 6657.— We conduct the present review in the light of *Alfonso v. LBP,* by which this Court, sitting En Banc, reaffirmed an established jurisprudential rule, *viz,* that until and unless declared invalid in a proper case, the basic formulas contained in DAR administrative orders partake of the nature of statutes; hence, courts have the positive legal duty to consider, and not disregard, their use and application in the determination of just compensation for agricultural lands covered by R.A. No. 6657. x x x. As its decision and order make plain, the SAC deviated from, nay rejected, the formula set by the DAR in the subject administrative orders. x x x. [T]he SAC presents two explanations for the deviation x x x. We are unable to accept these explanations. They are neither well-reasoned nor supported by the evidence on record.

2. ID.; ID.; ID.; THE GOVERNMENT CANNOT BE COMPELLED TO PAY FOR AN AGRICULTURAL LAND COVERED BY RA NO. 6657 THE PRICE THAT IT WOULD HAVE FETCHED IN THE COMPETITIVE RESIDENTIAL REAL ESTATE MARKET.— We go now to the second explanation, *viz,* that the subject land had been "converted" from agricultural to residential. To arrive here, the SAC appears to have relied

solely on the testimony of the municipal assessor who, in turn, said quite simply that she had visited the property and saw that it had already been converted into a subdivision with electricity and cemented roads. Despite what said witness may have in fact seen, however, the available records do not indicate that the DAR Secretary had authorized the alleged conversion. The same records also do not indicate the existence of a zoning ordinance reclassifying said land as to lawfully allow the establishment of a residential subdivision thereon. Neither were these decisive facts pleaded before this court. The subject land's alleged conversion to a residential subdivision, therefore, is poorly supported. Why the SAC relied solely on the verbal say-so of the municipal assessor is puzzling. At any rate, its alleged conversion should not have any bearing in the determination of the subject property's just compensation. The government cannot be compelled to pay for a CARP land the price that it would have fetched in the competitive residential real estate market. It goes without saying, there is nothing in R.A. No. 6657 or in the pertinent DAR administrative issuances that authorizes that the just compensation for a CARP land should be based exclusively on its market value.

3. ID.; ID.; ID.; THE SPECIAL COURT'S VALUATION OF THE PROPERTY SHOULD BE STRUCK DOWN AS ILLEGAL AND SET ASIDE WHERE IT FAILED TO JUSTIFY DEVIATION FROM THE DAR FORMULA IN THE DETERMINATION OF JUST COMPENSATION.— In its determination of just compensation in this case, the SAC made no use of any calculation or formula. The special court relied, quite simply, on respondents' valuation, which in turn was based on a 1998 issuance of the Barangay Council of Brgy. Tamisian. In the said issuance, the council members agreed that the selling price for the coconut lands in their barangay would be ₱100,000.00 per hectare. The SAC did not discuss how the council came up with this figure, other than vaguely stating that said figure was "culled" from the landowners and the barangay captains of the area who ostensibly had firsthand knowledge "of the situation in their barangays." In fine, the SAC failed to present a well-reasoned justification, as supported by the evidence on record, for why it deviated from the DAR formula. Hence, it ruled in blatant disregard of the factors spelled out in Section 17 of R.A. No. 6657. The SAC's valuation in this case must be struck down as illegal and set aside.

4. ID.; ID.; ID.; THE VALUATION OF THE PROPERTY SHOULD BE PEGGED AT THE TIME OF ITS TAKING, NOT OF THE FILING OF THE COMPLAINT, PENDENCY OF THE PROCEEDINGS, OR RENDITION OF JUDGMENT; THE LAND BANK OF THE PHILIPPINES' VALUATION MUST BE SUBSTANTIATED BEFORE IT COULD BE CONSIDERED AS SUFFICIENTLY IN ACCORD WITH THE BASIC FORMULA IN DAR A.O. NO. 6, SERIES OF 1992, AS AMENDED.— The Court cannot readily adopt LBP's valuation as the just compensation in this case. We are aware that in coming up with its valuation, LBP followed the formula in DAR *A.O.* No. 6, Series of 1992, as amended. We are also aware that the DARAB had concurred with and sustained this valuation. In the *Heirs of Lorenzo and Carmen Vidad v. LBP,* however, we decreed that LBP's valuation must be substantiated before it could be considered as sufficiently in accord with Section 17 of R.A. No. 6657 and the DAR administrative orders. It is also settled that the valuation of the property should be pegged at the time *of its taking,* not of the filing of the complaint, pendency of the proceedings, or rendition of judgment. In this case, the court is unable to confirm from the available records that the data LBP had used for its valuation are timely data, i.e., data reasonably obtaining at the time of the taking of the property. There is no declaration in the present petition that such data were gathered in 1998 or within a proximate data-gathering period prior thereto. More to the point, most of the data contained in the documents LBP included in its *Formal Offer of Documentary Evidence* in Civil Case No. 99-134 are undated.

5. ID.; ID.; ID.; ID.; ABSENT DELAY IN THE PAYMENT OF JUST COMPENSATION DUE TO THE LANDOWNERS, THE AWARD OF INTEREST IS UNWARRANTED AND MUST BE ANNULLED AND SET ASIDE.— Interest may be awarded as warranted by the circumstances of the case and based on prevailing jurisprudence. In previous cases, the Court allowed the grant of legal interest in expropriation cases where there was 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. In this case, there was no delay in the payment. To recall, the *Notice of Land Valuation and Acquisition* was issued over the subject property on 9 February 1998. On 24 March 1998, LBP deposited the said amount in respondents'

name. Hence, the order for LBP to pay interest is not warranted and must be annulled and set aside.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Asis G. Perez for respondents.

R E S O L U T I O N

MARTIRES, *J.*:

Petitioner Land Bank of the Philippines *(LBP)* assails,[1] by way of a petition for review by certiorari[2] the Decision[3] dated 31 October 2008 and the Resolution[4] dated 8 April 2009, of the Court of Appeals *(CA)* in CA-G.R. SP No. 99852, whereby the appellate court affirmed with modification the Decision[5] dated 3 April 2007, and the Order[6] dated 4 July 2007, of the Regional Trial Court of Lucena City *(RTC)*, sitting as Special Agrarian Court *(SAC)* in Civil Case No. 99-134.

The assailed ruling involves the determination of just compensation for a piece of agricultural land acquired by the government in 1998 for the Comprehensive Agrarian Reform Program *(CARP)* under Republic Act *(R.A.)* No. 6657.[7] The SAC determined that just compensation for the land was ₱2,267,620.00, a valuation based on its fair market value. The

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[1] *Rollo*, pp. 14-48.

[2] Under Rule 45 of the Rules of Court.

[3] *Rollo*, pp. 57-70; penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

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

[5] *Rollo*, pp. 134-142; penned by Judge Norma Chionglo-Sia.

[6] *Id*. at 143-145.

[7] Also known as the Comprehensive Agrarian Reform Law.

CA sustained this determination. LBP insisted before the CA, as it insists before this Court, that the valuation should be based on the basic formula set by the Department of Agrarian Reform *(DAR)* in its pertinent administrative orders; hence, just compensation for respondents' land should be ₱1,210,252.96.

We required[8] the parties to file their respective comment and reply. They complied.[9]

THE FACTS

Respondents, Edna Mayo Alcantara and the heirs of Cristy Mayo Alcantara,[10] were the registered owners of the subject agricultural land, which is located in Barangay Tamisian,[11] Municipality of Tiaong, Quezon Province *(Tiaong)*. The land was originally composed of 34.0807 hectares[12] and was covered by Transfer Certificate of Title No. T-211445.

On 9 February 1998, the DAR issued a Notice of Land Valuation and Acquisition over 22.6762 hectares of the land.[13] LBP, the financial intermediary of the CARP, thus gave its valuation for the acquired portion, namely ₱1,210,252.96, in accordance with DAR Administrative Order *(A.O.)* No. 6, series of 1992, as amended by A.O. No. 11, series of 1994 *(DAR A.O. No. 6, series of 1992, as amended)*. The amount was deposited in respondents' name on 24 March 1998.[14]

Respondents did not question their land's acquisition[15] but disagreed with its valuation. They filed a protest with the DAR

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[8] *Rollo*, p. 232.

[9] *Id*. at 250-263, Comment; *Id*. at 274-281, Reply.

[10] *Id*. at 134; the Special Agrarian Court in its Decision refers to them as "Edna Alcantara Mayo" and "Cristy Alcantara Mayo."

[11] *Id*. at 58; in TCT No. T-211445, the location of the agricultural land is also named as Barrio Quipot. *Id*. at 134.

[12] *Id*. at 58.

[13] *Id*. at 135.

[14] *Id*. at 58 and 189.

[15] *Id*. at 173.

Adjudication Board, Region IV *(DARAB)*,[16] which then began to conduct summary proceedings for the preliminary determination of just compensation, in accordance with the primary jurisdiction conveyed unto DAR by Section 16 (d)[17] of R.A. No. 6657.[18]

The Ruling of the DARAB

During the summary proceedings, respondents filed a motion for a re-valuation of the subject land, this time in accordance with DAR A.O. No. 5, series of 1998.[19] The re-valuation came up with a figure that was significantly reduced: ₱976,875.85.[20]

On 16 August 1999, the DARAB rendered a decision[21] upholding the valuation of LBP. It found that respondents had

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[16] *Id*. at 167; docketed as DARAB Case No. V-0408-031-98 and titled "In the Matter of Land Valuation of Agricultural Land Under Compulsory Acquisition owned by Christie & Edna A. Mayo with Title No. T-211445 Located at Tamisian, Tiaong, Quezon."

[17] Section 16 (d) of R.A. No. 6657 states:

> Section 16. *Procedure for Acquisition of Private Lands*. — For purposes of acquisition of private lands, the following procedures shall be followed:
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> x x x x x x x x x
>
> (d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

[18] *Rollo*, p. 20.

[19] Also known as the Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to R.A. No. 6657.

[20] *Rollo*, p. 167.

[21] *Id*. at 167 to 169; Penned by Provincial Adjudicator Marcocheo S. Camporedondo. The dispositive of the DARAB Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered:
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> 1. Dismissing the instant protest for lack of merit;
> 2. Ordering the Land Bank of the Philippines to pay herein landowner the amount of One Million Two Hundred Ten Thousand Two

failed to present clear and convincing evidence to support their protest; on the other hand, LBP established all the factors necessary for a valuation based on DAR A.O. No. 6, Series of 1992, as amended. Incidentally, the DARAB noted that the re-valuation respondents had requested was prejudicial to them.[22]

The Proceedings and Ruling of the SAC

With the administrative determination not in their favor, respondents sought the judicial determination of just compensation. They filed a complaint,[23] dated 8 September 1999, before the SAC, naming the DAR and LBP as defendants. In the complaint, they reiterated that just compensation for their agricultural land should be based on its fair market value and fixed at ₱2,267,620.00.[24]

In their Answer, [25] the DAR and LBP pointed out that their valuation abided by DAR A.O. No. 6, Series of 1992, as amended.

Trial on the merits ensued.

Respondents' evidence included the testimonies of Renato Robles, the husband of respondent Cristy Mayo Alcantara; Nelia V. Cortez, the Municipal Assessor of Tiaong; Victor Vasquez, a businessman who purchases coconut tree trunks at Brgy. Tamisian; and Nicasio Gutierrez, a Coconut Conservation Officer at the Philippine Coconut Authority *(PCA)*. The husband testified that the subject land was planted with coconut, mango, and banana trees; the coconut trees, numbering around 3,200, were believed to be 100 years old. He averred that respondents had

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Hundred Fifty-Two Pesos & Ninety-Six Centavos (₱1,210,252.96) as just compensation of the 22.6762 hectares, more or less, covered by TCT No. T-21145; and

3. Ordering further the Clerk of the Board to cause the immediate transmission of the Claim Folder to DAR Operations for further appropriate action.

[22] *Id*. at 168.

[23] *Id*. at 170-174.

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

[25] *Id*. at 180-183.

rejected LBP's valuation because, at the time, a prospective buyer was offering ₱100,000.00 to ₱120,000.00 per hectare for the property.[26] The municipal assessor testified, among others, that in 1998 the Barangay Council of Brgy. Tamisian issued a *Kapasiyahan Blg. 4* fixing the selling price for coconut lands in Brgy. Tamisian at ₱100,000.00 per hectare.[27] On cross-examination, she averred that she had visited the subject property and saw that it had been "converted" into a subdivision with electricity and cemented roads. For his part, the businessman testified that the prevailing price of coconut trees in the area if sold as lumber was ₱750.00 per tree.[28]

Finally, the Coconut Conservation Officer testified that he assessed the state of the coconut trees in the landholdings of Edna Mayo Alcantara in Brgy. Tamisian. At a distance of 8 by 8 meters in between the trees, the number of trees on the property should average at 150 to 160 trees per hectare. Many of these were 100 years old, thus ancient yet productive as lumber. There were also many newly planted trees, about four years old, on the property; respondents' farmer-tenants had requested the seedlings from the PCA nursery. On cross-examination, the officer answered that these newly planted trees outnumbered the old trees.[29]

LBP presented two witnesses: Januario Bondad, Chief of the Field Investigation Division of the Agrarian Operations Center of LBP in Los Baños, who testified on the findings of the field investigation LBP had caused to be conducted on the subject land; and Desideria Leonor, bank personnel, who testified as to how LBP had computed its valuation. Both averred that the valuation was based on the income approach, which involved the probable income that a tenant beneficiary could generate out of the land.[30]

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

[27] *Id.* at 136-137.

[28] *Id.* at 138.

[29] *Id.*

[30] *Id.* at 139-140.

LBP also presented the Field Investigation Report, which contained data on the average annual production per hectare and the net income of the subject land. The SAC summarized these data as follows:

> The average number of coconut trees is 120 trees per hectare intercropped with bananas at 400 hills per hectare. The average annual production per hectare of the subject property is: palay (40 cav.), cocos (12,000 nuts) and bananas (36,000 pcs) and the net income per hectare is: palay (₱12,000.00), cocos (₱12,000.00) and bananas (₱10,800.00). The fifth page of the same report gives the unit values per SUMV (schedule of unit market value): cocal with banana ₱26,250.00 (3rd class), unirrigated Riceland ₱24,500.00 (1st class) and banana land ₱26,250.00 (3rd class).[31]

Several other documents were also offered to prove, among others, that LBP's valuation made use of data obtained from the PCA and the Department of Agriculture, including data on the coconut production (whole nut and copra) and farmgate prices of the subject property.[32]

After trial, the SAC ruled in respondents' favor. We quote below the pertinent portions of its decision:

> Considering the evidence in this case, the Court finds that the computation of the Land Bank based on the production data or income approach of the coconut land of [respondents] would not result in just compensation for the landowner, since, as the PCA Conservation Officer observed, there were many trees the age of which was from 70 to 100 years old, and were therefore senile and unproductive but were in fact productive as coco lumber (TSN of 17 March 2005, p. 5). Verily, the income approach will not result in just compensation for the property owner, since the trees are no longer fruit-bearing but can command a higher price for other purposes. As a matter of fact, as the Municipal assessor pointed out on the witness stand, the property has been converted into a subdivision, and the subdivision lots are now sold at ₱30 to ₱40 per square meter. By simple mathematical computation, this would total ₱300,000 to ₱400,000

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[31] *Id*. at 139.

[32] *Id*. at 187-189.

per hectare ASIDE from income derived from the sale of the coconut trunks as coco lumber.

x x x x x x x x x

The Government cannot insist on adopting a uniform policy of production income in computing the remuneration for property under coverage of the CARP. To do so in this case will be anomalous and will result in a definite disadvantage to the landowner and forfeit his right to obtain for his property just compensation that is "substantial, and ample", in the words of the Supreme Court. The fact that the property is now a subdivision shows that the income approach is no longer relevant, because the land, which is no longer productive has in fact increased its value three hundredfold, when converted to other uses.

There is evidence in this case that in Brgy. Tamisian where [respondents'] property is located [at] Barangay Kapasiyahan Blg. 4 places the price of coconut land at ₱100,000.00 per hectare including improvements. If we multiply the 22.6762 hectares of plaintiffs by ₱100,000.00 per hectare we arrive at the amount of ₱2.2676 million.

WHEREFORE, in view of the foregoing considerations, the valuation of [respondents'] property by the Land Bank in the amount of ₱1,210,252.96 based on the income approach is hereby set aside and valuation therefor based on the fair market value, is fixed at **₱2,267,600.00** for the 22.6762 hectares as the just compensation for [respondents'] property. The amount shall earn interest reckoned from the notice of land valuation and acquisition on February 9, 1998.[33]

LBP filed a motion for reconsideration.[34] It was denied. In the order denying the motion, the SAC gave a more detailed presentation of the rationale behind its ruling. We thus quote the order in full:

Before the [c]ourt is [d]efendant Land Bank's motion for reconsideration of this [c]ourt's decision finding just compensation for [respondents'] property in the amount of ₱2,267,600.00 from Land Bank's finding of ₱1,210,252.96, on the main contention that the Decision does not conform with Administrative Order No. 5, series of 1998 of the DAR, nor Sec. 17 of R.A. 6657.

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[33] *Id.* at 141-142.

[34] *Id.* at 146-153; Motion for Reconsideration.

The formula under DAR A.O. No. 5, series of 1998 states:

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)

Where:

LV	= Land Value
CNI	= Capitalized Net Income
CS	= Comparable Sales
MV	= Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

The [c]ourt finds however that the land subject of this case is no longer productive, as the trees are over 100 years old and are more productive if utilized as coconut lumber that as a matter of fact the property at present has been converted or part thereof converted into a subdivision.

The [c]ourt finds therefore, that gauged by the above formula, the CNI (capitalized net income) and comparable sales (CS) are not present, and therefore, the formula cannot be considered relevant nor applicable.

On the other hand, Sec. 17 of R.A 6657 provides as follows:

Sec. 17. Determination of Just Compensation. In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and assessments made by the government assessors, should be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation.

Kapasiyahan Blg. 4 of Barangay Tamisian closely approximates the requirement of "current value of like properties" specified above, testified to by Nelia Cortez, Municipal Assessor of Tiaong, Quezon, for no less than 21 years.

The [c]ourt finds her testimony forthright and unbiased and finds that she has a working knowledge of the duties and functions of her office as she cites the revisions of tax declarations and their specific

dates. Her testimony, however, that the price per square meter of the property now a subdivision is now ₱20 to ₱30 was not followed by the [c]ourt because a) there is no evidence as to how big a portion of the 22 hectares has been converted into such a residential subdivision, and b) the compensation should be reckoned indeed at the time of taking and not at the time of its enhancement.

The land was taken at the time of coverage while it was agricultural land. On the estimate of the number of coconut trees found by the [c]ourt, the [c]ourt took particular notice that it was Land Bank's evidence (Exh. 4) that the average number of coconut trees per hectare is 150 and not only 120.

The [c]ourt takes judicial notice of the fact that at 8 meters distance between the trees, a hectare may be planted to an average of 200 coconut trees.

Kapasiyahan Blg. 4 of the Barangay Tamisian submitted to the Municipal Assessor of Tiaong, Quezon, is a more accurate estimation of the current value of property in Brgy. Tamisian regardless of the age of the trees as the valuation was culled from the different landowners and barangay captains who have firsthand knowledge of the situation in their barangays.

A.O. No. 5 Series of 1998 itself recognizes in its prefatory statement that just compensation is mandated by the Constitution (Art. XIII, par. 3 no. 4) that both Proclamation No. 131 and R.A 6657 provides that the principle in Agrarian Reform is "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation" that under Supreme Court jurisprudence, just compensation is the fair market value of the land or the price at which a buyer will pay without coercion and a seller will accept without compulsion.

The Administrative Order admits that valuation is "not an exact science but an exercise fraught with inexact estimates. What is important, it emphasizes, is that the land value approximates as closely as possible, what is broadly considered to be just."

The [c]ourt finds in this case, that the blind application of the formula under A.O. 5, series of 1998 will not result in just compensation for the landowner. At hindsight, it will even encourage the cutting of the trees sans government supervision, by landowners and farmworkers alike. Just Compensation, as stressed in the case of Association of Small Landowners vs. Sec. of Agrarian Reform (175

SCRA 343) "is the full and fair equivalent of the property taken from is owner… the equivalent to be rendered for the property shall be real, substantial, full, ample."

The motion for reconsideration is therefore DENIED as it veers away from the very intent of Sec. 17 of R.A. 6657 and considering that the factors set down by Administrative Order No. 5, Series of 1998 are no longer obtaining in view of the conditions of the property at the time of taking.[35]

Unsatisfied with the SAC's determination of just compensation, LBP filed an appeal[36] with the appellate court.

The Ruling of the CA

The CA affirmed the SAC's ruling on the amount of just compensation but modified the ruling on the payment of interest. It held:

WHEREFORE, the assailed dispositions are **AFFIRMED with MODIFICATION**. The award of twelve percent (12%) interest per annum shall only be imposed on the deficiency or the difference between the amount of the just compensation assigned by the Regional Trial Court, Br. 56 of Lucena City, Quezon, in its April 3, 2007 decision, and the amount already paid to the Private Respondents, computed from April 29, 1998 until the amount due is fully paid. No costs.[37]

LBP's motion for reconsideration was denied.[38] Hence, the present petition.

The Petition for Review

Before this Court, LBP posits that the CA erred, first, in upholding the amount of just compensation as determined by the SAC and, second, in ordering the payment of interest. It proposes the issues to be resolved in this review as:

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[35] *Id*. at 143-145.

[36] *Id*. at 100-133; filed under Rule 42 of the Rules of Court dated 10 August 2007, and docketed as CA-G.R. SP No. 99852.

[37] *Id*. at 69.

[38] *Id*. at 73-87.

1. Whether or not the valuation factors under Section 17 of RA 6657 and the legal formula provided for under DAR A.O. No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994, are MANDATORY insofar as lands acquired under R.A. No. 6657 are concerned; and

2. Whether or not interest on the compensation can still be validly imposed when prompt payment had already been made.[39]

To support its positions on these issues, LBP reasserts that it had observed the basic formula for the valuation of CARP lands set in DAR A.O. No. 6, Series of 1992, as amended, which formula corresponds to the valuation factors of Section 17, R.A. No. 6657. LBP thus computed its valuation for the subject land in this wise:[40]

7.05. The aforesaid administrative orders, which have the force and effect of law, were observed by LBP in computing the value of the subject property using the following formula:

LV = (CNI X 0.9) + (CS X 0.3) + (MV X 0.1)

LV	=	*Land Value*
CNI	=	*Capitalized Net Income*
CS	=	*Comparable Sales*
MV	=	*Market Value per Tax Declaration*

The above formula shall be used if all of the three factors are present, relevant and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) = (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) = (MV x 0.1)

A.3 When both CS and CNI are not present, and only MV is applicable, the formula shall be:

LV = MV x 2

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[39] *Id.* at 23.

[40] *Id.* at 25-27.

7.06. Following the above formula, the total value of the subject property amounted to **₱1,210,252.96**, computed as follows:

For Cocal/Banana Land

Area = 21.3687 has.
CNI = ₱58,401.71/ha.
MV = ₱24,208.80/ha.

ULV/ha = (CNI x 0/90) + (MV x 0.10)
= (₱58,401.71 x 0.90) + (₱24,208.80 x 0.10)
= ₱52,561.54 + ₱2,420.88
= ₱54,982.42/ha.

LV = ULV/ ha. x area
= ₱54,982.42 x 21.3687 has.
= ₱1,174,902.84

For Banana Land

Area = 1.0075 has
CNI = ₱13,495.62/ha.
MV = ₱24,208.80/ha.

ULV/ha = (CNI x 0.90) + (MV x 0.10)
= (₱13,495.62 x 0.90) + (₱24,208.80 x 0.10)
= ₱12,146.06 + ₱2,420.88
= **₱14,566.94/ha.**

LV = ULV/ ha. x area
= ₱14,566.94 x 1.0075 has.
= ₱14,676.19

For Unirrigated Riceland

Area = 0.3000 has.
CNI = ₱73,489.58/ ha.
MV = ₱22,594.88/ ha.

ULV/ha = (CNI x 0.90) + (MV x 0.10)
= (₱73,489.58 x 0.90) + (₱22,594.88 x 0.10)
= ₱66,140.62 x ₱2,259.49
= ₱68,913.11/ha

LV = ULV/ ha. x area
= ₱68,913.11 x 0.3000 has.
= ₱20,673.93

Summary of Computation:
Cocal/Banana Land = ₱1,174,902.84
Banana Land = ₱14,676.19
Unirritaged Riceland = ₱20,673.93
TOTAL = ₱1,210,252.96[41] (emphasis in the original)

LBP emphasizes that it has the expertise in the valuation of CARP lands. In the absence of grave error, its findings are entitled to great respect and considered binding on the courts.[42] Moreover, just compensation in the realm of agrarian reform is different from that in eminent domain. Expropriation for agrarian reform is an act of both eminent domain act and police power; hence, the amount of just compensation under agrarian reform may be made less than the appropriated land's market value.[43] The amount of just compensation determined by the SAC for respondents' land was excessive; at any rate, the determination was based solely on the fair market value, in disregard of the factors in Section 17 of R.A. No. 6657, which were translated into the basic formula in DAR A.O. No. 6, series of 1992, as amended.The SAC's ruling was thus not in accord with jurisprudence, specifically *LBP v. Spouses Banal,*[44] *LBP v. Celada,*[45] and *LBP v. Luz Lim.*[46] These decisions underscore that courts should not readily disregard the DAR basic formula.[47]

Finally, LBP opines that the order to pay interest has no legal basis as there was no delay in the payment of just compensation in this case.[48] Further, the ordered interest amounted to an unwarranted *additional* interest, *viz*:

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[41] *Id*. at 25-27.

[42] *Id*. at 27.

[43] *Id*. at 31.

[44] 478 Phil. 701 (2004).

[45] 515 Phil. 467 (2006).

[46] 555 Phil. 831 (2007).

[47] *Rollo*, pp. 35-40.

[48] *Id*. at 44-46.

7.23. The amount that was deposited by LBP in the name of respondents (representing the compensation that was rejected) already earned interest based on the nature of the deposit: ((a) the cash portion earned interest at the highest prevailing rate from the date of deposit or booking pursuant to existing DAR order and LBP policies; and (b) the bond portion which earned interest aligned with 91-day treasury bill rates from the date of the DAR order to deposit pursuant to Sec. 18 (4) (a) of RA 6657. Thus:

> *Sec. 18.* ***Valuation and Mode of Compensation****. x x x*
>
> *(4) LBP bonds, which shall have the following features:*
>
> *a)* ***Market interest rates aligned with 91-day treasury bill rates****. Ten percent (10%) of the face value of the bonds shall mature every year from the date of issuance until the tenth (10th) year:* ***Provided, That should the landowner choose to forego the cash portion, whether in full or in part, he shall be paid correspondingly in LBP bonds****."*

7.24. Outside of the legislated interest on LBP bonds and the normal banking interest rates on savings for cash deposit, there is no obligation on the part of the LBP or the Government to pay interest. In other words, the interest earning for the deposited compensation is clearly defined by law, thus, there is no need to impose additional interest. "*The interest earnings accruing on the deposit account of landowners would suffice to compensate them pending payment of just compensation*."[49] (emphasis, italics and underlining in the original)

In fine, LBP prays that the assailed ruling be annulled and set aside, that its own valuation be upheld, and that the order to pay interest be deleted.[50]

Comment and Reply

Respondents insist in their comment that neither the CA nor the SAC had ignored DAR A.O. No. 6, Series of 1992, as amended, inasmuch as the SAC had "meticulously looked into the factors affecting the valuation" of the subject land.[51]

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[49] *Id*. at 41-42 citing *LBP v. Wycoco*, 464 Phil. 83 (2004).

[50] *Id*. at 47.

[51] *Id*. at 254.

Interestingly, respondents also present the following views.

DAR A.O. No. 6, Series of 1992, as amended, was issued solely for the purpose of the *initial* determination of the *value* of a land under CARP, but not its just compensation.[52] The level of details contained in the order being clerical, the order should be directed towards administrative personnel only, as it was intended to guide the DAR and LBP, but not the courts.

There is nothing in said administrative order that would justify the view that it is binding on the courts. The determination of just compensation for CARP could only be made in a judicial proceeding, which is governed by the Rules of Court. The idea that the SAC is bound to use the procedure and the manner of computation contained in the DAR administrative orders would render the provisions of the Rules of Court inapplicable and ineffective. While it is true that said administrative orders are entitled to great respect, to insist on their mandatory application on the courts would be to support an unconstitutional exercise of the DAR's rule-making powers. Courts cannot rigidly apply the administrative orders without negating a judicial function, i.e., the fixing of just compensation. Hence, the SAC was fully justified in arriving at its own independent valuation. At any rate, as shown by the evidence during trial, the valuation proposed by LBP would not result into just compensation for respondents.[53]

In its reply, LBP reiterates that the SAC had contravened the law as it based its valuation solely on the fair market value.[54]

ISSUE

While our ruling in this case would resolve an issue that has a pragmatic result, i.e., whether the just compensation for respondents' agricultural land is ₱2,267,600.00, as determined by both the SAC and the CA; or ₱1,210,252.96, as computed by LBP and sustained by the DARAB, the essential issue to be

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[52] *Id*. at 256.

[53] *Id*. at 255.

[54] *Id*. at 275-277.

resolved under Rule 45 of the Rules of Court is whether or not there is reversible error with the ruling of the CA. As the appellate court had upheld the ruling of the SAC, this essential issue pivots, in turn, on whether the SAC had reversibly erred in rejecting LBP's valuation for the subject agricultural land. Thus, the decisive issue is whether the SAC had reversibly erred in rejecting the basic formula contained in DAR A.O. No. 6, series of 1992, as amended, for the valuation of a CARP land. Said differently, the issue is whether the valuation proposed by LBP for respondents' land is the just compensation contemplated by law for CARP lands.

OUR RULING

There is merit in the petition. It is partially granted.

The points the parties raise are nothing new, having been previously passed upon by the Court. We conduct the present review in the light of *Alfonso v. LBP*,[55] by which this Court, sitting En Banc, reaffirmed an established jurisprudential rule, *viz*, that until and unless declared invalid in a proper case, the basic formulas contained in DAR administrative orders partake of the nature of statutes; hence, courts have the positive legal duty to consider, and not disregard, their use and application in the determination of just compensation for agricultural lands covered by R.A. No. 6657. The Court proceeded to elaborate upon this rule by likewise reaffirming the following guidelines:

> First, in determining just compensation, courts are obligated to apply both the compensation valuation factors enumerated by the Congress under Section 17 of R.A. No. 6657 and the basic formula laid down by the DAR. x x x [.]
>
> x x x x x x x x x
>
> Second, the formula, being an administrative regulation issued by the DAR pursuant to its rule-making and subordinate legislation power under R.A. No. 6657, has the force and effect of law. Unless declared invalid in a case where its validity is directly put in issue, courts must consider their use and application. x x x [.]

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[55] G.R. Nos. 181912 & 183347, 29 November 2016.

x x x x x x x x x

Third, courts, in the exercise of their judicial discretion, may relax the application of the formula to fit the peculiar circumstances of a case. They must, however, clearly explain the reason for any deviation; otherwise, they will be considered in grave abuse of discretion. x x x [.]

x x x x x x x x x

When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them. They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.

The situation where a deviation is made in the exercise of judicial discretion should at all times be distinguished from a situation where there is utter and blatant disregard of the factors spelled out by law and by the implementing rules. For in [the latter case], the RTC-SAC's action already amounts to grave abuse of discretion for having been taken outside of the contemplation of the law.[56]

As its decision and order make plain,[57] the SAC deviated from, nay rejected, the formula set by the DAR in the subject administrative orders. The CA joined the SAC in the rejection, as may be seen from the following passage in the decision presently assailed:

The RTC's computation being different from the [LBP's] does not make the same erroneous. It is explicit in DAR AO No. 6 that land valuation is not an exact science but an exercise fraught with inexact estimates requiring integrity, conscientious and prudence on the part of those responsible for it. The determination of just compensation cannot simply be arrived at by strict reliance on the formula laid down in the administrative orders. The formula used by [LBP] as basis for the computation serves only as a guideline and

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[56] See also *Mateo, et al. v. DAR, et al.*, G.R. No. 186339, 15 February 2017.

[57] *Rollo*, pp. 143-145.

that the ultimate determination of just compensation must be made by the courts. Otherwise, to adhere to the formula mechanically would be to abdicate a duty placed in the courts of determining the question of just compensation. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation, goes beyond the intent and spirit of the law.[58] x x x

Following the guidelines reaffirmed in *Alfonso*, the next point of inquiry therefore is whether the courts *a quo*, principally the SAC, presented a clear explanation for its deviation from the DAR formula.

Parenthetically, we note at this juncture that per LBP's averments, the formula it had used to come up with its valuation was the formula in DAR A.O. No. 6, series of 1992, as amended. However, the SAC, particularly in its Order dated 4 July 2007, stated that LBP had used the formula in DAR A.O. No. 5, series of 1998. This is puzzling. LBP is consistent in averring that it had used the formula in DAR A.O. No. 6, series of 1992, as amended. We see this in its answer before the SAC and in the present petition. The DARAB seconds this averment.[59] We consider also that LBP's valuation, namely ₱1,210,252.96, is the figure that demonstrably results from the detailed mathematical computation it pleads before this Court, which follows the formula in DAR A.O. No. 6, series of 1992, as amended. In any case, this conflict between the SAC and LBP as to the formula the latter had used is, of course, of no moment in this review. Following *Alfonso*, what is material is that the courts *a quo* had deviated from the DAR formula, and are therefore charged, more than the usual, with presenting an acceptable explanation for the deviation—or, following the words of the recent case of *LBP v. Heirs of Tañada and Ebarle*,[60] a well-reasoned justification for the deviation as supported by the evidence on record.

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[58] *Id.* at 65-66.

[59] *Id.* at 178.

[60] G.R. No. 170506, 11 January 2017.

In the main, the SAC presents two explanations for the deviation: *first,* that respondents' land is "no longer productive, as the trees are over 100 years old and are more productive if utilized as coconut lumber,"[61] and, *second*, that the land has already been converted into a subdivision, increasing its value "three hundredfold."[62] These circumstances, the SAC reasoned out, render the use of the DAR formulas in the valuation of respondents' land anomalous as well as disadvantageous to landowners.[63]

We are unable to accept these explanations. They are neither well-reasoned nor supported by the evidence on record.

We are at a loss as to how the SAC came to conclude that respondents' land is no longer productive. In its decision, it gave a summary of the testimonial evidence it had received at trial. But as may be seen from the same summary, none of the witnesses testified that the land was no longer productive. The testimonial refrain was that "many" of the trees on the land were old; the SAC may have found such testimony to indicate that the land is no longer productive. But "many" does not mean "all." Neither should old mean infertile. At any rate, the testimony of one of respondents' own witnesses, the Coconut Conservation Officer, militates against the SAC's conclusion. The PCA officer testified as to two significant points: *first,* that tenants had planted new coconut trees on the land, with seedlings obtained from the PCA nursery; and *second,* that these newly planted trees outnumbered the old. With reason, it may be believed that tenants had planted new trees with a mind towards the subject landholding's continuing fertility. Indeed, among the documentary evidence presented at trial was LBP's Field Investigation Report, which the SAC had likewise summarized in the decision. This report contains data on the land's average annual production and net income per hectare, which were generated by its palay, coconut, and banana output. Do these uncontroverted data not

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[61] *Rollo*, p. 143.

[62] *Id*. at 142.

[63] *Id*.

contradict the rather sweeping view that the subject property is no longer agriculturally productive?

We go now to the second explanation, *viz*, that the subject land had been "converted" from agricultural to residential. To arrive here, the SAC appears to have relied solely on the testimony of the municipal assessor who, in turn, said quite simply that she had visited the property and saw that it had already been converted into a subdivision with electricity and cemented roads. Despite what said witness may have in fact seen, however, the available records do not indicate that the DAR Secretary had authorized the alleged conversion.[64] The same records also do not indicate the existence of a zoning ordinance reclassifying said land as to lawfully allow the establishment of a residential subdivision thereon.[65] Neither were these decisive facts pleaded before this court. The subject land's alleged conversion to a residential subdivision, therefore, is poorly supported. Why the SAC relied solely on the verbal say-so of the municipal assessor is puzzling.

On this note, it should also be said, if only in passing, that if it were true that the *land use* of the subject agricultural land — the acquisition of which for purposes of the state's agrarian reform program was *fait accompli* — was converted to residential pending the determination of its just compensation, then what we have here is a gravely anomalous situation. Such conversion would be antithetical to the agrarian reform program, to say the very least.

At any rate, its alleged conversion should not have any bearing in the determination of the subject property's just compensation. The government cannot be compelled to pay for a CARP land the price that it would have fetched in the competitive residential real estate market. It goes without saying, there is nothing in R.A. No. 6657 or in the pertinent DAR administrative issuances that authorizes that the just compensation for a CARP land should be based exclusively on its market value.

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[64] See R.A. No. 6657, Section 65.

[65] See R.A. No. 7160, Section 20.

Which brings us to another point. In its determination of just compensation in this case, the SAC made no use of any calculation or formula. The special court relied, quite simply, on respondents' valuation, which in turn was based on a 1998 issuance of the Barangay Council of Brgy. Tamisian. In the said issuance, the council members agreed that the selling price for the coconut lands in their barangay would be ₱100,000.00 per hectare.[66] The SAC did not discuss how the council came up with this figure, other than vaguely stating that said figure was "culled" from the landowners and the barangay captains of the area who ostensibly had firsthand knowledge "of the situation in their barangays."[67]

In fine, the SAC failed to present a well-reasoned justification, as supported by the evidence on record, for why it deviated from the DAR formula. Hence, it ruled in blatant disregard of the factors spelled out in Section 17 of R.A. No. 6657. The SAC's valuation in this case must be struck down as illegal and set aside.

However, the Court cannot readily adopt LBP's valuation as the just compensation in this case.

We are aware that in coming up with its valuation, LBP followed the formula in DAR *A.O.* No. 6, Series of 1992, as amended. We are also aware that the DARAB had concurred with and sustained this valuation. In the *Heirs of Lorenzo and Carmen Vidad v. LBP*,[68] however, we decreed that LBP's valuation must be substantiated before it could be considered as sufficiently in accord with Section 17 of R.A. No. 6657 and the DAR administrative orders. It is also settled that the valuation of the property should be pegged at the time *of its taking*, not of the filing of the complaint, pendency of the proceedings, or rendition of judgment.[69]

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[66] *Rollo*, pp. 136-137.

[67] *Id*. at 144.

[68] 634 Phil. 9 (2010).

[69] *LBP v. Heirs of Spouses Encinas*, 686 Phil. 48, 55 (2012).

In this case, the court is unable to confirm from the available records that the data LBP had used for its valuation are timely data, i.e., data reasonably obtaining at the time of the taking of the property. There is no declaration in the present petition that such data were gathered in 1998 or within a proximate data-gathering period prior thereto. More to the point, most of the data contained in the documents LBP included in its *Formal Offer of Documentary Evidence* in Civil Case No. 99-134 are undated. To illustrate, we quote from the subject *Formal Offer*:[70]

Exhibits	Description	Purpose
x x x		
"3"	Average Coconut Production (wholenut)	Offered for the purpose of showing that PCA data on production and farmgate prices were used in the valuation of LOs property.
"4"	Average Coconut Production (copra terms)	
"5"	Farmgate Prices of wholenuts; all 3 are certified by the Acting Provincial Coconut Development Manager	
"6"	Certification signed by Municipal Agriculturist Pedro R. Gayeta on monthly production of different crops.	Offered for the purpose of showing that Dept. of Agriculture data were used in the valuation of other improvements found on LOs property.
"7"	Certification of same official on monthly ave. farmgate price for different crops.	
"8"	General Revision 1997 data from the Provincial	Offered to prove that assessors data were used in

[70] *Rollo*, pp. 187-188.

	Assessor of Quezon signed by Assistant Provincial Assessor Isagani C. Atienza.	the valuation of plaintiff LOs property and improvements.
"9"	Schedule of Market Values classified into different crops, productivity and location adjustment from the Provincial Assessor's Office.	Offered to prove that Land Bank used data from concerned government agencies as called for under RA 6657, in land valuation.
x x x		

A question thus arises on whether the data LBP had utilized in order to come up with the values necessary for its computation of just compensation were reasonably obtaining during the time of the taking of the subject agricultural land. In which case, LBP's valuation has not been sufficiently substantiated. A remand of this case to the SAC is thus necessary, so that the special court may determine just compensation that is in full accordance with the basic formula in DAR A.O. No. 6, series of 1992, as amended.

We go now to the issue regarding interest. Interest may be awarded as warranted by the circumstances of the case and based on prevailing jurisprudence. In previous cases, the Court allowed the grant of legal interest in expropriation cases where there was 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.[71] In this case, there was no delay in the payment. To recall, the *Notice of Land Valuation and Acquisition* was issued over the subject property on 9 February 1998.[72] On 24 March 1998, LBP deposited the said amount in respondents' name.[73] Hence, the order for LBP to pay interest is not warranted and must be annulled and set aside.

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[71] *Mateo v. DAR, et al.*, *supra* note 56.

[72] *Rollo*, p. 135.

[73] *Id*. at 58 and 189.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision dated 31 October 2008 and the Resolution dated 8 April 2009 of the Court of Appeals in CA-G.R. SP No. 99852 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Lucena City, sitting as Special Agrarian Court, to determine the just compensation in Civil Case No. 99-134 strictly in accordance with Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 6, series of 1992, as amended by Department of Agrarian Reform Administrative Order No. 11, series of 1994, and in consonance with prevailing jurisprudence. Specifically, and towards this purpose, the Special Agrarian Court is directed to conduct summary proceedings to ascertain if the data presented by petitioner Land Bank of the Philippines for the determination of just compensation were data gathered in 1998 or within a proximate data-gathering period prior thereto.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 194262. February 28, 2018]

BOBIE ROSE D. V. FRIAS, as represented by MARIE REGINE F. FUJITA, *petitioner, vs.* **ROLANDO F. ALCAYDE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ACTION *IN PERSONAM*; THE PURPOSE THEREOF IS TO IMPOSE, THROUGH THE

JUDGMENT OF A COURT, SOME RESPONSIBILITY OR LIABILITY DIRECTLY UPON THE PERSON OF THE DEFENDANT.— An action *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. Its purpose is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him. The following are some of the examples of actions *in personam*: action for collection of sum of money and damages; action for unlawful detainer or forcible entry; action for specific performance; action to enforce a foreign judgment in a complaint for a breach of contract.

2. ID.; ID.; ACTION *IN REM*; REFERS TO AN ACTION AGAINST THE THING ITSELF, AND IT IS BINDING UPON THE WHOLE WORLD.— Actions *in rem* are actions against the thing itself. They are binding upon the whole world. The phrase, "against the thing," to describe *in rem* actions is a metaphor. It is not the "thing" that is the party to an *in rem* action; only legal or natural persons may be parties even *in rem* actions. The following are some of the examples of actions *in rem*: petitions directed against the "thing" itself or the *res* which concerns the status of a person, like a petition for adoption, correction of entries in the birth certificate; or annulment of marriage; nullity of marriage; petition to establish illegitimate filiation; registration of land under the Torrens system; and forfeiture proceedings.

3. ID.; ID.; ACTION *QUASI IN REM*; IN A PROCEEDING *QUASI IN REM*, AN INDIVIDUAL IS NAMED AS DEFENDANT, AND THE PURPOSE OF THE ACTION IS TO SUBJECT HIS INTERESTS THEREIN TO THE OBLIGATION OR LOAN BURDENING THE PROPERTY. — A proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed. In an action *quasi in rem,* an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening

the property. In an action *quasi in rem*, an individual is named as defendant. But, unlike suits in *rem*, a *quasi in rem* judgment is conclusive only between the parties. The following are some of the examples of actions *quasi in rem*: suits to quiet title; actions for foreclosure; and attachment proceedings.

4. ID.; ID.; JURISDICTION; JURISDICTION OVER THE PARTIES IS REQUIRED IN ACTIONS *IN PERSONAM*, BUT IN A PROCEEDING *IN REM* OR *QUASI IN REM*, JURISDICTION OVER THE PERSON OF THE DEFENDANT IS NOT A PREREQUISITE TO CONFER JURISDICTION ON THE COURT, PROVIDED THAT THE LATTER HAS JURISDICTION OVER THE *RES*.— In actions *in personam*, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions *in personam* because they seek to impose personal responsibility or liability upon a person. "*In a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the res. Jurisdiction over the res is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.*"

5. ID.; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; A REMEDY IN LAW INDEPENDENT OF THE CASE WHERE THE JUDGMENT SOUGHT TO BE ANNULLED IS RENDERED, AND IT IS PERMITTED ONLY IN EXCEPTIONAL CASES.— Annulment of judgment, as provided for in Rule 47, is based only on the grounds of extrinsic fraud and lack of jurisdiction. Jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered. It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases. Annulment of judgment involves the exercise

of original jurisdiction, as expressly conferred on the CA by *Batas Pambansa Bilang* (BP Blg.) 129, Section 9(2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.

6. ID.; ID.; ID.; THE NATURE OF A PETITION FOR ANNULMENT OF JUDGMENT IS *IN PERSONAM*.— For purposes of summons, this Court holds that the nature of a petition for annulment of judgment is *in personam* x x x. [A] petition for annulment of judgment is an original action, which is separate, distinct and independent of the case where the judgment sought to be annulled is rendered. It is not a continuation or progression of the same case. Thus, regardless of the nature of the original action in the decision sought to be annulled, be it *in personam*, *in rem* or *quasi in rem*, the respondent should be duly notified of the petition seeking to annul the court's decision over which the respondent has a direct or indirect interest. x x x [A] petition for annulment of judgment and the court's subsequent decision thereon will affect the parties alone. It will not be enforceable against the whole world. Any judgment therein will eventually bind only the parties properly impleaded.

7. ID.; ID.; SUMMONS; PERSONAL SERVICE; PREFERRED MODE OF SERVICE OF SUMMONS; SUBSTITUTED SERVICE OF SUMMONS, WHEN WARRANTED.— Where the action is in *personam* and the defendant is in the Philippines, as in this case, the service of summons may be done by personal or substituted service as laid out in Sections 6 and 7 of Rule 14. Indeed, the preferred mode of service of summons is personal service. To warrant the substituted service of the summons and copy of the complaint, (or, as in this case, the petition for annulment of judgment), the serving officer must first attempt to effect the same upon the defendant in person. Only after the attempt at personal service has become impossible within a reasonable time may the officer resort to substituted service.

8. ID.; ID.; ID.; SUBSTITUTED SERVICE; A METHOD EXTRAORDINARY IN CHARACTER AND MAY BE USED ONLY AS PRESCRIBED AND IN THE CIRCUMSTANCES AUTHORIZED BY STATUTE.— [W]ithout specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement

that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute. Sheriff Tolentino, however, fell short of these standards. For her failure to faithfully, strictly, and fully comply with the requirements of substituted service, the same is rendered ineffective. As such, the presumption of regularity in the performance of official functions, which is generally accorded to a sheriff's return, does not obtain in this case.

9. ID.; ID.; JURISDICTION; A SPECIAL APPEARANCE OF A PARTY TO CHALLENGE THE COURT'S JURISDICTION OVER HIS PERSON IS NOT EQUIVALENT TO SERVICE OF SUMMONS, NOR DOES IT CONSTITUTE AN ACQUIESCENCE TO THE COURT'S JURISDICTION.— In *Prudential Bank v. Magdamit, Jr.,* We had the occasion to elucidate the concept of voluntary or conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority x x x. [I]t is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court. The records show that the petitioner never received any copy of the the respondent's petition to annul the final and executory judgment of the MeTC in the unlawful detainer case. x x x Consequently, in order to question the trial court's jurisdiction, the petitioner filed x x x pleadings and motions x x x. In all these pleadings and motions, the petitioner never faltered in declaring that the trial court did not acquire jurisdiction over her person, due to invalid and improper service of summons. It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, *i.e.*, to defy the RTC's lack of jurisdiction over her person. This Court is of the view that the petitioner never abandoned her objections to the trial court's jurisdiction even when she elevated the matter to the CA through her petition for *certiorari*. The filing of her pleadings and motions, including that of her subsequent posturings, were all in protest of the respondent's insistence on holding her to answer the petition for annulment of judgment in the RTC, which she believed she

was not subject to. Indeed, to continue the proceeding in such case would not only be useless and a waste of time, but would violate her right to due process. x x x As we have consistently pronounced, if the appearance of a party in a suit is precisely to question the jurisdiction of the said tribunal over the person of the defendant, then this appearance is not equivalent to service of summons, nor does it constitute an acquiescence to the court's jurisdiction.

10. ID.; ID.; SUMMONS; THE SERVICE OF SUMMONS IS A VITAL AND INDISPENSABLE INGREDIENT OF DUE PROCESS AND COMPLIANCE WITH THE RULES REGARDING THE SERVICE OF THE SUMMONS IS AS MUCH AN ISSUE OF DUE PROCESS AS IT IS OF JURISDICTION.— [T]he jurisdiction over the person of the petitioner was never vested with the RTC despite the mere filing of the petition for annulment of judgment. The manner of substituted service by the process server was apparently invalid and ineffective. As such, there was a violation of due process. In its classic formulation, due process means that any person with interest to the thing in litigation, or the outcome of the judgment, as in this case, must be notified and given an opportunity to defend that interest. Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, the petitioner must be properly served the summons of the court. In other words, the service of summons is a vital and indispensable ingredient of due process and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction.

11. ID.; ID.; JUDGMENTS; WHEN A DECISION HAS ACQUIRED FINALITY, THE SAME BECOMES IMMUTABLE AND UNALTERABLE.— [A]n action for annulment of judgment cannot and is not a substitute for the lost remedy of appeal. Its obvious rationale is to prevent the party from benefiting from his inaction or negligence. In this case, it is evident that respondent failed to interpose an appeal, let alone a motion for new trial or a petition for relief from the MeTC July 26, 2006 Decision rendering the same final and executory. Hence, the October 30, 2007 Order granting its execution was properly issued. It is doctrinal that when a decision has acquired finality, the same becomes immutable and

> unalterable. x x x Resultantly, the implementation and execution of judgments that had attained finality are already ministerial on the courts. Public policy also dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.

APPEARANCES OF COUNSEL

Real Brotarlo & Real Law Offices for petitioner.
Corpuz Ejercito Macasaet Rivera & Corpuz Law Offices for respondent.

D E C I S I O N

TIJAM, *J.*:

> "*Due process dictates that jurisdiction over the person of a defendant can only be acquired by the courts after a strict compliance with the rules on the proper service of summons.*"[1]

Challenged in this appeal[2] is the Decision[3] dated May 27, 2010 and Resolution[4] dated October 22, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 109824.

The facts are as follows:

On December 5, 2003, petitioner Bobie Rose D.V. Frias, as lessor and respondent Rolando Alcayde, as lessee, entered into a Contract of Lease involving a residential house and lot (subject

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[1] *Pascual v. Pascual*, 622 Phil. 307, 312 (2009).

[2] *Rollo*, pp. 8-31.

[3] Penned by CA Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan, *id*. at 38-53.

[4] *Id*. at 54-57.

property) located at No. 589 Batangas East, Ayala Alabang Village, Muntinlupa City, for a period of one year, starting on December 5, 2003 up until December 4, 2004, with a monthly rental of Thirty Thousand Pesos (₱30,000). Respondent refused to perform any of his contractual obligations, which had accumulated for 24 months in rental arrearages as of December 2005.[5]

This prompted petitioner to file a Complaint for Unlawful Detainer,[6] docketed as CV Case No. 6040, with the Metropolitan Trial Court (MeTC), Muntinlupa City, Branch 80, against the respondent.[7] As per the Process Server's Return[8] dated February 14, 2006, the process server, Tobias N. Abellano (Mr. Abellano) tried to personally serve the summons to respondent on January 14 and 22, 2006, but to no avail. Through substituted service, summons was served upon respondent's caretaker, May Ann Fortiles (Ms. Fortiles).

On July 26, 2006, the MeTC rendered a Decision,[9] in favor of the petitioner and ordered respondent to vacate the subject premises and to pay the petitioner the accrued rentals at 12% legal interest, plus ₱10,000 in attorney's fees. The dispositive portion reads, thus:

> WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against [respondent] ordering:
>
> 1. The [respondent] and all persons claiming right over him to immediately vacate the subject premises located at No. 589 Batangas East, Ayala Alabang Village, Muntinlupa City and peacefully surrender possession thereof to the [petitioner];
>
> 2. The [respondent] to pay the accrued rental arrearages from December 2003 up to the time he vacates the property in the amount of THIRTY THOUSAND PESOS (Php30,000.00) per month with twelve (12%) percent legal interest; and

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[5] *Id*. at 74.

[6] *Id*. at 77-79.

[7] *Id*. at 39.

[8] *Id*. at 82.

[9] Penned by Presiding Judge Paulino Q. Gallegos, *id*. at 74-76.

3. The [respondent] to pay the [petitioner] the amount of TEN THOUSAND PESOS (Php10,000.00) as reasonable attorney's fees and to pay the cost of the suit.

SO ORDERED.[10]

On July 4, 2007, the MeTC issued an Order,[11] granting petitioner's Motion to execute the Decision dated July 26, 2006, and denying respondent's Omnibus Motion thereto.

On July 25, 2007, respondent filed a Petition for Annulment of Judgment with Prayer for Issuance of TRO and/or Injunction,[12] with the Regional Trial Court (RTC), Muntinlupa City, Branch 203. Respondent averred that the MeTC's July 26, 2006 Decision does not bind him since the court did not acquire jurisdiction over his person. Respondent likewise averred that the MeTC lacked jurisdiction over the case for two reasons: (1) petitioners' complaint has no cause of action for failure to make a prior demand to pay and to vacate; and (2) petitioner's non-referral of the case before the *barangay*.[13]

A copy of the petition for annulment of judgment was allegedly served to the petitioner. Based on the Officer's Return[14] dated July 27, 2007, Sheriff IV Jocelyn S. Tolentino (Sheriff Tolentino) caused the "service of a Notice of Raffle and Summons together with a copy of the complaints and its annexes" to the petitioner, through Sally Gonzales (Ms. Gonzales), the secretary of petitioner's counsel, Atty. Daniel S. Frias (Atty. Frias).

On September 7, 2007, the RTC, through Judge Pedro M. Sabundayo, Jr. issued an Order,[15] containing therein the manifestation of respondent that he is withdrawing his application

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[10] *Id*. at 76.

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

[12] *Id*. at 60-73.

[13] *Id*. at 40.

[14] *Id*. at 85.

[15] *Id*. at 86.

for a TRO and is now pursuing the main case for annulment of judgment.

On September 25, 2007, respondent filed an Ex-Parte Motion,[16] to declare petitioner in default, on the ground that despite her receipt of the summons, she has yet to file any pleading.[17]

On October 3, 2007, the petitioner filed a Special Appearance/ Submission (Jurisdictional Infirmity Raised),[18] alleging among others, that respondent's Motion to Revive Relief re: Issuance of a TRO merits neither judicial cognizance nor consideration.[19]

On October 30, 2007 the MeTC issued a Writ of Execution,[20] for the purpose of implementing its July 26, 2006 Decision.

On November 5, 2007, Sheriff III Armando S. Camacho, sent a Notice to Pay and to Vacate[21] to respondent. Attached to the notice was the October 30, 2007 Writ of Execution.

In the RTC's Order[22] dated November 15, 2007, the RTC issued a TRO enjoining the MeTC from implementing its July 26, 2006 Decision, and setting the hearing for respondent's prayer for writ of preliminary injunction.[23]

On November 29, 2007, petitioner, through her representative, Marie Regine F. Fujita (Ms. Fujita), filed a Preliminary Submission to Dismiss Petition — Special Appearance Raising Jurisdictional Issues (Preliminary Submission), on the ground of lack of jurisdiction over her person.[24] She pointed out that

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[16] *Id*. at 87-88.

[17] *Id*. at 40.

[18] *Id*. at 89-101.

[19] *Id*. at 40.

[20] *Id*. at 113-114.

[21] *Id*. at 112.

[22] *Id*. at 122.

[23] *Id*. at 41.

[24] *Id*. at 123-151.

the defect in the service of summons is immediately apparent on the Officer's Return, since it did not indicate the impossibility of a personal service within a reasonable time; it did not specify the efforts exerted by Sheriff Tolentino to locate the petitioner; and it did not certify that the person in the office who received the summons in petitioner's behalf was one with whom the petitioner had a relation of confidence ensuring that the latter would receive or would be notified of the summons issued in her name.[25]

On December 3, 2007, the RTC issued an Order,[26] granting respondent's prayer for the issuance of a writ of preliminary injunction, to enjoin the MeTC's July 26, 2006 Decision. The RTC ruled that although Atty. Frias maintained his special appearance, he actively participated in the proceedings by attending the summary hearing in the prayer for the issuance of the TRO on November 9, 2007 and November 20, 2007. The dispositive portion reads, thus:

> WHEREFORE, premises considered, the Court grants [respondent]'s prayer for the issuance of a preliminary injunction. Accordingly, the Court enjoins respondent and the Court Sheriff of Metropolitan Trial Court, Branch 80, Muntinlupa City and or his deputy or duly authorized representative(s) from implementing or enforcing the decision dated July 26, 2006 in Civil Case No. 6040 during the pendency of this action.
>
> SO ORDERED.[27]

On July 25, 2008, the law office of Real Brotarlo & Real entered its appearance as collaborating counsel for the petitioner.[28]

On August 11, 2008, petitioner filed a Manifestation and Omnibus Motion to Dismiss Petition for Annulment of Judgment

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[25] *Id*. at 12, 125.

[26] *Id*. at 152-155.

[27] *Id*. at 155.

[28] *Id*. at 156.

and to Set Aside and/or Reconsider[29] the RTC's December 3, 2007 Order, reiterating in substance the November 29, 2007 Preliminary Submission. Petitioner alleged, among others, that the RTC's December 3, 2007 Order violated the well-settled rule that a writ of injunction is not proper where its purpose is to take property out of the possession or control of one person and place the same in the hands of another where title has not been clearly established by law.[30]

On August 22, 2008, the RTC issued an Order,[31] granting petitioner's November 29, 2007 Preliminary Submission. The RTC ruled that the summons and copies of the petition and its attachments were not duly served upon petitioner, either personally or through substituted service of summons strictly in accordance with the Rules. The RTC continued that there is no proof that Ms. Gonzales or Atty. Frias was authorized by the petitioner to receive summons on her behalf. Since the face of the Officer's Return is patently defective, the RTC ruled that the presumption of regularity of performance of duty under the Rules does not apply. The RTC, thus, ordered the dismissal of the petition for annulment of judgment.[32] The dispositive portion of which reads, thus:

> WHEREFORE, premises considered, the preliminary submission to dismiss petition and Omnibus Motion filed by [petitioner] Bobbie Rose DV Frias are granted and the petition for annulment of judgment filed by Rolando Alcayde is DISMISSED. The Order of the court dated December 3, 2007 granting the issuance of a preliminary injunction is recalled and set aside considering that since the court has not acquired jurisdiction over the person of the [petitioner], all the proceedings in this case are without any force and effect.
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> SO ORDERED.[33]

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[29] *Id*. at 158-170.

[30] *Id*. at 168.

[31] *Id*. at 180-181.

[32] *Id*.

[33] *Id*. at 181.

On September 4, 2008, respondent filed a Manifestation and Motion,[34] praying for the recall of the August 22, 2008 Order and/or to maintain the status *quo*.

On September 15, 2008, respondent filed a Motion for Reconsideration[35] of the August 22, 2008 Order.

On October 6, 2008, petitioner filed a Consolidated Opposition,[36] alleging that the RTC held in abeyance the resolution of her November 29, 2007 Preliminary Submission, for eight (8) months until it issued its August 22, 2008 Order. She likewise alleged that there was nothing in the RTC's December 3, 2007 Order that categorically denied the November 29, 2007 Preliminary Submission.[37]

On November 3, 2008, the RTC, through Judge Juanita T. Guerrero, issued an Order,[38] granting respondent's Motion for Reconsideration, on the ground that he was not given an opportunity to file his Comment or Opposition to petitioner's August 11, 2008 Manifestation and Omnibus Motion. The dispositive portion of the order reads, thus:

> IN VIEW THEREOF, the Motion for Reconsideration is hereby GRANTED. The Order of the Court dated August 22, 2008 is recalled and set aside. The [respondent] is given fifteen (15) days from receipt of this order to file his Comment or Opposition or reiterates the one he filed, on the Manifestation and Omnibus Motion (i.) to Dismiss Petition for Annulment of Judgment (ii.) to Set Aside and/or Reconsider the Order dated December 3, 2007 and [petitioner] Bobbie Rose D.V. Frias through his counsel is given fifteen (15) days therefrom to file his Reply if necessary. Thereafter, said Manifestation and Omnibus Motion is considered submitted for resolution.
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> SO ORDERED.[39]

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[34] *Id*. at 182-185.

[35] *Id*. at 186-194.

[36] *Id*. at 196.

[37] *Id*. at 196-202.

[38] *Id*. at 212-213.

[39] *Id*. at 213.

On November 17, 2008, respondent filed a Manifestation (in compliance with the Order dated November 3, 2008) and Supplement,[40] substantially reiterating his September 15, 2008 Motion for Reconsideration.

On November 28, 2008, petitioner filed a Manifestation and Reply (to Alcayde's Comment dated August 19, 2008 and Supplement dated November 12, 2008).[41]

On February 2, 2009, the RTC issued an Order[42] denying petitioner's August 11, 2008 Manifestation and Omnibus Motion, the dispositive portion of which reads, thus:

> WHEREFORE, finding no reason to deviate from the Order of the Court dated December 3, 2007, the same is hereby maintained with modification that the Writ of Preliminary Injunction shall be issued upon filing of a bond in the amount of Php500,000.00 by the [respondent]. For emphasis, the Motion to Dismiss this petition for lack of jurisdiction is hereby DENIED.
>
> The petitioner BOBIE ROSE D. FRIAS is directed to file his ANSWER within a non-extendible period of ten (10) days from receipt of this Order.
>
> SO ORDERED.[43]

On February 20, 2009, petitioner moved for the reconsideration[44] of the RTC's February 2, 2009 Order, but the same was denied in the RTC's Order[45] dated June 5, 2009.

On July 15, 2009, respondent filed an Ex-Parte Motion for Default,[46] to declare petitioner in default for the latter's failure

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[40] *Id*. at 214-222.

[41] *Id*. at 223-231.

[42] *Id*. at 232-238.

[43] *Id*. at 238.

[44] *Id*. at 239-252.

[45] *Id*. at 256.

[46] *Id*. at 257-258.

to comply with the RTC's February 2, 2009 order requiring her to file an answer to the Petition for Annulment of Judgment.

Aggrieved, petitioner filed a Petition for *Certiorari*[47] with the CA, to which respondent answered by way of a Comment.[48] After the filing of petitioner's Reply,[49] the CA on May 27, 2010 rendered a Decision,[50] denying the petitioner's Petition for *Certiorari* for lack of merit.

The Motion for Reconsideration,[51] having been denied by the CA in its Resolution dated October 22, 2010,[52] petitioner filed this Petition for Review on *Certiorari*, raising the following issues:

I. WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF AP[P]EALS ERRED IN NOT HOLDING THAT THE PAIRING JUDGE OF RTC 203 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DISMISSING [RESPONDENT]'S PETITION FOR ANNULMENT OF JUDGMENT ON A GROUND THAT THE RTC 203 DID NOT ACQUIRE JURISDICTION OVER THE PETITIONER.

II. WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE RTC 203 NEED NOT ACQUIRE JURISDICTION OVER THE PETITIONER AS LONG AS SAID RTC 203 HAS ACQUIRED JURISDICTION OVER THE *RES*.

III. WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PAIRING JUDGE OF RTC 203 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT SETTING ASIDE THE ORDER DATED

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[47] *Id*. at 259-287.

[48] *Id*. at 289-302.

[49] *Id*. at 303-322.

[50] *Id*. at 38-53.

[51] *Id*. at 323-328.

[52] *Id*. at 54-57.

DECEMBER 3, 2007 OF THE RTC ENJOINING PETITIONER AND SHERIFF OF THE METROPOLITAN TRIAL COURT, BRANCH 80 OF MUNTINLUPA CITY FROM IMPLEMENTING ITS FINAL AND EXECUTORY DECISION DATED JULY 26, 2006.[53]

On the one hand, petitioner contends that the CA erred in not dismissing respondent's petition for annulment of judgment on the ground of lack of jurisdiction over her person. She maintains that since an annulment of judgment is a personal action, it is necessary for the RTC to acquire jurisdiction over her person. She likewise insists that the CA erred in not setting aside the RTC's Decision dated December 3, 2007.

On the other hand, the CA ruled that a petition for annulment of judgment is not an action *in personam*, thus, the court need not acquire jurisdiction over the person of the petitioner, as long as it has acquired jurisdiction over the *res*, which in this case was through the filing of the petition for annulment of judgment with the RTC. This pronouncement was adopted by the respondent in his comment to the instant petition.

The petition is meritorious.

It is elementary that courts acquire jurisdiction over the plaintiff or petitioner once the complaint or petition is filed. On the other hand, there are two ways through which jurisdiction over the defendant or respondent is acquired through coercive process — either through the service of summons upon them or through their voluntary appearance in court.

The function of summons in court actions

In the case of *Guiguinto Credit Cooperative, Inc. (GUCCI) v. Torres*,[54] We discussed the function of summons in court actions, in this wise —

Fundamentally, ***the service of summons is intended to give official notice to the defendant or respondent that an action has been***

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

[54] 533 Phil. 476 (2006).

commenced against it. The defendant or respondent is thus put on guard as to the demands of the plaintiff as stated in the complaint. ***The service of summons upon the defendant becomes an important element in the operation of a court's jurisdiction upon a party to a suit, as service of summons upon the defendant is the means by which the court acquires jurisdiction over his person. Without service of summons, or when summons are improperly made, both the trial and the judgment, being in violation of due process, are null and void, unless the defendant waives the service of summons by voluntarily appearing and answering the suit.***

When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. This is not, however, always the case. Admittedly, and without subjecting himself to the court's jurisdiction, ***the defendant in an action can, by special appearance object to the court's assumption on the ground of lack of jurisdiction***. If he so wishes to assert this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court, otherwise, he shall be deemed to have submitted himself to that jurisdiction.[55]

Elsewhere, We declared that jurisdiction of the court over the person of the defendant or respondent cannot be acquired notwithstanding his knowledge of the pendency of a case against him unless he was validly served with summons. Such is the important role a valid service of summons plays in court actions.[56]

Nature of a petition for annulment of judgment for purposes of service of summons

For a proper perspective, it is crucial to underscore the necessity of determining first whether the action subject of this appeal is *in personam, in rem,* or *quasi in rem* because the rules on service of summons under Rule 14 apply according to the nature of the action.[57]

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[55] *Id.* at 488-489 citing *Avon Insurance PLC v. CA*, 343 Phil. 849, 863 (1997).

[56] *Cezar v. Judge Ricafort-Bautista*, 536 Phil. 1037, 1046 (2006).

[57] *Gomez v. Court of Appeals*, 469 Phil. 38, 47-48 (2004).

An action *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. Its purpose is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him.[58] The following are some of the examples of actions *in personam*: action for collection of sum of money and damages; action for unlawful detainer or forcible entry; action for specific performance; action to enforce a foreign judgment in a complaint for a breach of contract.

Actions *in rem* are actions against the thing itself. They are binding upon the whole world.[59] The phrase, "against the thing," to describe *in rem* actions is a metaphor. It is not the "thing" that is the party to an *in rem* action; only legal or natural persons may be parties even in *in rem* actions.[60] The following are some of the examples of actions *in rem*: petitions directed against the "*thing*" itself or the *res* which concerns the status of a person, like a petition for adoption, correction of entries in the birth certificate; or annulment of marriage; nullity of marriage; petition to establish illegitimate filiation; registration of land under the Torrens system; and forfeiture proceedings.

A proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed.[61] In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening

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[58] *Muñoz v. Atty. Yabut, Jr., et al.*, 665 Phil. 488, 515-516 (2011), citing *Pineda v. Judge Santiago*, 549 Phil. 560, 575 (2007).

[59] *Muñoz v. Atty. Yabut, Jr., et al., supra* at 509.

[60] *De Pedro v. Romasan Development Corp.*, 748 Phil. 706, 725 (2014).

[61] *Sps. Yu v. Pacleb, et al.*, 599 Phil. 354, 367 (2009).

the property.[62] In an action *quasi in rem*, an individual is named as defendant. But, unlike suits in *rem*, a *quasi in rem* judgment is conclusive only between the parties.[63] The following are some of the examples of actions *quasi in rem*: suits to quiet title; actions for foreclosure; and attachment proceedings.

In actions *in personam*, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions *in personam* because they seek to impose personal responsibility or liability upon a person.[64] "*In a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the res. Jurisdiction over the res is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.*"[65]

Here, respondent filed a petition to annul the MeTC's July 26, 2006 Decision, which ordered him to vacate the premises of the subject property and to pay the petitioner the accrued rentals thereon, in violation of the parties' lease contract.

Annulment of judgment, as provided for in Rule 47, is based only on the grounds of extrinsic fraud and lack of jurisdiction. Jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment.[66] It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.[67] It is unlike

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[62] *Macasaet, et al. v. Co, Jr.*, 710 Phil. 167, 178 (2013).

[63] *Portic v. Cristobal*, 496 Phil. 456, 464 (2005).

[64] *De Pedro v. Romasan Development Corp., supra* at 725.

[65] *Alba v. Court of Appeals*, 503 Phil. 451, 459 (2005).

[66] *Diona v. Balangue, et al.*, 701 Phil. 19, 30-31 (2013).

[67] *Macalalag v. Ombudsman*, 468 Phil. 918, 923 (2004).

a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.[68]

Annulment of judgment involves the exercise of original jurisdiction, as expressly conferred on the CA by *Batas Pambansa Bilang* (BP Blg.) 129, Section 9(2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.[69]

For purposes of summons, this Court holds that the nature of a petition for annulment of judgment is *in personam*, on the basis of the following reasons:

First, a petition for annulment of judgment is an original action, which is separate, distinct and independent of the case where the judgment sought to be annulled is rendered. It is not a continuation or progression of the same case. Thus, regardless of the nature of the original action in the decision sought to be annulled, be it *in personam*, *in rem* or *quasi in rem*, the respondent should be duly notified of the petition seeking to annul the court's decision over which the respondent has a direct or indirect interest.

To consider a petition for annulment of judgment as either *in rem* or *quasi-in-rem*, would create an absurdity wherein the petitioner would simply file the petition in court, without informing the respondent of the same, through a valid service of summons. This is exactly what the CA reasoned out in its decision. The CA held that the court need only acquire jurisdiction over the *res*, which was "*through the institution of the petition*

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[68] *Nudo v. Hon. Caguioa, et al.*, 612 Phil. 517, 522 (2009).

[69] *Commissioner of Internal Revenue v. Kepco Ilijan Corporation*, G.R. No. 199422, June 21, 2016, 794 SCRA 193, 203.

for annulment of judgment" with the RTC, conveniently invoking that "*jurisdiction over the res x x x is x x x acquired x x x as a result of the institution of legal proceedings with the court.*"[70] If left unchecked, this disposition would set a dangerous precedent that will sanction a violation of due process. It will foil a respondent from taking steps to protect his interest, merely because he was not previously informed of the pendency of the petition for annulment of judgment filed in court.

Second, a petition for annulment of judgment and the court's subsequent decision thereon will affect the parties alone. It will not be enforceable against the whole world. Any judgment therein will eventually bind only the parties properly impleaded.

Pursuant to Section 7, Rule 47,[71] a judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void.

In this case, had the RTC granted the respondent's petition, the MeTC's July 26 2006 judgment would have been declared a nullity. This would have resulted to the following consequences: as to the respondent, he would no longer be required to pay the rentals and vacate the subject property; and, as to the petitioner, she would be deprived of her right to demand the rentals and to legally eject the respondent. Clearly, through the RTC's judgment on the petition, only the parties' interests, *i.e., rights and obligation*, would have been affected. Thus, a petition for annulment of judgment is one *in personam*. It is neither an action *in rem* nor an action *quasi in rem*.

We disagree with the CA's disquisition that since jurisdiction over the *res* is sufficient to confer jurisdiction on the RTC, the

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

[71] *Section. 7. Effect of judgment.* — A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

jurisdiction over the person of herein petitioner may be dispensed with. Citing the case of *Villanueva v. Nite*,[72] the CA concluded that the petition is not an action *in personam* since it can be filed by one who was not a party to the case. Suffice it to say that in *Villanueva*, this Court did not give a categorical statement to the effect that a petition for annulment of judgment is not an action *in personam*. Neither did We make a remark that said petition is either an action *in rem* or a *quasi in rem*. The issue in *Villanueva* was simply whether or not the CA erred in annulling and setting aside the RTC's decision on the ground of extrinsic fraud. Unlike in this case, there were no issues pertaining to the proper service of summons, to the nature of a petition for annulment of judgment or to the denial of due process by reason of a defect in the service of summons.

We cannot likewise lend credence to the respondent's claim that a petition for annulment of judgment is either an action *in rem* or *quasi in rem*. Suffice it to say that the petition cannot be converted either to an action *in rem* or *quasi in rem* since there was no showing that the respondent attached any of the properties of the petitioner located within the Philippines.[73]

Assuming *arguendo*, that a petition for annulment of judgment is either an action *in rem* or *quasi in rem*, still the observance of due process for purposes of service of summons cannot be deliberately ignored. For courts, as guardians of constitutional rights cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.[74]

There was neither a valid service of summons in person nor a valid substituted service of summons over the person of the petitioner

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[72] 528 Phil. 867 (2006).

[73] *Perkin Elmer Singapore PTE., Ltd. v. Dakila Trading Corp.*, 556 Phil. 822 (2007).

[74] *Yu v. Yu*, G.R. No. 200072, June 20, 2016, 794 SCRA 45, 64.

At any rate, regardless of the type of action — whether it is *in personam*, *in rem* or *quasi in rem* — the proper service of summons is imperative.[75]

Where the action is in *personam* and the defendant is in the Philippines, as in this case, the service of summons may be done by personal or substituted service as laid out in Sections 6[76] and 7[77] of Rule 14. Indeed, the preferred mode of service of summons is personal service.[78] To warrant the substituted service of the summons and copy of the complaint, (or, as in this case, the petition for annulment of judgment), the serving officer must first attempt to effect the same upon the defendant in person. Only after the attempt at personal service has become impossible within a reasonable time may the officer resort to substituted service.[79]

This Court explained the nature and enumerated the requisites of substituted service in *Manotoc v. Court of Appeals, et al.*,[80] which We summarize and paraphrase below:

(1) Impossibility of Prompt Personal Service —

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service.

"Reasonable time" under Section 8, Rule 14, is defined as "so much time as is necessary under the circumstances for a reasonably

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[75] *De Pedro v. Romasan Development Corp., supra* note 60, 706, 727 (2014).

[76] *Section 6. Service in person on defendant*. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

[77] *Section 7. Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

[78] *De Pedro v. Romasan Development Corp., supra* note 60, at 727.

[79] *Macasaet, et al. v. Co, Jr.*, 710 Phil. 167, 170 (2013).

[80] 530 Phil. 454 (2006).

prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party."

To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. Thus, one (1) month from the issuance of summons can be considered "*reasonable time*" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, ***the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant.***

For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one (1) month which eventually resulted in failure to prove impossibility of prompt service. ***"Several attempts" means at least three (3) tries, preferably on at least two (2) different dates. In addition, the sheriff must cite why such efforts were unsuccessful.*** It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return —

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the *Return* to justify substituted service.

(3) A Person of Suitable Age and Discretion —

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and

discretion then residing therein**."* A person of suitable age and discretion is one who has attained the ***age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. ***"Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed."*** Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, ***the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.***

(4) A Competent Person in Charge –

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, ***the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return***. [Emphasis and italics supplied].[81]

A copy of Sheriff Tolentino's *Return* dated July 27, 2007 reads, thus:

OFFICER'S RETURN

This is to certify the on the 27th day of July 2007, the undersigned caused the service of the *Notice of Raffle and Summons* together

[81] *Id*. at 468-471.

with a copy of the complaints and its annexes, to the following defendants, to wit:

BOBBIE ROSE DV FRIAS — served thru Ms. Sally Gonzales, a secretary of her counsel Atty. Daniel S. Frias, a person employed thereat of suitable age and discretion to receive such court processes. Inspite of diligent efforts exerted by the undersigned to effect personal service to the defendant, but still no one's around at her given address.

HON. PAULINO GALLEGOS,
Presiding Judge – MTC Branch LXXX,
Muntinlupa City and Sheriff Armando
Camacho of MTC – Br. 80, Muntinlupa City –
served thru their authorized receiving clerk, Mr. Jay-R Honorica, a person employed thereat of suitable age and discretion to receive such court processes.

As evidenced by their signature's and stamp received appearing on the original copy of the Notice of Raffle and Summons.

WHEREFORE, in view of the foregoing, I am now returning herewith the original copy of the Notice of Raffle and Summons to the Honorable Court of origin, DULY SERVED, for its record's [sic] and information.

Muntinlupa City, July 27, 2007.[82]

A perusal, however, of the Officer's Return discloses that the following circumstances, as required in *Manotoc*, were not clearly-established: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business.[83]

The Officer's Return likewise revealed that no diligent effort was exerted and no positive step was taken to locate and serve

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[82] *Rollo*, p. 85.

[83] *Robinson v. Miralles*, 540 Phil. 1, 6 (2006).

the summons personally on the petitioner. Upon having been satisfied that the petitioner was not present at her given address, Sheriff Tolentino immediately resorted to substituted service of summons by proceeding to the office of Atty. Frias, petitioner's counsel. Evidently, Sheriff Tolentino failed to show that she made several attempts to effect personal service for at least three times on at least two different dates. It is likewise evident that Sheriff Tolentino simply left the "Notice of Raffle and Summons" with Ms. Gonzales, the alleged secretary of Atty. Frias. She did not even bother to ask her where the petitioner might be. There were no details in the Officer's Return that would suggest that Sheriff Tolentino inquired as to the identity of Ms. Gonzales. There was no showing that Ms. Gonzales was the one managing the office or business of the petitioner, such as the president or manager; and that she has sufficient knowledge to understand the obligation of the petitioner in the summons, its importance, and the prejudicial effects arising from inaction on the summons.

Indeed, without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons.[84] This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute.[85] Sheriff Tolentino, however, fell short of these standards. For her failure to faithfully, strictly, and fully comply with the requirements of substituted service, the same is rendered ineffective. As such, the presumption of regularity in the performance of official functions, which is generally accorded to a sheriffs return,[86] does not obtain in this case.

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[84] *Guiguinto Credit Cooperative, Inc. (GUCCI) v. Torres, supra* note 54, at 486.

[85] *Cezar v. Judge Ricafort-Bautista, supra* note 56, at 1047.

[86] *Nation Petroleum Gas, Inc. v. RCBC*, 166 Phil. 696 (2015).

Special appearance to question a court's jurisdiction is not voluntary appearance

In *Prudential Bank v. Magdamit, Jr.*,[87] We had the occasion to elucidate the concept of voluntary or conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority, thus:

> Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of *motions to admit answer, for additional time to file answer: for reconsideration of a default judgment*, and *to lift order of default with motion for reconsideration*, is considered voluntary submission to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.
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> Prescinding from the foregoing, it is thus clear that:
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> (1) Special appearance operates as an exception to the general rule on voluntary appearance;
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> (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, *i.e.*, set forth in an unequivocal manner; and
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> (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.[88]

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[87] 746 Phil. 649 (2014).

[88] *Id*. at 666, citing *Philippine Commercial International Bank v. Spouses Dy*, 606 Phil. 615, 633-634 (2009). Italics supplied.

Measured against these standards, it is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court.

The records show that the petitioner never received any copy of the respondent's petition to annul the final and executory judgment of the MeTC in the unlawful detainer case. As explained earlier, the copy of the said petition which was served to Ms. Gonzales was defective under the Rules of Court. Consequently, in order to question the trial court's jurisdiction, the petitioner filed the following pleadings and motions: *Special Appearance/ Submission (Jurisdictional Infirmity Raised); Preliminary Submission to Dismiss Petition (Special Appearance Raising Jurisdictional Issues); Manifestation and Omnibus Motion to Dismiss Petition for Annulment of Judgment and to Set Aside and/or Reconsider*[89] the RTC's December 3, 2007 *Order, Consolidated Opposition, Manifestation and Reply (to Alcayde's Comment dated August 19, 2008 and Supplement dated November 12, 2008)*; and *Motion for Reconsideration against the RTC's February 2, 2009 Order*.

In all these pleadings and motions, the petitioner never faltered in declaring that the trial court did not acquire jurisdiction over her person, due to invalid and improper service of summons. It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, *i.e.*, to defy the RTC's lack of jurisdiction over her person.

This Court is of the view that the petitioner never abandoned her objections to the trial court's jurisdiction even when she elevated the matter to the CA through her petition for *certiorari*. The filing of her pleadings and motions, including that of her subsequent posturings, were all in protest of the respondent's insistence on holding her to answer the petition for annulment of judgment in the RTC, which she believed she was not subject

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[89] *Rollo*, pp. 158-170.

to. Indeed, to continue the proceeding in such case would not only be useless and a waste of time, but would violate her right to due process.

In its Order dated December 3, 2007, the RTC harped on the fact that petitioner's counsel, Atty. Frias, attended the summary hearing on November 9, 2007 of the respondent's prayer for the issuance of a TRO. This, however, can hardly be construed as voluntary appearance. There was no clear intention on the part of Atty. Frias to be bound by the proceedings. Precisely, his "special" appearance in the hearing was to challenge the RTC's lack of jurisdiction over her client. This Court held in *Ejercito, et al. v. M.R. Vargas Construction, et al.*[90] that the presence or attendance at the hearing on the application of a TRO should not be equated with voluntary appearance, thus:

> Despite Agarao's not being a party-respondent, petitioners nevertheless confuse his presence or attendance at the hearing on the application for TRO with the notion of voluntary appearance, which interpretation has a legal nuance as far as jurisdiction is concerned. ***While it is true that an appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person, the appearance must constitute a positive act on the part of the litigant manifesting an intention to submit to the court's jurisdiction.*** Thus, in the instances where the Court upheld the jurisdiction of the trial court over the person of the defendant, the parties showed the intention to participate or be bound by the proceedings through the filing of a motion, a plea or an answer.
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> Neither is the service of the notice of hearing on the application for a TRO on a certain Rona Adol binding on respondent enterprise. The records show that Rona Adol received the notice of hearing on behalf of an entity named JCB. More importantly, ***for purposes of acquiring jurisdiction over the person of the defendant, the Rules require the service of summons and not of any other court processes***. [Emphasis and italics supplied].[91]

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[90] 574 Phil. 255 (2008).

[91] *Id.* at 267-268.

As we have consistently pronounced, if the appearance of a party in a suit is precisely to question the jurisdiction of the said tribunal over the person of the defendant, then this appearance is not equivalent to service of summons, nor does it constitute an acquiescence to the court's jurisdiction.[92]

To recapitulate, the jurisdiction over the person of the petitioner was never vested with the RTC despite the mere filing of the petition for annulment of judgment. The manner of substituted service by the process server was apparently invalid and ineffective. As such, there was a violation of due process. In its classic formulation, due process means that any person with interest to the thing in litigation, or the outcome of the judgment, as in this case, must be notified and given an opportunity to defend that interest.[93] Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, the petitioner must be properly served the summons of the court. In other words, the service of summons is a vital and indispensable ingredient of due process[94] and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction.[95] Regrettably, as had been discussed, the Constitutional right of the petitioner to be properly served the summons and be notified has been utterly overlooked by the officers of the trial court.

Petition for annulment of judgment is an improper remedy

In any event, respondent's petition to annul the MeTC's July 26, 2006 judgment cannot prosper for being the wrong remedy.

A principle almost repeated to satiety is that an action for annulment of judgment cannot and is not a substitute for the

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[92] *Avon Insurance PLC v. C.A.*, 343 Phil. 849 (1997).

[93] *Borlongan v. Banco De Oro*, G.R. No. 217617, April 5, 2017.

[94] *Express Padala v. Ocampo*, G.R. No. 202505, September 6, 2017.

[95] *Borlongan v. Banco De Oro, supra.*

lost remedy of appeal.[96] Its obvious rationale is to prevent the party from benefiting from his inaction or negligence.[97]

In this case, it is evident that respondent failed to interpose an appeal, let alone a motion for new trial or a petition for relief from the MeTC July 26, 2006 Decision rendering the same final and executory. Hence, the October 30, 2007 Order granting its execution was properly issued.

It is doctrinal that when a decision has acquired finality, the same becomes immutable and unalterable. By this principle of immutability of judgments, the RTC is now precluded from further examining the MeTC Decision and to further dwell on petitioner's perceived errors therein, *i.e., that petitioners' complaint has no cause of action for failure to make a prior demand to pay and to vacate; and, that petitioner failed to refer the case before the barangay*.

Resultantly, the implementation and execution of judgments that had attained finality are already ministerial on the courts. Public policy also dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[98] Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.[99]

Verily, once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution, the issuance of which is the trial court's ministerial duty. So is it in this case.

WHEREFORE, the Petition is **GRANTED.** The Decision dated May 27, 2010 and Resolution dated October 22, 2010 of

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[96] *V.L. Enterprises and/or Faustino J. Visitacion v. CA*, 547 Phil. 87, 92 (2007), citing *Mercado v. Security Bank Corporation*, 517 Phil. 690, 696 (2006).

[97] *V.L. Enterprises and/or Faustino J. Visitacion v. CA, supra*, at 92.

[98] *Mejia-Espinoza, et al. v. Cariño*, G.R. No. 193397, January 25, 2017.

[99] *Id*.

the Court of Appeals in **CA-G.R. SP No. 109824**, are hereby **REVERSED** and **SET ASIDE**, and a new judgment is rendered ordering the **DISMISSAL** of the respondent Rolando F. Alcayde's petition for annulment of judgment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206284. February 28, 2018]

REDANTE SARTO *y* MISALUCHA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; BIGAMY; ELEMENTS.— For a person to be convicted of bigamy, the following elements must concur: (1) that the offender has been legally married; (2) that the first marriage has not been legally dissolved or, in case of an absentee spouse, the absent spouse could not yet be presumed dead according to the provisions of the Civil Code; (3) that the offender contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity.

2. ID.; ID.; ID.; ACCUSED HAS THE BURDEN OF PROVING THE TERMINATION OF THE FIRST MARRIAGE PRIOR TO THE CELEBRATION OF THE SECOND.— Redante admitted that he had contracted two marriages. He, however, put forth the defense of the termination of his first marriage as a result of the divorce obtained abroad by his alien spouse. It is a fundamental principle in this jurisdiction that the burden of proof lies with the party who alleges the existence of a fact

or thing necessary in the prosecution or defense of an action. Since the divorce was a defense raised by Redante, it is incumbent upon him to show that it was validly obtained in accordance with Maria Socorro's country's national law. Stated differently, Redante has the burden of proving the termination of the first marriage prior to the celebration of the second.

3. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; BEFORE THE EFFECTS OF A DIVORCE DECREE OBTAINED ABROAD BY AN ALIEN SPOUSE COULD BE EXTENDED IN THIS JURISDICTION, THE PARTY PLEADING IT MUST PROVE IT AS A FACT AND DEMONSTRATE ITS CONFORMITY TO THE FOREIGN LAW ALLOWING IT.— A divorce decree obtained abroad by an alien spouse is a foreign judgment relating to the status of a marriage. As in any other foreign judgment, a divorce decree does not have an automatic effect in the Philippines. Consequently, recognition by Philippine courts may be required before the effects of a divorce decree could be extended in this jurisdiction. Recognition of the divorce decree, however, need not be obtained in a separate petition filed solely for that purpose. Philippine courts may recognize the foreign divorce decree when such was invoked by a party as an integral aspect of his claim or defense. Before the divorce decree can be recognized by our courts, the party pleading it must prove it as a fact and demonstrate its conformity to the foreign law allowing it. Proving the foreign law under which the divorce was secured is mandatory considering that Philippine courts cannot and could not be expected to take judicial notice of foreign laws. For the purpose of establishing divorce as a fact, a copy of the divorce decree itself must be presented and admitted in evidence. This is in consonance with the rule that a foreign judgment may be given presumptive evidentiary value only after it is presented and admitted in evidence.

4. ID.; ID.; ID.; ID.; DIVORCE DECREE AND FOREIGN LAW, HOW PROVED.— In particular, to prove the divorce and the foreign law allowing it, the party invoking them must present copies thereof and comply with Sections 24 and 25, Rule 132 of the Revised Rules of Court. Pursuant to these rules, the divorce decree and foreign law may be proven through (1) an official publication or (2) or copies thereof attested to by the officer having legal custody of said documents. If the office which

has custody is in a foreign country, the copies of said documents must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (b) authenticated by the seal of his office. Applying the foregoing, the Court is convinced that Redante failed to prove the existence of the divorce as a fact or that it was validly obtained prior to the celebration of his subsequent marriage to Fe.

5. CRIMINAL LAW; REVISED PENAL CODE; BIGAMY; ACCUSED SHALL BE HELD LIABLE FOR BIGAMY WHERE HE FAILED TO PROVE THAT HE HAD THE CAPACITY TO REMARRY WHEN HE CONTRACTED A SUBSEQUENT MARRIAGE. — Aside from the testimonies of Redante and Maria Socorro, the only piece of evidence presented by the defense to prove the divorce, is the certificate of divorce allegedly issued by the registrar of the Supreme Court of British Columbia on 14 January 2008. x x x. This certificate of divorce, however, is utterly insufficient to rebut the charge against Redante. *First*, the certificate of divorce is not the divorce decree required by the rules and jurisprudence. x x x , [T]he divorce decree required to prove the fact of divorce is the judgment itself as rendered by the foreign court and not a mere certification. *Second*, assuming the certificate of divorce may be considered as the divorce decree, it was not accompanied by a certification issued by the proper Philippine diplomatic or consular officer stationed in Canada, as required under Section 24 of Rule 132. *Lastly*, no copy of the alleged Canadian law was presented by the defense. Thus, it could not be reasonably determined whether the subject divorce decree was in accord with Maria Socorro's national law. Further, since neither the divorce decree nor the alleged Canadian law was satisfactorily demonstrated, the type of divorce supposedly secured by Maria Socorro - whether an absolute divorce which terminates the marriage or a limited divorce which merely suspends it — and whether such divorce capacitated her to remarry could not also be ascertained. As such, Redante failed to prove his defense that he had the capacity to remarry when he contracted a subsequent marriage to Fe. His liability for bigamy is, therefore, now beyond question.

APPEARANCES OF COUNSEL

Obias Ramos Rosario & Associates Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari seeking to reverse and set aside the 31 July 2012 Decision[1] and the 6 March 2013 Resolution[2] of the Court of Appeals (*CA*), in CA-G.R. CR No. 32635, which affirmed the 18 May 2009 Decision[3] of the Regional Trial Court, Branch 26, Naga City (*RTC*), in Criminal Case No. 2007-0400 finding petitioner Redante Sarto y Misalucha (*Redante*) guilty beyond reasonable doubt of Bigamy.

THE FACTS

On 3 October 2007, Redante was charged with the crime of bigamy for allegedly contracting two (2) marriages: the first, with Maria Socorro G. Negrete (*Maria Socorro*), and the second, without having the first one legally terminated, with private complainant Fe R. Aguila (*Fe*). The charge stemmed from a criminal complaint filed by Fe against Redante on 4 June 2007. The accusatory portion of the Information reads:

> That on or about December 29, 1998, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, having been previously united in lawful marriage with one Ma. Socorro G. Negrete, as evidenced by hereto attached Certificate of Marriage mark as Annex "A," and without said marriage having been legally dissolved, did then and there, willfully and feloniously contract a second marriage with FE R.

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[1] *Rollo,* pp. 18-26. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Japar B. Dimaampao and Elihu A. Ybanez, concurring.

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

[3] Records, pp. 151-157.

AGUILA-SARTO, herein complaining witness, to her damage and prejudice.

CONTRARY TO LAW.[4]

During his arraignment on 3 December 2007, Redante entered a plea of "not guilty." Pre-trial ensued wherein Redante admitted that he had contracted two marriages but interposed the defense that his first marriage had been legally dissolved by divorce obtained in a foreign country.

On 22 May 2008, the defense filed a motion to allow the taking of Maria Socorro's deposition considering that she was set to leave the country on the first week of June 2008.[5] This was granted by the RTC in its Order,[6] dated 26 May 2008. Maria Socorro's deposition was taken on 28 May 2008.

On 22 August 2008, the prosecution moved for a modified or reverse trial on the basis of Redante's admissions.[7] The RTC granted the motion in its Order,[8] dated 27 August 2008, wherein the defense was directed to present its case ahead of the prosecution.

Evidence for the Defense

The defense presented Redante and Maria Socorro as witnesses. Their testimonies, taken together, tended to establish the following:

Redante and Maria Socorro, both natives of Buhi, Camarines Sur, were married on 31 August 1984 in a ceremony held in Angono, Rizal.[9] Sometime thereafter, Maria Socorro left for Canada to work as a nurse. While in Canada, she applied for

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[4] *Id*. at 1.

[5] *Id*. at 78-79.

[6] *Id*. at 80.

[7] *Id*. at 100-101.

[8] *Id*. at 103.

[9] TSN, 28 May 2008, p. 7.

Canadian citizenship. The application was eventually granted and Ma. Socorro acquired Canadian citizenship on 1 April 1988.[10] Maria Socorro then filed for divorce in British Columbia, Canada, to sever her marital ties with Redante. The divorce was eventually granted by the Supreme Court of British Columbia on 1 November 1988.[11]

Maria Socorro came back to Buhi, Camarines Sur, sometime in 1992 for a vacation. While there Redante's mother and grandparents, who were against the divorce, convinced her and Redante to give their marriage a second chance to which they acceded. Their attempts to rekindle their romance resulted in the birth of their daughter on 8 March 1993 in Mandaluyong City. In spite of this, Redante and Maria Socorro's efforts to save their marriage were futile.[12]

Sometime in February 1998, Redante met Fe to whom he admitted that he was previously married to Maria Socorro who, however, divorced him.[13] Despite this admission, their romance blossomed and culminated in their marriage on 29 December 1998 at the Peñafrancia Basilica Minore in Naga City.[14] They established a conjugal home in Pasay City and had two children. Their relationship, however, turned sour when Ma. Socorro returned to the Philippines and met with Redante to persuade him to allow their daughter to apply for Canadian citizenship. After learning of Redante and Maria Socorro's meeting and believing that they had reconciled, Fe decided to leave their conjugal home on 31 May 2007.[15] On 4 June 2007, Fe filed a complaint for bigamy against Redante.[16]

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[10] *Id*. at 4.

[11] *Id*. at 7; Records p. 36, Exh. (3.)

[12] *Id*. at 10.

[13] TSN, 27 October 2008, pp. 7-8.

[14] *Id*. at 3.

[15] *Id*. at 10.

[16] Records, pp. 3-4.

Meanwhile, Maria Socorro married a certain Douglas Alexander Campbell, on 5 August 2000, in Chilliwack, British Columbia, Canada.[17]

The defense presented a Certificate of Divorce[18] issued on 14 January 2008, to prove the fact of divorce.

Evidence for the Prosecution

The prosecution waived the presentation of testimonial evidence and presented instead, the Marriage Contract[19] between Redante and Maria Socorro, to prove the solemnization of their marriage on 31 August1984, in Angono, Rizal; and the Marriage Contract[20] of Redante and Fe to prove the solemnization of Redante's second marriage on 29 December 1998, in Naga City. The prosecution also adopted the Certificate of Divorce[21] as its own exhibit for the purpose of proving that the same was secured only on 14 January 2008.

The RTC Ruling

In its judgment, the RTC found Redante guilty beyond reasonable doubt of the crime of bigamy. The trial court ratiocinated that Redante's conviction is the only reasonable conclusion for the case because of his failure to present competent evidence proving the alleged divorce decree; his failure to establish the naturalization of Maria Socorro; and his admission that he did not seek judicial recognition of the alleged divorce decree. The dispositive portion of the decision reads:

WHEREFORE, finding the accused Redante Sarto y Misalucha guilty beyond reasonable doubt for the crime of Bigamy punishable under Article 349 of the Revised Penal Code, and after applying the Indeterminate Sentence Law, this Court hereby sentenced him an

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[17] TSN, 28 May 2008, p. 8.

[18] Records, p. 36, Exhibit "3".

[19] *Id*. at 34, Exh. "A".

[20] *Id*. at 35, Exh. "B".

[21] *Id*. at 36, Exh. "C".

imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.[22]

Aggrieved, Redante appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed the RTC's Judgment. The appellate court ratiocinated that assuming the authenticity and due execution of the Certificate of Divorce, since the order of divorce or the divorce decree was not presented, it could not ascertain whether said divorce capacitated Maria Socorro, and consequently Redante, to remarry. It continued that Redante failed to present evidence that he had filed and had secured a judicial declaration that his first marriage had been dissolved in accordance with Philippine laws prior to the celebration of his subsequent marriage to Fe. The dispositive portion of the assailed decision provides:

> WHEREFORE, the Judgment of the Regional Trial Court convicting appellant Redante Sarto y Misalucha of Bigamy in Criminal Case No. 2007-0400, is AFFIRMED.[23]

Redante moved for reconsideration, but the same was denied by the CA in its 6 March 2013 resolution.

Hence, the present petition.

On 26 June 2013, the Court issued a Resolution[24] requiring the respondent Republic of the Philippines to file its comment.

The OSG's Manifestation

In compliance with this Court's resolution, the respondent, through the Office of the Solicitor General (*OSG*), filed its Manifestation (in lieu of Comment)[25] advocating Redante's

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[22] *Id*. at 157.

[23] *Rollo*, p. 26.

[24] *Id*. at 34.

[25] *Id*. at 43-55.

acquittal. The OSG argued that the RTC had convicted Redante solely because of his failure to provide evidence concerning the date when Maria Socorro acquired Canadian citizenship. It observed that Maria Socorro failed to provide the exact date when she acquired Canadian citizenship because of the loss of her citizenship certificate at the time she took the witness stand.The OSG claimed, however, that Redante was able to submit, although belatedly, a photocopy of Maria Socorro's Canadian citizenship certificate as an attachment to his appellant's brief. The said certificate stated that Maria Socorro was already a Canadian citizen as early as 1 April 1988; hence, the divorce decree which took effect on 1 November 1988 is valid. The OSG further averred that substantial rights must prevail over the application of procedural rules.

ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED WHEN THEY FOUND PETITIONER REDANTE SARTO y MISALUCHA GUILTY BEYOND REASONABLE DOUBT OF BIGAMY.

THE COURT'S RULING

The petition is bereft of merit.

Elements of bigamy; burden of proving the termination of the first marriage.

For a person to be convicted of bigamy, the following elements must concur: (1) that the offender has been legally married; (2) that the first marriage has not been legally dissolved or, in case of an absentee spouse, the absent spouse could not yet be presumed dead according to the provisions of the Civil Code; (3) that the offender contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity.[26]

Redante admitted that he had contracted two marriages. He, however, put forth the defense of the termination of his first

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[26] *Antone v. Beronilla*, 652 Phil. 151, 166 (2010).

marriage as a result of the divorce obtained abroad by his alien spouse.

It is a fundamental principle in this jurisdiction that the burden of proof lies with the party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action.[27] Since the divorce was a defense raised by Redante, it is incumbent upon him to show that it was validly obtained in accordance with Maria Socorro's country's national law.[28] Stated differently, Redante has the burden of proving the termination of the first marriage prior to the celebration of the second.[29]

Redante failed to prove his capacity to contract a subsequent marriage.

A divorce decree obtained abroad by an alien spouse is a foreign judgment relating to the status of a marriage. As in any other foreign judgment, a divorce decree does not have an automatic effect in the Philippines. Consequently, recognition by Philippine courts may be required before the effects of a divorce decree could be extended in this jurisdiction.[30] Recognition of the divorce decree, however, need not be obtained in a separate petition filed solely for that purpose. Philippine courts may recognize the foreign divorce decree when such was invoked by a party as an integral aspect of his claim or defense.[31]

Before the divorce decree can be recognized by our courts, the party pleading it must prove it as a fact and demonstrate its conformity to the foreign law allowing it. Proving the foreign law under which the divorce was secured is mandatory considering that Philippine courts cannot and could not be

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[27] *Garcia v. Recio*, 418 Phil. 723, 735 (2001).

[28] *Vda. de Catalan v. Catalan-Lee*, 681 Phil. 493, 500 (2012).

[29] *Marbella-Bobis v. Bobis*, 391 Phil. 648, 656 (2000).

[30] *Fujiki v. Marinay*, 712 Phil. 524, 546 (2013).

[31] *Van Dorn v. Romillo*, 223 Phil. 357-363 (1985); *Corpuz v. Sto. Tomas*, 642 Phil. 420, 432-433 (2010); *Noveras v. Noveras,* 741 Phil. 670, 682 (2014).

expected to take judicial notice of foreign laws.[32] For the purpose of establishing divorce as a fact, a copy of the divorce decree itself must be presented and admitted in evidence. This is in consonance with the rule that a foreign judgment may be given presumptive evidentiary value only after it is presented and admitted in evidence.[33]

In particular, to prove the divorce and the foreign law allowing it, the party invoking them must present copies thereof and comply with Sections 24 and 25, Rule 132 of the Revised Rules of Court.[34] Pursuant to these rules, the divorce decree and foreign law may be proven through (1) an official publication or (2) or copies thereof attested to by the officer having legal custody of said documents. If the office which has custody is in a foreign country, the copies of said documents must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (b) authenticated by the seal of his office.[35]

Applying the foregoing, the Court is convinced that Redante failed to prove the existence of the divorce as a fact or that it was validly obtained prior to the celebration of his subsequent marriage to Fe.

Aside from the testimonies of Redante and Maria Socorro, the only piece of evidence presented by the defense to prove the divorce, is the certificate of divorce allegedly issued by the registrar of the Supreme Court of British Columbia on 14 January 2008. Said certificate provides:

> In the Supreme Court of British Columbia
> Certificate of Divorce
>
> This is to certify that Ma. Socorro Negrete SARTO and Redante M SARTO who were married at ANGONO, RIZAL, PHILIPPINES on

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[32] *Amor-Catalan v. Court of Appeals*, 543 Phil, 568, 576 (2007).

[33] *Vda. de Catalan v. Catalan-Lee*, *supra* note 28 at 499.

[34] *ATCI Overseas Corporation v. Echin*, 647 Phil. 43, 50 (2010).

[35] *Vda.de Catalan v. Catalan-Lee*, *supra* note 33; *San Luiz v. San Luiz*, 543 Phil. 275, 294 (2007).

August 31, 1984 were divorced under the Divorce Act (Canada) by an order of this Court which took effect and dissolved the marriage on November 1, 1988.

Given under my hand and the Seal of this Court
January 14, 2008

(SGD.)
REGISTRAR

This certificate of divorce, however, is utterly insufficient to rebut the charge against Redante. *First*, the certificate of divorce is not the divorce decree required by the rules and jurisprudence. As discussed previously, the divorce decree required to prove the fact of divorce is the judgment itself as rendered by the foreign court and not a mere certification. *Second*, assuming the certificate of divorce may be considered as the divorce decree, it was not accompanied by a certification issued by the proper Philippine diplomatic or consular officer stationed in Canada, as required under Section 24 of Rule 132. *Lastly*, no copy of the alleged Canadian law was presented by the defense. Thus, it could not be reasonably determined whether the subject divorce decree was in accord with Maria Socorro's national law.

Further, since neither the divorce decree nor the alleged Canadian law was satisfactorily demonstrated, the type of divorce supposedly secured by Maria Socorro — whether an absolute divorce which terminates the marriage or a limited divorce which merely suspends it[36] — and whether such divorce capacitated her to remarry could not also be ascertained. As such, Redante failed to prove his defense that he had the capacity to remarry when he contracted a subsequent marriage to Fe. His liability for bigamy is, therefore, now beyond question.

This Court is not unmindful of the second paragraph of Article 26 of the Family Code. Indeed, in *Republic v. Orbecido*,[37] a case invoked by Redante to support his cause, the Court recognized that the legislative intent behind the said provision

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[36] *Garcia v. Recio, supra* note 27 at 735-736.

[37] 509 Phil. 108, 114 (2005).

is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse under the laws of his or her country. The Court is also not oblivious of the fact that Maria Socorro had already remarried in Canada on 5 August 2000.These circumstances, however, can never justify the reversal of Redante's conviction.

In *Orbecido,* as in Redante's case,the alien spouse divorced her Filipino spouse and remarried another. The Filipino spouse then filed a petition for authority to remarry under paragraph 2 of Article 26. His petition was granted by the RTC. However, this Court set aside said decision by the trial court after finding that the records were bereft of competent evidence concerning the divorce decree and the naturalization of the alien spouse. The Court reiterated therein the rules regarding the recognition of the foreign divorce decree and the foreign law allowing it, as well as the necessity to show that the divorce decree capacitated his former spouse to remarry.[38]

Finally, the Court notes that the OSG was miserably misguided when it claimed that the sole reason for the RTC's judgment of conviction was Redante's failure to provide evidence, during trial, of the date Maria Socorro acquired Canadian citizenship.

An examination of the 18 May 2009 judgment would reveal that the trial court rendered the said decision after finding that there was lack of any competent evidence with regard to the divorce decree[39] and the national law governing his first wife,[40] not merely because of the lack of evidence concerning the effectivity date of Maria Socorro's naturalization. Thus, even if the Court were to indulge the OSG and consider Maria Socorro's citizenship certificate, which was a mere photocopy and filed belatedly, it would not have any effect significant enough to produce a judgment of acquittal. The fact that Redante

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[38] *Id*. at 116.

[39] CA *rollo*, p. 19.

[40] *Id*. at 21.

failed to prove the existence of the divorce and that it was validly acquired prior to the celebration of the second marriage still subsists.

WHEREFORE, the present petition is **DENIED** for lack of merit. The assailed Decision, dated 31 July 2012, of the Court of Appeals in CA-G.R. CR No. 32635 which affirmed the 18 May 2009 Judgment of the Regional Trial Court, Branch 26, Naga City, in Criminal Case No. 2007-0400 is hereby **AFFIRMED.** Petitioner Redante Sarto y Misalucha is found GUILTY beyond reasonable doubt of the crime of bigamy and is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211153. February 28, 2018]

AMPARO S. CRUZ; ERNESTO HALILI; ALICIA H. FLORENCIO; DONALD HALILI; EDITHA H. RIVERA; ERNESTO HALILI, JR.; and JULITO HALILI, *petitioners, vs.* **ANGELITO S. CRUZ, CONCEPCION S. CRUZ, SERAFIN S. CRUZ, and VICENTE S. CRUZ,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; THE CHILDREN OF THE DECEASED SHALL ALWAYS INHERIT FROM HIM IN

THEIR OWN RIGHT, DIVIDING THE INHERITANCE IN EQUAL SHARES; THE SHARES OF THE CO-HEIRS WHO RENOUNCED THEIR INHERITANCE SHALL ACCRUE TO THE REMAINING CO-HEIRS, IN EQUAL SHARES AS WELL.— [T]his is a simple case of exclusion in legal succession, where co-heirs were effectively deprived of their rightful share to the estate of their parents who died without a will — by virtue of a defective deed of extrajudicial settlement or partition which granted a bigger share to one of the heirs and was prepared in such a way that the other heirs would be effectively deprived of discovering and knowing its contents. Under the law, "[t]he children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares." In this case, two of Concepcion's co-heirs renounced their shares in the subject property; their shares therefore accrued to the remaining co-heirs, in equal shares as well.

2. **ID.; ID.; ID.; ID.; AN EXTRAJUDICIAL SETTLEMENT OR PARTITION WHICH EFFECTIVELY DEPRIVED CO-HEIRS OF THEIR RIGHTFUL SHARES TO THE ESTATE IS A TOTAL NULLITY, AND THE ACTION TO HAVE IT ANNULLED DOES NOT PRESCRIBE. —** In *Bautista v. Bautista*, it was held that — x x x. The extra-judicial partition executed by Teofilos co-heirs was invalid, however. So *Segura v. Segura* instructs: x x x The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under the rule, 'no extra-judicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.' As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years x x x The deed of extra-judicial partition in the case at bar being invalid, the action to have it annulled does not prescribe. x x x. Thus, while the CA was correct in ruling in favor of Concepcion and setting aside the subject deed of extrajudicial settlement, it erred in appreciating and ruling that the case involved fraud — thus applying the four-year prescriptive period — when it should have simply held that the action for the declaration of nullity of the defective deed of extrajudicial settlement does not prescribe, under the circumstances, given that the same was a total nullity. Clearly, the issue of literacy

is relevant to the extent that Concepcion was effectively deprived of her true inheritance, and not so much that she was defrauded.

APPEARANCES OF COUNSEL

Pedro T. Santos, Jr. for petitioners.
Jose V. Nitura, Jr. for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the June 25, 2013 Decision[2] and January 29, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV. No. 96345 which, respectively, granted herein respondents' appeal and reversed the June 1, 2010 Decision[4] of the Regional Trial Court of San Mateo, Rizal, Branch 75 (RTC) in Civil Case No. 1380-98 SM, and denied petitioners' motion for reconsideration thereto.

Factual Antecedents

In an Amended Complaint[5] filed on April 6, 1999 and docketed with the RTC as Civil Case No. 1380-98 SM, respondents Angelito S. Cruz, Concepcion S. Cruz (Concepcion), and Serafin S. Cruz alleged that they—together with their siblings, petitioner Amparo S. Cruz (Amparo) and Antonia Cruz (Antonia)—inherited a 940-square-meter parcel of land (the subject property) from their late parents, spouses Felix and Felisa Cruz, which land was covered by Original Certificate of Title No. ON-658; that on July 31, 1986, the parties executed a deed of extrajudicial

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[1] *Rollo*, pp. 6-24.

[2] *Id.* at 47-61; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

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

[4] *Id*. at 40-46; penned by Presiding Judge Manuel R. Taro.

[5] *Id*. at 25-30.

settlement of estate covering the subject property, on the agreement that each heir was to receive an equal portion of the subject property as mandated by law; that in 1998, when the subject property was being subdivided and the subdivision survey plan was shown to respondents, they discovered that Antonia was allocated two lots, as against one (1) each for the respondents; that Antonia's allocation of two lots contravened the agreement among the heirs that they would receive equal shares in the subject property; that Amparo and Antonia were able to perpetrate the fraud by inducing Concepcion—who was illiterate—to sign the deed of extrajudicial settlement of estate, which was written in the English language, without previously reading and explaining the contents thereof to the latter; that Amparo and Antonia fraudulently took advantage of Concepcion's ignorance and mental weakness, deceiving and cajoling her into signing the deed of extrajudicial settlement, to her damage and injury; and that Antonia passed away, but left as her heirs herein petitioners Ernesto Halili, Alicia H. Florencio, Donald Halili, Editha H. Rivera, Ernesto Halili, Jr. and Julito Halili, who are in possession of the two lots allocated to Antonia. Respondents thus prayed, as follows:

> In view of the foregoing, it is respectfully prayed that after due hearing, judgment be rendered as follows:
>
> 1. Declaring null and void the extra-judicial settlement executed by the parties on July 31, 1986;
>
> 2. Declaring one of the lots adjudicated to defendant Antonia Cruz-Halili to the common fund;
>
> 3. For such other relief just and equitable under the circumstances;
>
> 4. To pay the cost of this suit.[6]

In their Answer,[7] petitioners prayed for dismissal, claiming that the July 31, 1986 deed of extrajudicial settlement of estate had been voluntarily and freely executed by the parties, free

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[6] *Id*. at 28.

[7] *Id*. at 31-38.

from vitiated consent; that respondents' cause of action has prescribed; that the complaint failed to state a cause of action; and that no earnest efforts toward compromise have been made. By way of counterclaim, petitioners prayed for an award of moral and exemplary damages, attorney's fees, and costs of suit.

Ruling of the Regional Trial Court

After trial, the RTC rendered its Decision dated June 1, 2010, pronouncing as follows:

> From the foregoing, the main issue is whether or not the extrajudicial settlement is null and void on grounds of fraud, deceit, misrepresentation or mistake.
>
> x x x x x x x x x
>
> Besides, while the Extra-Judicial Settlement was executed and signed on July 13, 1986[8] x x x, and alleged fraud was discovered on May 12, 1986 when subdivision survey was conducted x x x and defendants started to build their houses x x x this petition was filed only on August 14, 1998 or more than 10 years from date of execution or date of discovery of alleged fraud. Under Art. 1144 Civil Code, actionable documents prescribes [sic] in 10 years. However, if a property is allegedly acquired thru fraud or mistake, the person obtaining it is, by force of law, considered an implied trustee for the benefit of the person deprived of it, in which case the action based thereon is 10 years from date of registration of the extra-judicial settlement or issuance of new certificate of title (Art. 1456 Civil Code x x x). Hence, this petition is not barred by prescription. As the period is not too long nor short, laches has not yet set in.
>
> Moreover, fraud, as basis of the Complaint, is not delineated therein with particularity. Under Sec. 5 Rule 8, fraud must be alleged specifically, not generally. Nonetheless, apart from such allegations, no clear and convincing evidence was presented by plaintiffs. For one, while plaintiff Concepcion Cruz-Enriquez is admittedly only grade 3 and could hardly understand English as what is written in the extra-judicial settlement which was not even allegedly fully explained to her, it appears that she can absolutely read and write, and understand English albeit not fully. And as she is deeply interested

[8] Should be "July 31, 1986."

in her inheritance share, she is aware of the import and consequences of what she executed and signed. For the past 10 years, there is no way she could feign ignorance of the alleged fraud and make passive reactions or complaint thereof. Being adversely interested in the property, her apprehensions were purely in the state of her mind, if not unilateral and afterthought.

Secondly, just like any other contracts, parties in an extra-judicial settlement are given wide latitude to stipulate terms and conditions they feel fair and convenient beneficial to one and prejudicial to the other. By tradition and good customs, equality is relaxed if only to buy peace, or out of compassion or courtesy. So long as not contrary to strict provisions of the law, the supremacy of contracts shall be respected.

Being consensual, extra-judicial settlement is deemed perfected once mutual consent is manifested. Notarization being a mere formality, whatever its infirmity cannot invalidate a contract but at most, merely ensue to administrative sanction on the part of their notary. Even so, unless a strong clear and convincing evidence is shown, a document, one appeared notarized [sic], becomes a public document. As between a public document and mere allegations of plaintiffs, the former prevails x x x.

Thirdly, for the past 10 years from 1996 [sic] when they forged an extra-judicial settlement and defendants admittedly started constructing their house and even made a subdivision survey, plaintiffs also occupied their allotted lots but never complain [sic] and even attended their reunions x x x. Other heirs also waived or sold shares to Amparo and Antonia Cruz x x x. Parties were even unified and unanimous in surrendering dominion of their parents' ancestral house in favor of Antonia Cruz alone x x x. As such, two lots would necessarily accrue to Antonia Cruz, and only one lot each should belong to other heirs. If the heirs are contented and unanimously conformable, it is quite absurd that only plaintiff Concepcion Cruz-Enriquez was disagreeable and yet, after the lapse of 10 years. Her conduct then belies her present claim of being defrauded and prejudiced x x x. And in the interpretation of stipulations, clarification may be had from such subsequent acts of the parties x x x. Even so, in case of conflict or dual interpretations, its validity shall be preferred x x x.

Fourthly, other than simply alleging that her sisters Amparo Cruz and Antonia Cruz prepared the extra-judicial settlement, and made a house-to-house visit to have it signed by their brothers and sisters

including plaintiff Concepcion Cruz-Enriquez, no other independent facts aliunde has [sic] been adduced to substantiate or the least corroborate actual fraud. Fraud cannot be presumed. It must be proven. Mere allegation is not evidence. Rather, if ever both defendants were eager to have it signed, their motive appears to be solely to reduce in writing their imperfect title over a thing already pre-owned.

Peremptorily, following the tenet "allegata et non probata," he who alleges has the burden of proof. Thus, the burden of proof lies on the pleader. He cannot be allowed to draw preponderance of evidence on the weakness of the respondent. Otherwise, the relief being sought must necessarily fail x x x Hence, this case must be dismissed.

And as plaintiffs filed this petition relying on their unilateral perception that plaintiff Concepcion Cruz-Enriquez was prejudiced by the 2 lots for defendant Antonia Cruz, they and defendants shall each bear their own costs of litigation and defense.

WHEREFORE, premises considered, the Complaint is hereby ordered *DISMISSED*. Costs de-officio.

SO ORDERED.[9] (Citations omitted)

Ruling of the Court of Appeals

Respondents appealed before the CA, which completely reversed and set aside the RTC's judgment and the parties' deed of extrajudicial settlement. The appellate court held:

The sole issue in this case is whether the consent given by appellant Concepcion to the subject extrajudicial settlement of estate was given voluntarily.

We hold that it was not.

Although the action commenced by appellants before the trial court was a declaration of nullity of the deed of extrajudicial settlement of estate, the case was clearly an action to annul the same. A distinction between an action for annulment and one for declaration of nullity of an agreement is called for.

An action for annulment of contract is one filed where consent is vitiated by lack of legal capacity of one of the contracting parties,

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[9] *Rollo*, pp. 43-46.

or by mistake, violence, intimidation, undue influence or fraud. By its very nature, annulment contemplates a contract which is *voidable*, that is, valid until annulled. Such contract is binding on all the contracting parties until annulled and set aside by a court of law. It may be ratified. An action for annulment of contract has a four-year prescriptive period.

On the other hand, an action for declaration of nullity of contract presupposes a *void* contract or one where all of the requisites prescribed by law for contracts are present but the cause, object or purpose is contrary to law, morals, good customs, public order or public policy, prohibited by law or declared by law to be void. Such contract as a rule produces no legal and binding effect even if it is not set aside by direct legal action. Neither may it be ratified. An action for the declaration of nullity of contract is imprescriptible.

The appellants' pleading was for declaration of nullity of the deed of extrajudicial settlement of estate. However, this did not necessarily mean that appellants' action was dismissible.

Granting that the action filed by appellants was incompatible with their allegations, it is not the caption of the pleading but the allegations that determine the nature of the action. The court should grant the relief warranted by the allegations and the proof even if no such relief is prayed for. In this case, the allegations in the pleading and the evidence adduced point to no other remedy but to annul the extrajudicial settlement of estate because of vitiated consent.

The essence of consent is the agreement of the parties on the terms of the contract, the acceptance by one of the offer made by the other. It is the concurrence of the minds of the parties on the object and the cause which constitutes the contract. The area of agreement must extend to all points that the parties deem material or there is no consent at all.

To be valid, consent must meet the following requisites: (a) it should be intelligent, or with an exact notion of the matter to which it refers; (b) it should be free; and (c) it should be spontaneous. Intelligence in consent is vitiated by error; freedom by violence, intimidation or undue influence; and spontaneity by fraud.

Here, appellant Concepcion clearly denied any knowledge of the import and implication of the subject document she signed, the subject extra-judicial settlement. She asserted that she does not understand English, the language in which the terms of the subject document

she signed was written. To quote a part of her testimony, translated in English, as follows:

Q: Did you have occasion to read that document before you affixed your signature on it?
A: The document was written in English and me as well as my brothers and sisters, we trusted our younger sister, sir.

Q: That is why you signed the document even though you did not understand the same?
A: Yes, sir.

Court:

Did you not ask your younger sister Amparo to read this document considering it was in English? I will reform the question.

Q: But you don't know how to read English?
A: No, your Honor.

Q: When you saw that the document was in English, did you not ask your younger sister to read the document before you affixed your signature?
A: No, your Honor.

Q: Why did you not ask Amparo to read the document to you considering that it was in English and you don't understand English?
A: *Parti-partihan daw po at nagtiwala ako*, your Honor.

Appellant Concepcion invoked Articles 24 and 1332 of the Civil Code of the Philippines, which provide:

> ART. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.
>
> ART. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. x x x

Article 1332 was a provision taken from [A]merican law, necessitated by the fact that there continues to be a fair number of

people in this country without the benefit of a good education or documents have been written in English or Spanish. The provision was intended to protect a party to a contract disadvantaged by illiteracy, ignorance, mental weakness or some other handicap. It contemplates a situation wherein a contract is entered into but the consent of one of the contracting parties is vitiated by mistake or fraud committed by the other.

Thus, in case one of the parties to a contract is unable to read and fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. Where a party is unable to read, and he expressly pleads in his reply that he signed the voucher in question 'without knowing its contents which have not been explained to him,' this plea is tantamount to one of mistake or fraud in the execution of the voucher or receipt in question and the burden is shifted to the other party to show that the former fully understood the contents of the document; and if he fails to prove this, the presumption of mistake (if not fraud) stands unrebutted and controlling.

Here, at the time appellant Concepcion signed the document in question, she was with appellee Amparo. Appellant could not possibly have read the contents of the extra-judicial settlement and could not have consented to a contract whose terms she never knew nor understood. It cannot be presumed that appellant Concepcion knew the contents of the extra-judicial settlement. Article 1332 of the Civil Code is applicable in these circumstances.

Although under Art. 1332 there exists a *presumption of mistake or error* accorded by law to those who have not had the benefit of a good education, one who alleges any defect or the lack of a valid consent to a contract must establish the same by full, clear and convincing evidence, not merely by preponderance of evidence. Hence, even as the burden of proof shifts to the defendants x x x to rebut the *presumption of mistake*, the plaintiff x x x who allege(s) such mistake (or fraud) must show that his personal circumstances warrant the application of Art. 1332.

In this case, the presumption of mistake or error on the part of appellant Concepcion was not sufficiently rebutted by appellees. Appellees failed to offer any evidence to prove that the extrajudicial settlement of estate was explained in a language known to the appellant Concepcion, *i.e.* in Pilipino. Clearly, appellant Concepcion, who only finished Grade 3, was not in a position to give her free, voluntary

and spontaneous consent without having the document, which was in English, explained to her in the Pilipino. She stated in open court that she did not understand English. Her testimony as quoted above is instructive.

Due to her limited educational attainment, appellant Concepcion could not understand the document in English. She wanted to seek assistance. However, due to the misrepresentation, deception and undue pressure of her sister appellee Amparo, petitioner signed the document. Appellant Concepcion was assured that she would receive her legitimate share in the estate of their late parents.

Later on, appellant Concepcion found out that appellee Antonia received two (2) lots compared to her siblings, including appellant Concepcion, who respectively received one (1) lot each. This was a substantial mistake clearly prejudicial to the substantive interests of appellant Concepcion in her parent's estate. There is no doubt that, given her lack of education, appellant Concepcion is protected by Art. 1332 of the Civil Code. There is reason to believe that, had the provisions of the extrajudicial agreement been explained to her in the Pilipino language, she would not have consented to the significant and unreasonable diminution of her rights.

Atty. Edgardo C. Tagle, the officer who notarized the extrajudicial settlement did not state that he explained the contents to all the parties concerned. The records or the subject document for that matter, do not reflect that he explained the contents of the document to appellant Concepcion nor to the other parties in a language or dialect known to all of them. Significantly, the appellants even denied their presence during the notarization of the document.

Therefore, the presumption of mistake under Article 1332 is controlling, having remained unrebutted by appellees. The evidence proving that the document was not fully explained to appellant Concepcion in a language known to her, given her low educational attainment, remained uncontradicted by appellees x x x the consent of petitioner was invalidated by a substantial mistake or error, rendering the agreement voidable. The deed of extrajudicial settlement between appellants and appellees should therefore be annulled and set aside on the ground of mistake.

In *Rural Bank of Caloocan, Inc. v. Court of Appeals*, the Supreme Court ruled that a contract may be annulled on the ground of vitiated consent, even if the act complained of is committed by a third party

without the connivance or complicity of one of the contracting parties. It found that a substantial mistake arose from the employment of fraud or misrepresentation. The plaintiff in that case was a 70-year old unschooled and unlettered woman who signed an unauthorized loan obtained by a third party on her behalf. The Court annulled the contract due to a substantial mistake which invalidated her consent.

By the same reasoning, if it is one of the contracting parties who commits the fraud or misrepresentation, such contract may all the more be annulled due to substantial mistake.

In *Remalante v. Tibe*, the Supreme Court ruled that misrepresentation to an illiterate woman who did not know how to read and write, nor understand English, is fraudulent. Thus, the deed of sale was considered vitiated with substantial error and fraud. x x x

x x x x x x x x x

Evidently, the applicable prescriptive period to institute the action to annul the deed of extrajudicial settlement was four (4) years counted from the discovery of fraud as held in the case of *Gerona v. De Guzman*.[10] The records show that appellants' complaint was filed on 17 August 1998 or twelve (12) years from the execution of the deed. However, as appellants are deemed to have obtained constructive notice of the fraud upon the publication of the same in a newspaper on June 5, 10 and 27, 1995, this Court rules that the present action has not prescribed.

Based on the foregoing, the trial court erred in ruling as it did.

WHEREFORE, premises considered, the appealed Decision dated 1 June 2010 of the Regional Trial Court (RTC), Branch 75, San Mateo, Rizal is REVERSED. The extrajudicial settlement of the estate of Felix Cruz is hereby ANNULLED and SET ASIDE.

SO ORDERED.[11] (Other citations omitted)

Petitioners filed their Motion for Reconsideration, which was denied via the second assailed January 29, 2014 Resolution. Hence, the instant Petition.

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[10] 120 Phil. 149 (1964).

[11] *Rollo*, pp. 52-60.

In a November 9, 2015 Resolution,[12] this Court resolved to give due course to the Petition.

Issues

Petitioners claim that the CA erred in ruling that the respondents' cause of action for annulment has not prescribed, and that it ignored contemporaneous and subsequent acts of respondents indicating the absence of fraud or vitiation of consent in the execution of the deed of extrajudicial settlement of the estate of Felix Cruz.

Petitioners' Arguments

In their Petition and Reply[13] seeking reversal of the assailed CA dispositions, petitioners essentially insist that respondents' cause of action for annulment has prescribed, since they filed Civil Case No. 1380-98 SM only in 1998, or 12 years after the execution of the deed of extrajudicial settlement of estate on July 31, 1986; that pursuant to Article 1144 of the Civil Code,[14] a cause of action based upon a written contract—such as the subject deed of extrajudicial settlement—must be brought within 10 years from the execution thereof; that even assuming that the four-year prescriptive period based on fraud applies as the CA ruled, respondents' cause of action already prescribed, as the case was filed only in 1998, while the supposed fraud may be said to have been discovered in 1986, when they learned of the survey being conducted on the subject property; that respondents' actions belied their claim, in that they did not object when petitioners built their home on the lots allotted to them and never registered any objection even during family gatherings and occasions; that the subject deed of extrajudicial

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[12] *Id.* at 123-124.

[13] *Id.* at 113-121.

[14] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

settlement—being a notarized document—enjoys the presumption of regularity and integrity, and may only be set aside by clear and convincing evidence of irregularity; that it is a matter of judicial notice that a pre-war third-grader has the education of a high school student; and that the findings of the trial court must be given weight and respect.

Respondents' Arguments

In their Comment[15] seeking denial of the Petition, respondents reiterate the correctness of the CA's assailed Decision; that the deed of extrajudicial settlement, being written in English, was calculated to defraud Concepcion—who could not read nor write in said language; that owing to the fact that she trusted petitioners, who were her sisters, she was cajoled into signing the deed without knowing its contents; that the deed was notarized in the absence of most of the parties thereto; that the prescriptive period to be applied is not the 10-year period under Article 1144, but the four-year period as held by the CA, to be computed from the discovery of the fraud—since respondents discovered the fraud only in 1998; and that the factual issues raised by petitioners have been passed upon by the CA, and are thus not reviewable at this stage.

Our Ruling

The Court denies the Petition.

The present action involves a situation where one heir was able—through the expedient of an extrajudicial settlement that was written in a language that is not understood by one of her co-heirs—to secure a share in the estate of her parents that was greater than that of her siblings, in violation of the principle in succession that heirs should inherit in equal shares.

Thus, Antonia—represented in this case by her surviving heirs—received two lots as against her siblings, including respondent Concepcion, who respectively received only one lot each in the subject 940-square-meter property. This she was able to

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[15] *Rollo*, pp. 95-106.

achieve through the subject 1986 deed of extrajudicial settlement—which was written in English, a language that was not known to and understood by Concepcion given that she finished only Grade 3 elementary education. With the help of Amparo, Antonia was able to secure Concepcion's consent and signature without the benefit of explaining the contents of the subject deed of extrajudicial settlement. For this reason, Concepcion did not have adequate knowledge of the contents and ramifications of the subject deed of extrajudicial settlement; she was left unaware of the sharing arrangement contained therein, and realized it only when Antonia attempted to subdivide the subject property in 1998, and the plan of subdivision survey was shown to Concepcion—which revealed that Antonia obtained two lots. Consequently, Concepcion filed Civil Case No. 1380-98 SM on August 17, 1998.

In short, this is a simple case of exclusion in legal succession, where co-heirs were effectively deprived of their rightful share to the estate of their parents—who died without a will—by virtue of a defective deed of extrajudicial settlement or partition which granted a bigger share to one of the heirs and was prepared in such a way that the other heirs would be effectively deprived of discovering and knowing its contents.

Under the law, "[t]he children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares."[16] In this case, two of Concepcion's co-heirs renounced their shares in the subject property; their shares therefore accrued to the remaining co-heirs, in equal shares as well.[17]

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[16] CIVIL CODE, Article 980.

[17] CIVIL CODE, Article 1015. Accretion is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heirs, co-devisees, or co-legatees.

Article 1018. In legal succession the share of the person who repudiates the inheritance shall always accrue to his co-heirs.

In *Bautista v. Bautista*,[18] it was held that —

As gathered from the above-quoted portion of its decision, the Court of Appeals applied the prescriptive periods for annulment on the ground of fraud and for reconveyance of property under a constructive trust.

The extra-judicial partition executed by Teofilos co-heirs was invalid, however. So *Segura v. Segura*[19] instructs:

> x x x The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under the rule, 'no extra-judicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.' As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years x x x

The deed of extra-judicial partition in the case at bar being invalid, the action to have it annulled does not prescribe

The above pronouncement was reiterated in *Neri v. Heirs of Hadji Yusop Uy*,[20] where the Court ruled:

Hence, in the execution of the Extra-Judicial Settlement of the Estate with Absolute Deed of Sale in favor of spouses Uy, all the heirs of Anunciacion should have participated. Considering that Eutropia and Victoria were admittedly excluded and that then minors Rosa and Douglas were not properly represented therein, the settlement was not valid and binding upon them and consequently, a total nullity.

Section 1, Rule 74 of the Rules of Court provides:

Article 1019. The heirs to whom the portion goes by the right of accretion take it in the same proportion that they inherit.

Article 1020. The heirs to whom the inheritance accrues shall succeed to all the rights and obligations which the heir who renounced or could not receive it would have had.

[18] 556 Phil. 40, 46 (2007).

[19] 247-A Phil. 449, 456 (1988).

[20] 697 Phil. 217, 225-230 (2012).

> SECTION 1. Extrajudicial settlement by agreement between heirs. — x x x
>
> The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. x x x

The effect of excluding the heirs in the settlement of estate was further elucidated in *Segura v. Segura*, thus:

> It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void as far as the plaintiffs were concerned. The rule covers only valid partitions. The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under the rule 'no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.' As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution…

However, while the settlement of the estate is null and void, the subsequent sale of the subject properties made by Enrique and his children, Napoleon, Alicia and Visminda, in favor of the respondents is valid but only with respect to their proportionate shares therein. It cannot be denied that these heirs have acquired their respective shares in the properties of Anunciacion from the moment of her death and that, as owners thereof, they can very well sell their undivided share in the estate.

x x x x x x x x x

On the issue of prescription, the Court agrees with petitioners that the present action has not prescribed in so far as it seeks to annul the extrajudicial settlement of the estate. Contrary to the ruling of the CA, the prescriptive period of 2 years provided in Section 1 Rule 74 of the Rules of Court reckoned from the execution of the extrajudicial settlement finds no application to petitioners Eutropia, Victoria and Douglas, who were deprived of their lawful participation in the subject estate. Besides, an 'action or defense for the declaration of the inexistence of a contract does not prescribe' in accordance with Article 1410 of the Civil Code. (Citations omitted)

Then again, in *The Roman Catholic Bishop of Tuguegarao v. Prudencio*,[21] the above pronouncements were echoed, thus:

> Considering that respondents-appellees have **neither knowledge nor participation in the Extra-Judicial Partition, the same is a total nullity**. It is not binding upon them. Thus, in *Neri v. Heirs of Hadji Yusop Uy*, which involves facts analogous to the present case, we ruled that:
>
> > [I]n the execution of the Extra-Judicial Settlement of the Estate with Absolute Deed of Sale in favor of spouses Uy, all the heirs of Anunciacion should have participated. Considering that Eutropia and Victoria were admittedly excluded and that then minors Rosa and Douglas were not properly represented therein, the settlement was not valid and binding upon them and consequently, a total nullity.
> >
> > x x x x x x x x x
>
> The effect of excluding the heirs in the settlement of estate was further elucidated in *Segura v. Segura*, thus:
>
> > It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void as far as the plaintiffs were concerned. The rule covers only valid partitions. The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under the rule 'no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.' As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution x x x (Emphasis supplied; citations omitted)

Thus, while the CA was correct in ruling in favor of Concepcion and setting aside the subject deed of extrajudicial settlement, it erred in appreciating and ruling that the case involved fraud—thus applying the four-year prescriptive period—when it should have simply held that the action for the declaration

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[21] G.R. No. 187942, September 7, 2016, 802 SCRA 319, 331-332.

of nullity of the defective deed of extrajudicial settlement does not prescribe, under the circumstances, given that the same was a total nullity. Clearly, the issue of literacy is relevant to the extent that Concepcion was effectively deprived of her true inheritance, and not so much that she was defrauded.

With the foregoing disposition, the other issues raised by the petitioners are deemed resolved.

WHEREFORE, the Petition is **DENIED.** The subject July 31, 1986 Extrajudicial Settlement of Estate is hereby **DECLARED NULL AND VOID**, and thus **ANNULLED** and **SET ASIDE**. Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 212003. February 28, 2018]

PHILIPPINE SPAN ASIA CARRIERS CORPORATION (FORMERLY SULPICIO LINES, INC.), *petitioner, vs.* **HEIDI PELAYO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYMENT; THE MANAGEMENT HAS THE PREROGATIVE TO DISCIPLINE ITS EMPLOYEES AND TO IMPOSE APPROPRIATE PENALTIES ON ERRING WORKERS PURSUANT TO COMPANY RULES AND REGULATIONS; RATIONALE.— While adopted with a view "to give maximum aid and protection to labor," labor laws are

not to be applied in a manner that undermines valid exercise of management prerogative. Indeed, basic is the recognition that even as our laws on labor and social justice impel a "preferential view in favor of labor," [e]xcept as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the *discipline, dismissal and recall of work*. The validity of management prerogative in the discipline of employees was sustained by this Court in *Philippine Airlines v. National Labor Relations Commission*, "In general, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations." The rationale for this was explained in *Rural Bank of Cantilan, Inc. v. Julve*: While the law imposes many obligations upon the employer, nonetheless, it also protects the employer's right to expect from its employees not only good performance, adequate work, and diligence, but also good conduct and loyalty. In fact, the Labor Code does not excuse employees from complying with valid company policies and reasonable regulations for their governance and guidance.

2. ID.; ID.; TERMINATION OF EMPLOYMENT; TWO-NOTICE RULE; WHILE THE LABOR CODE SPECIFICALLY PRESCRIBES THE TWO-NOTICE RULE AS THE MANNER BY WHICH AN EMPLOYER MUST PROCEED AGAINST AN EMPLOYEE SPECIFICALLY CHARGED WITH WRONGDOING, IT LEAVES TO THE EMPLOYER'S DISCRETION THE MANNER BY WHICH IT SHALL PROCEED IN INITIALLY INVESTIGATING OFFENSES THAT HAVE BEEN UNCOVERED, AND WHOSE PROBABLE PERPETRATORS HAVE YET TO BE PINPOINTED.— In the case of termination of employment for offenses and misdeeds by employees, i.e., for just causes under Article 282 of the Labor Code, employers are required to adhere to the so-called "two-notice rule." x x x. The two-notice rule applies at that stage when an employer has previously determined that there are probable grounds for dismissing a specific employee. The first notice implies that the employer already has a cause for termination. The employee then responds

to the cause against him or her. The two-notice rule does not apply to anterior, preparatory investigations precipitated by the initial discovery of wrongdoing. At this stage, an employer has yet to identify a specific employee as a suspect. These preparatory investigations logically lead to disciplinary proceedings against the specific employee suspected of wrongdoing, but are not yet part of the actual disciplinary proceedings against that erring employee. While the Labor Code specifically prescribes the two-notice rule as the manner by which an employer must proceed against an employee specifically charged with wrongdoing, it leaves to the employer's discretion the manner by which it shall proceed in initially investigating offenses that have been uncovered, and whose probable perpetrators have yet to be pinpointed. Thus, subject to the limits of ethical and lawful conduct, an employer is free to adopt any means for conducting these investigations. They can, for example, obtain information from the entire roster of employees involved in a given workflow. They can also enlist the aid of public and private investigators and law enforcers, especially when the uncovered iniquity amounts to a criminal offense just as much as it violates company policies.

3. ID.; ID.; ID.; EMPLOYERS ARE EQUALLY FREE TO ADOPT CONTINGENCY MEASURES WHICH MAY BE ENFORCED AS SOON AS AN EMPLOYEE'S WRONGDOING IS UNCOVERED.— When employee wrongdoing has been uncovered, employers are equally free to adopt contingency measures; lest they, their clients, and other employees suffer from exigencies otherwise left unaddressed. These measures may be enforced as soon as an employee's wrongdoing is uncovered, may extend until such time that disciplinary proceedings are commenced and terminated, and in certain instances, even made permanent. Employers can rework processes, reshuffle assignments, enforce stopgap measures, and put in place safety checks like additional approvals from superiors. In *Mandapat v. Add Force Personnel Services, Inc*., this Court upheld the temporary withholding of facilities and privileges as an incident to an ongoing investigation. x x x.

4. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; WHEN IT EXISTS. — The standards for ascertaining constructive dismissal are settled: There is constructive dismissal when an employer's act of clear discrimination, insensibility or disdain

becomes so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment. It exists where there is involuntary resignation because of the harsh, hostile and unfavorable conditions set by the employer. We have held that the standard for constructive dismissal is "whether a reasonable person in the employee's position would have felt compelled to give up his employment under the circumstances."

5. ID.; ID.; ID.; ID.; NOT EVERY INCONVENIENCE, DISRUPTION, DIFFICULTY, OR DISADVANTAGE THAT AN EMPLOYEE MUST ENDURE SUSTAINS A FINDING OF CONSTRUCTIVE DISMISSAL, AS RESOLVING ALLEGATIONS OF CONSTRUCTIVE DISMISSAL INVOLVES THE WEIGHING OF EVIDENCE AND A CONSIDERATION OF THE TOTALITY OF CIRCUMSTANCES.— This Court has, however, been careful to qualify that "[n]ot every inconvenience, disruption, difficulty, or disadvantage that an employee must endure sustains a finding of constructive dismissal." In a case where the employee decried her employers' harsh words as supposedly making for a work environment so inhospitable that she was compelled to resign, this Court explained: The unreasonably harsh conditions that compel resignation on the part of an employee must be way beyond the occasional discomforts brought about by the misunderstandings between the employer and employee. Strong words may sometimes be exchanged as the employer describes her expectations or as the employee narrates the conditions of her work environment and the obstacles she encounters as she accomplishes her assigned tasks. As in every human relationship, there are bound to be disagreements. However, when these strong words from the employer happen without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created. In a sense, the doctrine of constructive dismissal has been a consistent vehicle by this Court to assert the dignity of labor. Resolving allegations of constructive dismissal is not a one-sided affair impelled by romanticized sentiment for a preconceived underdog. Rather, it is a question of justice that "hinges on whether, given the circumstances, the employer acted fairly in exercising a prerogative." It involves the weighing of evidence and a consideration of the "totality of circumstances."

6. ID.; ID.; ID.; ID; THE COURT DECLINES TO CONDONE THE EMPLOYEE'S ACTS IN PREEMPTING AND REFUSING TO COOPERATE IN A LEGITIMATE INVESTIGATION, ONLY TO CRY CONSTRUCTIVE DISMISSAL; TO DO SO WOULD BE TO RENDER INUTILE LEGITIMATE MEASURES TO ADDRESS EMPLOYEE INIQUITY.— This Court fails to see how the petitioner's investigation amounted to respondent's constructive dismissal x x x . In prior jurisprudence, this Court has been so frank as to view an employee's preemption of investigation as a badge of guilt. x x x. This Court will not be so intrepid in this case as to surmise that respondent was truly complicit in the uncovered anomalies and that termination of employment for just cause was a foregone conclusion which she was merely trying to evade by ceasing to report to work. Still, fairness dictates that this Court decline to condone her acts in preempting and refusing to cooperate in a legitimate investigation, only to cry constructive dismissal. To do so would be to render inutile legitimate measures to address employee iniquity. It would be to send a chilling effect against bona fide investigations, for to investigate — riddled as it is with the strain on employees it naturally entails — would be to court liability for constructive dismissal. Employees cannot tie employers' hands, incapacitating them, and preemptively defeating investigations with laments of how the travails of their involvement in such investigations translates to their employers' fabrication of an inhospitable employment atmosphere so that an employee is left with no recourse but to resign.

APPEARANCES OF COUNSEL

Baduel Espina & Associates for petitioner.
Into Pantojan Feliciano-Braceros & Lumbatan Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

"Not every inconvenience, disruption, difficulty, or disadvantage that an employee must endure sustains a finding of constructive

dismissal."[1] It is an employer's right to investigate acts of wrongdoing by employees. Employees involved in such investigations cannot ipso facto claim that employers are out to get them. Their involvement in investigations will naturally entail some inconvenience, stress, and difficulty. However, even if they might be burdened — and, in some cases, rather heavily so — it does not necessarily mean that an employer has embarked on their constructive dismissal.

This resolves a Petition for Review on Certiorari[2] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Court of Appeals July 4, 2013 Decision[3] and February 12, 2014 Resolution[4] in CA-G.R. SP No. 04622 be reversed and set aside.

The assailed Court of Appeals July 4, 2013 Decision found grave abuse of discretion on the part of the National Labor Relations Commission in issuing its May 27, 2011 Decision[5] and August 31, 2011 Decision[6] holding that respondent Heidi Pelayo (Pelayo) was not constructively dismissed. The assailed

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[1] *Manalo v. Ateneo de Naga University*, 772 Phil. 366, 369 (2015). [Per J. Leonen, Second Division].

[2] *Rollo*, pp. 10-28.

[3] *Id*. at 248-257. The Decision was penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[4] *Id*. at 266-268. The Resolution was penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[5] *Id*. at 180-184. The Decision, docketed as NLRC No. MAC-01-011835-2011, was penned by Presiding Commissioner Bario-rod M. Talon and concurred in by Commissioners Proculo T. Sarmen and Dominador B. Medroso, Jr. of the Eighth Division, National Labor Relations Commission, Cagayan de Oro City.

[6] *Id.* at 204-205. The Decision was penned by Presiding Commissioner Bario-rod M. Talon and concurred in by Commissioners Proculo T. Sarmen and Dominador B. Medroso, Jr. of the Eighth Division, National Labor Relations Commission, Cagayan de Oro City.

Court of Appeals February 12, 2014 Resolution denied the Motion for Reconsideration[7] of petitioner Philippine Span Asia Carriers Corporation, then Sulpicio Lines, Inc. (Sulpicio Lines).

Pelayo was employed by Sulpicio Lines as an accounting clerk at its Davao City branch office. As accounting clerk, her main duties were "to receive statements and billings for processing of payments, prepare vouchers and checks for the approval and signature of the branch manager, and release checks for payment."[8]

Sulpicio Lines uncovered several anomalous transactions in its Davao City branch office. Most notably, a check issued to a certain "J. Josol"[9] had been altered from its original amount of ₱20,804.58 to ₱820,804.58. The signatories to the check were branch manager Tirso Tan (Tan) and cashier Fely Sobiaco (Sobiaco).[10]

There were also apparent double disbursements. In the first double disbursement, two (2) checks amounting to ₱5,312.15 each were issued for a single ₱5,312.15 transaction with Davao United Educational Supplies. This transaction was covered by official receipt no. 16527, in the amount of ₱5,312.15 and dated January 12, 2008. The first check, Philippine Trust Company (PhilTrust Bank) check no. 2043921, was issued on December 15, 2007. This was covered by voucher no. 227275. The second check, PhilTrust Bank check no. 2044116, was issued on January 19, 2008 and was covered by voucher no. 227909.[11]

There was another double disbursement for a single transaction. Two (2) checks for ₱20,804.58 each in favor of Everstrong Enterprises were covered by official receipt no. 5129, dated January 25, 2008. The first check, PhilTrust Bank check

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[7] *Id*. at 258-264.

[8] *Id*. at 249.

[9] Also referred to as "C. Josol" in some documents.

[10] *Rollo*, p. 249.

[11] *Id*. at 40-41 and 59-60.

no. 2044156, was dated January 26, 2008 and covered by voucher no. 228034. The second check, PhilTrust Bank check no. 2044244, was dated February 9, 2008 and covered by voucher no. 228296.[12]

Another apparent anomaly was a discrepancy in the amounts reflected in what should have been a voucher and a check corresponding to each other and covering the same transaction with ARR Vulcanizing. Voucher no. 232550 dated October 30, 2008 indicated only ₱17,052.00, but the amount disbursed through check no. 2051313 amounted to ₱29,306.00.[13]

Sulpicio Lines' Cebu-based management team went to Davao to investigate from March 3 to 5, 2010. Pelayo was interviewed by members of the management team as "she was the one who personally prepared the cash vouchers and checks for approval by Tan and Sobiaco."[14]

The management team was unable to complete its investigation by March 5, 2010. Thus, a follow-up investigation had to be conducted. On March 8, 2010, Pelayo was asked to come to Sulpicio Lines' Cebu main office for another interview.[15] Sulpicio Lines shouldered all the expenses arising from Pelayo's trip.[16]

In the midst of a panel interview, Pelayo walked out.[17] She later claimed that she was being coerced to admit complicity with Tan and Sobiaco.[18] Pelayo then returned to Davao City,[19] where she was admitted to a hospital "because of depression

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[12] *Id*. at 41 and 60.

[13] *Id*.

[14] *Id*. at 181.

[15] *Id*. at 181 and 249.

[16] *Id*. at 155.

[17] *Id*. at 181.

[18] *Id*. at 249.

[19] *Id*. at 181.

and a nervous breakdown."[20] She eventually filed for leave of absence and ultimately stopped reporting for work.[21]

Following an initial phone call asking her to return to Cebu, Sulpicio Lines served on Pelayo a memorandum dated March 15, 2010,[22] requiring her to submit a written explanation concerning "double disbursements, payments of ghost purchases and issuances of checks with amounts bigger than what [were] stated in the vouchers."[23] Sulpicio Lines also placed Pelayo on preventive suspension for 30 days.[24] It stated:

> Among your duties is to receive statements and billings for processing of payments, prepare vouchers and checks for the signature of the approving authority. In the preparation of the vouchers and the checks, you also are required to check and to make sure that the supporting documents are in order. Thus, the double payments and other payments could not have been perpetra[t]ed without your cooperation and/or neglect of duty/gross negligence.
>
> You are hereby required to submit within three (3) days from receipt of this letter a written explanation why no disciplinary action [should] be imposed against you for dishonesty and/or neglect of duty or gross negligence.[25]

Sulpicio Lines also sought the assistance of the National Bureau of Investigation, which asked Pelayo to appear before it on March 19, 2010.[26]

Instead of responding to Sulpicio Lines' memorandum or appearing before the National Bureau of Investigation, Pelayo filed a Complaint against Sulpicio Lines charging it with constructive dismissal.[27]

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[20] *Id*. at 249.

[21] *Id*.

[22] *Id*. at 40-42.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 42.

[26] *Id*. at 156.

[27] *Id.* at 181.

Sulpicio Lines denied liability asserting that Pelayo was merely asked to come to Cebu "to shed light on the discovered anomalies"[28] and was "only asked to cooperate in prosecuting Tan and Sobiaco."[29] It also decried Pelayo's seeming attempt at "distanc[ing] herself from the ongoing investigation of financial anomalies discovered."[30]

In her September 17, 2010 Decision,[31] Labor Arbiter Merceditas C. Larida (Labor Arbiter Larida) held that Sulpicio Lines constructively dismissed Pelayo. She faulted Sulpicio Lines for harassing Pelayo when her participation in the uncovered anomalies was "far-fetched."[32] Labor Arbiter Larida relied mainly on the affidavit of Alex Te (Te),[33] an employee of Sulpicio Lines assigned at the Accounting Department of its Cebu City main office. Te's affidavit was attached to the Secretary's Certificate,[34] attesting to Sulpicio Lines' Board Resolution authorizing Te to act in its behalf in prosecuting Tan and Sobiaco. This affidavit detailed the duties of Tan and Sobiaco, as branch manager and cashier, respectively, and laid out the bases for their prosecution.[35] Labor Arbiter Larida noted that the affidavit's silence on how Pelayo could have been involved demonstrated that it was unjust to suspect her of wrongdoing.[36]

In its May 27, 2011 Decision,[37] the National Labor Relations Commission reversed Labor Arbiter Larida's Decision. It

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[28] *Id*. at 250.

[29] *Id*.

[30] *Id*.

[31] *Id*. at 154-162. The Decision, docketed as NLRC RAB-XI-03-00352-2010, was penned by Labor Arbiter Merceditas C. Larida of Branch No. XI, National Labor Relations Commission, Davao City.

[32] *Id*. at 158.

[33] *Id*. at 130-135.

[34] *ld*. at 128-129.

[35] *ld*. at 130-134.

[36] *Id*. at 158-159.

[37] *Id*. at 180-184.

explained that the matter of disciplining employees was a management prerogative and that complainant's involvement in the investigation did not necessarily amount to harassment.[38] The dispositive portion of this Decision read:

> WHEREFORE, foregoing premises considered, the appeal is GRANTED and the appealed decision is SET ASIDE and VACATED. In lieu thereof, a new judgment is rendered DISMISSING the above-entitled case for lack of merit.
>
> SO ORDERED.[39]

In its assailed July 4, 2013 Decision, the Court of Appeals found grave abuse of discretion on the part of the National Labor Relations Commission in reversing Labor Arbiter Larida's Decision.[40]

Following the denial of its Motion for Reconsideration,[41] Sulpicio Lines filed the present Petition.

For resolution is the issue of whether or not the Court of Appeals erred in finding grave abuse of discretion on the part of the National Labor Relations Commission in ruling that respondent Heidi Pelayo's involvement in the investigation conducted by petitioner did not amount to constructive dismissal.

The Court of Appeals must be reversed.

An employer who conducts investigations following the discovery of misdeeds by its employees is not being abusive when it seeks information from an employee involved in the workflow which occasioned the misdeed. Basic diligence impels an employer to cover all bases and inquire from employees who, by their inclusion in that workflow, may have participated in the misdeed or may have information that can lead to the perpetrator's identification and the employer's adoption of

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[38] *Id*. at 183.

[39] *Id*. at 184.

[40] *Id*. at 254-255.

[41] *Id*. at 258-264.

appropriate responsive measures. An employee's involvement in such an investigation will naturally entail difficulty. This difficulty does not mean that the employer is creating an inhospitable employment atmosphere so as to ease out the employee involved in the investigation.

I

While adopted with a view "to give maximum aid and protection to labor,"[42] labor laws are not to be applied in a manner that undermines valid exercise of management prerogative.

Indeed, basic is the recognition that even as our laws on labor and social justice impel a "preferential view in favor of labor,"

> [e]xcept as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the *discipline, dismissal and recall of work*.[43] (Emphasis supplied).

The validity of management prerogative in the discipline of employees was sustained by this Court in *Philippine Airlines v. National Labor Relations Commission*,[44] "In general, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations."[45]

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[42] *Cristobal v. Employees' Compensation Commission*, 186 Phil. 324, 329 (1980) [Per *J.* Makasiar, First Division].

[43] *Manalo v. Ateneo de Naga University*, 772 Phil. 366, 382 (2015) [Per *J.* Leonen, Second Division], citing *Rivera v. Genesis Transport*, 765 Phil. 544 (2015) [Per *J.* Leonen, Second Division], and San *Miguel Brewery Sales Force Union v. Ople*, 252 Phil. 27, 30 (1989) [Per *J.* Griño-Aquino, First Division].

[44] 392 Phil. 50 (2000) [Per *J.* Pardo, First Division].

[45] *Id*. at 56-57. See *Deles, Jr. v. National Labor Relations Commission*, 384 Phil. 271 (2000) [Per *J.* Quisumbing, Second Division] and *China Banking Corp. v. Borromeo*, 483 Phil. 643 (2004) [Per *J.* Callejo, Sr., Second Division].

The rationale for this was explained in *Rural Bank of Cantilan, Inc. v. Julve*:[46]

> While the law imposes many obligations upon the employer, nonetheless, it also protects the employer's right to expect from its employees not only good performance, adequate work, and diligence, but also good conduct and loyalty. In fact, the Labor Code does not excuse employees from complying with valid company policies and reasonable regulations for their governance and guidance.[47]

Accordingly, in *San Miguel Corporation v. National Labor Relations Commission*:[48]

> An employer has the prerogative to prescribe reasonable rules and regulations necessary for the proper conduct of its business, to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with. An employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees.
>
> It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition. Thus, in the implementation of its rules and policies, the employer has the choice to do so strictly or not, since this is inherent in its right to control and manage its business effectively.[49]

II

Disciplining employees does not only entail the demarcation of permissible and impermissible conduct through company rules and regulations, and the imposition of appropriate sanctions.

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[46] 545 Phil. 619 (2007) [Per *J*. Sandoval-Guttierez, First Division].

[47] *Id*. at 624, citing *Baybay Water District v. Commission on Audit*, 425 Phil. 326 (2002) [Per *J*. Mendoza, *En Banc*]; and *Durban Apartments Corp. v. Catacutan*, 545 Phil. 619 (2005) [Per *J*. Sandoval-Gutierrez, First Division].

[48] 574 Phil. 556 (2008) [Per *J*. Tinga, Second Division].

[49] *Id*. at 569-570, citing *Gustilo v. Wyeth Philippines, Inc*., 574 Phil. 556 (2004) [Per *J*. Sandoval-Gutierrez, Third Division] and *Coca Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca Cola-FFW*, 492 Phil. 570 (2005) [Per *J*. Callejo, Sr., Second Division].

It also involves intervening mechanisms "to assure that [employers' rules] would be complied with."[50] These mechanisms include the conduct of investigations to address employee wrongdoing.

While due process, both substantive and procedural, is imperative in the discipline of employees, our laws do not go so far as to mandate the minutiae of how employers must actually investigate employees' wrongdoings. Employers are free to adopt different mechanisms such as interviews, written statements, or probes by specially designated panels of officers.

In the case of termination of employment for offenses and misdeeds by employees, i.e., for just causes under Article 282 of the Labor Code,[51] employers are required to adhere to the so-called "two-notice rule."[52] *King of Kings Transport v. Mamac*[53] outlined what "should be considered in terminating the services of employees"[54]:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a

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[50] *Id*.

[51] LABOR CODE, Art. 297 (282) provides:

Article 297. [282] Termination by Employer.— An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing.

[52] *Orlando Farms Growers Association v. National Labor Relations Commission*, 359 Phil. 693, 701 (1998) [Per *J*. Romero, Third Division].

[53] 553 Phil. 108 (2007) [Per *J*. Velasco, Jr., Second Division].

[54] *Id*. at 115.

reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[55] (Citation omitted)

The two-notice rule applies at that stage when an employer has previously determined that there are probable grounds for dismissing a specific employee. The first notice implies that

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

the employer already has a cause for termination. The employee then responds to the cause against him or her. The two-notice rule does not apply to anterior, preparatory investigations precipitated by the initial discovery of wrongdoing. At this stage, an employer has yet to identify a specific employee as a suspect. These preparatory investigations logically lead to disciplinary proceedings against the specific employee suspected of wrongdoing, but are not yet part of the actual disciplinary proceedings against that erring employee. While the Labor Code specifically prescribes the two-notice rule as the manner by which an employer must proceed against an employee specifically charged with wrongdoing, it leaves to the employer's discretion the manner by which it shall proceed in initially investigating offenses that have been uncovered, and whose probable perpetrators have yet to be pinpointed.

Thus, subject to the limits of ethical and lawful conduct, an employer is free to adopt any means for conducting these investigations. They can, for example, obtain information from the entire roster of employees involved in a given workflow. They can also enlist the aid of public and private investigators and law enforcers, especially when the uncovered iniquity amounts to a criminal offense just as much as it violates company policies.

When employee wrongdoing has been uncovered, employers are equally free to adopt contingency measures; lest they, their clients, and other employees suffer from exigencies otherwise left unaddressed. These measures may be enforced as soon as an employee's wrongdoing is uncovered, may extend until such time that disciplinary proceedings are commenced and terminated, and in certain instances, even made permanent. Employers can rework processes, reshuffle assignments, enforce stopgap measures, and put in place safety checks like additional approvals from superiors. In *Mandapat v. Add Force Personnel Services, Inc.*,[56] this Court upheld the temporary withholding of facilities and privileges as an incident to an ongoing

[56] 638 Phil. 150 (2010) [Per *J.* Perez, First Division].

investigation. Thus, this Court found no fault in the disconnection of an employee's computer and the suspension of her internet access privilege.[57] Employers can also place employees under preventive suspension, not as a penalty in itself, but as an intervening means to enable unhampered investigation and to foreclose "a serious and imminent threat to the life or property of the employer or of the employee's co-workers."[58] As *Artificio v. National Labor Relations Commission*[59] illustrated:

> In this case, Artificio's preventive suspension was justified since he was employed as a security guard tasked precisely to safeguard respondents' client. His continued presence in respondents' or its client's premises poses a serious threat to respondents, its employees and client in light of the serious allegation of conduct unbecoming a security guard such as abandonment of post during night shift duty, light threats and irregularities in the observance of proper relieving time.
>
> Besides, as the employer, respondent has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.
>
> This Court has upheld a company's management prerogatives so long as they are 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 under valid agreements.[60]

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[57] *Id*. at 160.

[58] *Maula v. Ximex Delivery Express, Inc.*, G.R. No. 207838, January 25, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/207838.pdf> 17 [Per *J*. Peralta, Second Division].

[59] 639 Phil. 449 (2010) [Per *J*. Perez, First Division].

[60] *Id*. at 458-459, citing *Challenge Socks Corporation v. Court of Appeals*, 511 Phil. 4 (2005) [Per *J*. Ynares-Santiago, First Division].

III

The standards for ascertaining constructive dismissal are settled:

> There is constructive dismissal when an employer's act of clear discrimination, insensibility or disdain becomes so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment. It exists where there is involuntary resignation because of the harsh, hostile and unfavorable conditions set by the employer. We have held that the standard for constructive dismissal is "whether a reasonable person in the employee's position would have felt compelled to give up his employment under the circumstances."[61]

This Court has, however, been careful to qualify that "[n]ot every inconvenience, disruption, difficulty, or disadvantage that an employee must endure sustains a finding of constructive dismissal."[62] In a case where the employee decried her employers' harsh words as supposedly making for a work environment so inhospitable that she was compelled to resign, this Court explained:

> The unreasonably harsh conditions that compel resignation on the part of an employee must be way beyond the occasional discomforts brought about by the misunderstandings between the employer and employee. Strong words may sometimes be exchanged as the employer describes her expectations or as the employee narrates the conditions of her work environment and the obstacles she encounters as she accomplishes her assigned tasks. As in every human relationship, there are bound to be disagreements.

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[61] *Rodriguez v. Park N Ride, Inc.*, G.R. No. 222980, March 20, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/222980.pdf > 7-8 [Per *J.* Leonen, Second Division], citing *Gan v. Galderma Philippines, Inc.*, 701 Phil. 612, 638-639 (2013) [Per *J.* Peralta, Third Division]; *Portuguez v. GSIS Family Bank (Comsavings Bank)*, 546 Phil. 140, 153 (2007) [Per *J.* Chico-Nazario, Third Division]; and, *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, 570 Phil. 535, 548 (2008) [Per *J.* Austria-Martinez, Third Division].

[62] *Manalo v. Ateneo de Naga University*, 772 Phil. 366, 369 (2015) [Per *J.* Leonen, Second Division].

However, when these strong words from the employer happen without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created. In a sense, the doctrine of constructive dismissal has been a consistent vehicle by this Court to assert the dignity of labor.[63]

Resolving allegations of constructive dismissal is not a one-sided affair impelled by romanticized sentiment for a preconceived underdog. Rather, it is a question of justice that "hinges on whether, given the circumstances, the employer acted fairly in exercising a prerogative."[64] It involves the weighing of evidence and a consideration of the "totality of circumstances."[65]

IV

This Court fails to see how the petitioner's investigation amounted to respondent's constructive dismissal.

The assailed Court of Appeals July 4, 2013 Decision devoted all of three (3) paragraphs[66] in explaining why respondent was

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[63] *Rodriguez v. Park N Ride, Inc.*, G.R. No. 222980, March 20, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/222980.pdf> 8 [Per *J.* Leonen, Second Division].

[64] *Manalo v. Ateneo de Naga University*, 772 Phil. 366, 383 (2015) [Per *J.* Leonen, Second Division].

[65] *Rodriguez v. Park N Ride, Inc.*, G.R. No. 222980, March 20, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/222980.pdf> 1 [Per *J.* Leonen, Second Division].

[66] *Rollo*, pp. 255-256. The entirety of the Court of Appeals' *ratio decidendi* reads:

It is to Our observation that constructive dismissal is apparent in the case at bar. Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay. 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 is made to appear as if it were not. 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.

constructively dismissed. It anchored its conclusion on how "petitioner was made to admit the commission of the crime,"[67] and on how "[respondent] was compelled to give up her employment due to [petitioner's] unfounded, unreasonable and improper accusations, which made her employment unbearable."[68]

The Court of Appeals was in serious error.

The most basic flaw in the Court of Appeals' reasoning is its naive credulity. It did not segregate verified facts from impressions and bare allegations. It was quick to lend credence to respondent's version of events and her bare claim that she "was made to admit the commission of the crime."[69]

At first glance, it would seem that petitioner was "invited to participate" in the investigation against Tan and Sobacio. But during said investigation, petitioner was made to admit the commission of the crime instead:

> . . . . . .
>
> Pelayo further narrated that during the investigation, those officers of Sulpicio forced her to admit the offense — the alteration on the check issued to C. Josol. Having no knowledge at all to (sic) the said transaction Pelayo stood firm of (sic) her lack of knowledge and participation whatsoever to (sic) the said transaction (thereof). Mr. Devin Go, on (sic) their one-on-one conversation once again forced her to admit her participation and even offered that if she admits the charge they will allow her to pay it on (sic) installment basis. Pelayo, who could no longer withstand the baseless and malevolent accusation of respondents, left Cebu City and upon her arrival in Davao City, she was immediately rushed to San Pedro Hospital and was confined because of depression and nervous breakdown. Not contented, on (the) same day, Mr. Devin Go even called up Pelayo and ordered her to come back to Cebu City which she vehemently opposed. Thru counsel, Pelayo sent a letter to Sulpicio dated March 10, 2010 reciting Pelayo's dismay over the way Sulpicio, thru its officers, conducted the investigation. Pelayo also manifested her intention to go on leave of absence for 6 months and to turn over all accounting documents to the company....

As shown by the evidence at hand and the findings of the Labor Arbiter, petitioner was compelled to give up her employment due to [Sulpicio Lines'] unfounded, unreasonable and improper accusations, which made her employment unbearable. (Citations omitted)

[67] *Id*. at 255.

[68] *Id*. at 256.

[69] *Id*. at 255.

As it stands, all that have been ascertained are that: first, petitioner discovered anomalies in its Davao branch; second, members of its management team went to Davao to investigate; third, the investigation involved respondent considering that, as accounting clerk, her main duties were "to receive statements and billings for processing of payments, prepare vouchers and checks for the approval and signature of the Branch Manager, and release the checks for cash payment";[70] fourth, the investigation in Davao could not be completed for lack of time; fifth, respondent was made to come to petitioner's Cebu main office — all expense paid — for the continuation of the investigation; sixth, in Cebu, respondent was again interviewed; seventh, respondent walked out in the midst of this interview.

There is no objective proof demonstrating how the interview in Cebu actually proceeded. Other than respondent's bare allegation, there is nothing to support the claim that her interviewers were hostile, distrusting, and censorious, or that the interview was a mere pretext to pin her down. Respondent's recollection is riddled with impressions, unsupported by independently verifiable facts. These impressions are subjective products of nuanced perception, personal interpretation, and ingrained belief that cannot be appreciated as evidencing "the truth respecting a matter of fact."[71]

Respondent's subsequent hospitalization does not prove harassment or coercion to make an admission either. The mere fact of its occurrence is not an attestation that respondent's interview proceeded in the manner that she claimed it did. While it proves that she was stressed, it does not prove that she was stressed specifically because she was cornered into admitting wrongdoing.

Human nature dictates that involvement in investigations for wrongdoing, even if one is not the identified suspect, will entail discomfort and difficulty. Indeed, stress is merely the "response

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[70] *Id*. at 181.

[71] RULES OF COURT, Rule 128, Sec. 1.

to physical or psychological demands on a person."[72] Even positive stimuli can become stressors.[73] Stress, challenge, and adversity are the natural state of things when a problematic incident is revealed and begs to be addressed. They do not mean that an employer is bent on inflicting suffering on an employee.

Different individuals react to stress differently "and some people react to stress by getting sick."[74] Stress is as much a matter of psychological perception as it is of physiological reaction. Respondent's confinement at a hospital proves that, indeed, she was stressed at such a degree that it manifested physically. It may also be correlated with the stressors that respondent previously encountered. Among these stressors was her interview. One can then reasonably say that respondent's interview may have been difficult for her. However, any analysis of causation and correlation can only go as far as this. The evidence does not lead to an inescapable conclusion that respondent's confinement was solely and exclusively because of how respondent claims her interviewers incriminated her.

The discomfort of having to come to the investigation's venue, the strain of recalling and testifying on matters that transpired months prior, the frustration that she was being dragged into the wrongdoing of other employees—if indeed she was completely innocent—or the trepidation that a reckoning was forthcoming—if indeed she was guilty—and many other worries doubtlessly weighed on respondent. Yet, these are normal burdens cast upon her plainly on account of having to cooperate in the investigation. They themselves do not translate to petitioner's malice. Respondent's physical response may have been acute, but this, by itself, can only speak of her temperament and physiology. It would be fallacious to view this physical response as proof of what her interviewers actually told her or did to her.

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[72] DIANE E. PAPALIA, SALLY WNDKOS OLDS AND RUTH DUSKIN FELDMAN, *HUMAN DEVELOPMENT* 377 (9th ed. 1994).

[73] *Id*. at 545.

[74] *Id*.

Indeed, it was possible that respondent was harassed. But possibility is not proof. Judicial and quasi-judicial proceedings demand proof. Respondent's narrative is rich with melodramatic undertones of how she suffered a nervous breakdown, but is short of prudent, verifiable proof. In the absence of proof, it would be a miscarriage of justice to sustain a party-litigant's allegation.

What is certain is that there were several anomalies in petitioner's Davao branch. It made sense for petitioner to investigate these anomalies. It also made sense for respondent to be involved in the investigation.

Contrary to Labor Arbiter Larida's conclusion, respondent's connection with the uncovered anomalies was not "far-fetched."[75] The anomalies related to discrepancies between vouchers and checks, multiple releases of checks backed by as many vouchers (even if there had only been one transaction), and a check altered to indicate a larger amount, thereby enabling a larger disbursement. Certainly, it made sense to involve in the investigation the accounting clerk whose main duty was to "prepare vouchers and checks for the approval and signature of the Branch Manager, and release the checks for cash payment."[76]

Labor Arbiter Larida's reliance on Te's affidavit is misplaced. That affidavit was prepared to facilitate the criminal prosecution of Tan, the branch manager, and Sobiaco, the cashier.[77] It naturally emphasized Tan's and Sobiaco's functions, and related these to the uncovered anomalies. It would have been absurd to make respondent a focal point as she was extraneous to the criminal suit against Tan and Sobiaco. The affidavit was reticent about respondent because it did not have to discuss her.

If at all, Te's affidavit even militates against respondent's claim that petitioner was out to get her. For if petitioner was

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[75] *Rollo*, p. 158.

[76] *Id*. at 181.

[77] *Id*. at 128-134.

indeed bent on pinning her down, it was foolhardy for it to concentrate its attempts at criminal prosecution on Tan and Sobiaco.

Respondent cannot point to petitioner's referral to the National Bureau of Investigation as proof of petitioner's malevolence. In the first place, petitioner was free to refer the commission of crimes to the National Bureau of Investigation. Republic Act No. 157,[78] which was in effect until the National Bureau of Investigation's functions were calibrated in 2016 by Republic Act No. 10867,[79] enabled the National Bureau of Investigation "[t]o render assistance, whenever properly requested in the investigation or detection of crimes and other offenses."[80] Moreover, petitioner's efforts show that it opted to avail of legitimate, official channels for conducting investigations. Petitioner's actions demonstrate that rather than insisting on its own position and proceeding with undue haste, it was submitting to the wisdom of an independent, official investigator and was willing to await the outcome of an official process. While this could have also led to criminal prosecution, it still negates malicious fixation. Indeed, if petitioner's focus was to subvert respondent, it could have just lumped her with Tan and Sobiaco. This would have even been to petitioner's advantage as joining all defendants in a single case would have been more efficient and economical.

In any case, for the very reason of her main functions as accounting clerk, it made sense to view respondent with a degree of suspicion. It was only logical for petitioner to inquire into how multiple vouchers and checks could have passed the scrutiny of the officer tasked to prepare them. It was not capricious for petitioner to ponder if its accounting clerk acted negligently or had allowed herself to be used, if not acted with deliberate intent to defraud.

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[78] An Act Creating a Bureau of Investigation, Providing Funds Therefor, and for Other Purposes (1947).

[79] The National Bureau of Investigation Reorganization and Modernization Act (2016).

[80] Rep. Act No. 157, Section 1(b).

Even if petitioner were to completely distance itself from judicious misgivings against respondent, elect to not treat her as a suspect, and restrict itself to Tan's and Sobiaco's complicity, it was still reasonable for it to involve respondent in its investigation. Given her direct interactions with Tan and Sobiaco and her role in the workflow for payments and disbursements, it was wise, if not imperative, to invoke respondent as a witness.

In prior jurisprudence, this Court has been so frank as to view an employee's preemption of investigation as a badge of guilt. In *Mandapat v. Add Force Personnel Services, Inc.*,[81] this Court quoted with approval the following findings of the Court of Appeals:

> Unfortunately, however, before the investigation could proceed to the second step of the termination process into a hearing or conference, Mandapat chose to resign from her job. Mandapat's bare allegation that she was coerced into resigning can hardly be given credence in the absence of clear evidence proving the same. No doubt, Mandapat read the writing on the wall, knew that she would be fired for her transgressions, and beat the company to it by resigning. Indeed, by the disrespectful tenor of her memorandum, Mandapat practically indicated that she was no longer interested in continuing cordial relations, much less gainful employment with Add Force.[82] (Citation omitted)

This Court will not be so intrepid in this case as to surmise that respondent was truly complicit in the uncovered anomalies and that termination of employment for just cause was a foregone conclusion which she was merely trying to evade by ceasing to report to work. Still, fairness dictates that this Court decline to condone her acts in preempting and refusing to cooperate in a legitimate investigation, only to cry constructive dismissal. To do so would be to render inutile legitimate measures to address employee iniquity. It would be to send a chilling effect against bona fide investigations, for to investigate — riddled as it is with the strain on employees it naturally entails — would be

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[81] 638 Phil. 150 (2010) [Per *J.* Perez, First Division].

[82] *Id*. at 159.

to court liability for constructive dismissal. Employees cannot tie employers' hands, incapacitating them, and preemptively defeating investigations with laments of how the travails of their involvement in such investigations translates to their employers' fabrication of an inhospitable employment atmosphere so that an employee is left with no recourse but to resign.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED.** The assailed July 4, 2013 Decision and February 12, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 04622 are **REVERSED and SET ASIDE**. The National Labor Relations Commission May 27, 2011 and August 31, 2011 Decisions in NLRC No. MAC-01-011835-2011 (RAB-XI-03-00352-2010) are **REINSTATED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 215320. February 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL CORPUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONIES; POLICE BLOTTERS CANNOT PREVAIL OVER THE POSITIVE TESTIMONY GIVEN IN OPEN COURT.— Entries in the police blotter are not evidence of the truth thereof but merely of the fact that the entries were made. Affidavits executed before the police or entries in such police blotters cannot prevail over the positive testimony given in open court. The entry in the

police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries. Without the aid of such the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter.

2. ID.; ID.; ALIBI; WEAK DEFENSE WHICH CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS.— As to Manuel's defense of alibi, suffice it to state that the same is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witness that accused-appellant has committed the crime. Further, for such defense to prosper, he must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.

3. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; APPRECIATION THEREOF DEPENDS ON THE AGE, SIZE AND STRENGTH OF THE PARTIES.— The circumstance of abuse of superior strength is present whenever there is inequality of force between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime. Evidence must show that the assailants consciously sought the advantage or that they had the deliberate intent to use this advantage. The appreciation of the aggravating circumstance of abuse of superior strength depends on the age, size, and strength of the parties.

4. ID.; ID.; ID.; TREACHERY; MERE SUDDENNESS OF THE ATTACK IS NOT SUFFICIENT WHERE IT DOES NOT APPEAR THAT SUCH MODE OF ATTACK WAS ADOPTED TO FACILITATE THE PERPETRATION OF THE KILLING WITHOUT RISK TO THE AGGRESSOR.— Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms

in the execution thereof, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. For treachery to be appreciated, the concurrence of two conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted. The appellate court opined that treachery attended the commission of the felony because of the suddenness of the attack. However, mere suddenness of an attack is not sufficient to constitute treachery where it does not appear that the aggressor adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.

5. ID.; ID.; PENALTY IS *RECLUSION PERPETUA* WITH ELIGIBILITY FOR PAROLE; PROPER MONETARY AWARDS.— Under Article 63(2) of the RPC, in cases where the penalty prescribed is composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied. In this regard, Article 248 of the RPC, as amended by Section 6 of Republic Act *(R.A.)* No. 7659, punishes murder with the penalty of *reclusion perpetua* to death. In this case, other than the circumstance of abuse of superior strength which already qualified the crimes to murder, no other modifying circumstance is present, whether aggravating or mitigating. Thus, the lesser penalty *reclusion perpetua* shall be imposed. The Court modifies the decision of the appellate court by deleting the phrase "without eligibility for parole" from the penalty imposed. The penalty of *reclusion perpetua* without eligibility for parole is applicable only when *reclusion perpetua* is imposed in lieu of death due to the latter's suspension under R.A. No. 9346. Such is not the case here. The Court further modifies the CA decision with respect to the monetary awards. In *People v. Jugueta*, the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that when the penalty imposed is *reclusion perpetua*, the following amounts may be awarded: (1) ₱75,000.00, as civil indemnity; (2) ₱75,000.00, as moral damages; and (3) ₱75,000.00 as exemplary damages. The aforesaid amounts are proper in this case. The Court further retains the award of temperate damages in the amount of ₱25,000.00 in lieu of actual damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

On appeal is the 14 March 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CEB CR-HC No. 01355, which affirmed with modification the 25 March 2011 Decision[2] of the Regional Trial Court of Abuyog, Leyte, Branch 10 *(RTC)*, in Criminal Case Nos. 2389 and 2390, finding herein accused-appellant Manuel Corpuz *(Manuel)* guilty beyond reasonable doubt of two (2) counts of Murder, defined and penalized under Article 248 of the Revised Penal Code *(RPC)*.

THE FACTS

On 18 January 2005, Manuel was charged with two (2) counts of murder committed upon the persons of Romana P. Arcular *(Romana)* and Leonila C. Histo *(Leonila)* under two (2) Informations, which accusatory portions read:

Criminal Case No. 2389

That on or about the 29th day of October 2004, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill, with treachery and abuse of superior strength, the victim being a woman and 74 years old, did then and there willfully, unlawfully and feloniously attack, assault, hack and wound one ROMANA P. AR[C]ULAR with the use of a long bladed weapon locally known as "sundang" which the accused provided himself for the purpose,

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[1] *Rollo*, pp. 4-20; penned by Associate Justice Carmelita Salandanan-Manahan, and concurred in by Associate Justices Edgardo L. Delos Santos, and Ma. Luisa Quijano-Padilla.

[2] Records (Criminal Case No. 2390), pp. 155-164; penned by Presiding Judge Buenaventura A. Pajaron.

thereby hitting and inflicting upon the said ROMANA P. AR[C]ULAR a [hack] wound at the right occipital area with fracture of underlying bone which was the direct and proximate cause of her death.[3]

Criminal Case No. 2390

That on or about the 29th day of October 2004, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill, with treachery and abuse of superior strength the victim being a woman and 64 years old, did then and there willfully, unlawfully and feloniously attack, assault, hack and wound one LEONILA C. [H]ISTO with the use of a long bladed weapon locally known as "sundang" which the accused provided himself for the purpose, thereby hitting and inlicting upon the said LEONILA C. [H]ISTO a [hack] wound with laceration of the right earlobe at left sternocleidomastoid area which was the direct and proximate cause of her death.[4]

On 3 May 2005, Manuel, with the assistance of counsel, was arraigned and pleaded not guilty to the charges against him.[5] Trial on the merits thereafter ensued.

Evidence for the Prosecution

The prosecution presented four (4) witnesses, namely: Pedro Dejaresco *(Pedro)*, Leonilo Bongalan *(Leonilo)*, Teodoro Queriqueri *(Teodoro)*, and Dr. Amelia C. Gacis *(Dr. Gacis)*. Their combined testimonies tended to establish the following:

On 29 October 2004, at around 2:00 o'clock in the afternoon, Leonila told Leonilo, her son-in-law, that she would go to her farm situated at Barangay Maitom, Abuyog, Leyte.[6] Later, at around 4:00 o'clock in the afternoon, Leonilo went to the farm to check on his mother-in-law.[7] Upon reaching the farm, he

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[3] Records (Criminal Case No. 2389), p. 1.

[4] Records (Criminal Case No. 2390), p. 16.

[5] *Id*. at 22.

[6] TSN, 13 September 2006, p. 14.

[7] *Id*. at 4.

saw Manuel hacking Leonila and Romana with a bolo about 26 inches in length.[8] Leonila was hit in the right nape,[9] while Romana was hit in the left nape.[10] Both victims fell to the ground.[11] After witnessing the incident, Leonilo ran towards the house of Juaquinito Poliquit *(Juaquinito)*, the Barangay Captain of Barangay Maitom.[12] After reporting the incident and that Manuel was the assailant,[13] Leonilo and Juaquinito proceeded to the police station where the incident was again reported. Thereafter, the victims were brought to the chapel and later autopsied at the Rural Health Unit.[14]

Meanwhile, at around 4:00 o'clock in the afternoon of the same day, Pedro and Teodoro were on their way home when they saw Manuel on the trail, half-naked and holding a bolo. They noted that Manuel came from the direction of the place where the incident happened.[15]

The postmortem examinations[16] conducted by Dr. Gacis on the cadavers of the deceased revealed that each victim sustained a fatal hack wound. In particular, Dr. Gacis testified that Romana sustained a hack wound in the back close to the heart which possibly hit the occipital area about five (5) inches long, and which fractured the underlying bone; while Leonila sustained a hack wound six (6) inches long which lacerated the right ear lobe at the left sternum occipital area. Dr. Gacis stated that it was possible that the assailant used a sharp-bladed weapon such as a *bolo* or *sundang*.[17]

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

[9] *Id*. at 6.

[10] *Id*. at 7.

[11] *Id*. at 8.

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

[13] *Id*. at 15.

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

[15] TSN, 14 March 2006, pp. 4-5; TSN, 19 February 2007, pp. 4-6.

[16] Records (Criminal Case No. 2390), pp. 7 and 9; Exhibits "A" and "C".

[17] TSN, 16 July 2008, pp. 5-6.

At the time of death, Romana was 74 years old,[18] while Leonila was 65 years old.[19]

Evidence for the Defense

The defense presented Manuel and his wife Annabelle Corpuz *(Annabelle)* as witnesses. Their testimonies sought to establish the defenses of alibi and denial, as follows:

On 29 October 2004, at around 4:00 o'clock in the afternoon, Manuel was at Barangay Capilian, Abuyog, Leyte, with one Nestor Castos *(Nestor)*, and a certain Ike, who hired him to cultivate and plow his rice field.[20] On that day, he arrived at Barangay Capilian at around 8:00 o'clock in the morning and stayed there until 4:30 p.m.. He took his lunch at the said barangay.[21] After completing his task, he walked home with Nestor and Ike and arrived at his house at Barangay Maitom, Abuyog, Leyte, at around 5:30 p.m..[22] Manuel maintained that he only learned of the deaths of Leonila and Romana after he was apprehended by the police.[23]

Manuel was 40 years old when he took the witness stand on 17 July 2009.[24]

Annabelle corroborated Manuel's testimony that he plowed Nestor's rice field on 29 October 2004, from morning until around 5:00 o'clock in the afternoon.[25] She stated that at that time she was actually at Nestor's house which faced the rice field as she was tasked to cook lunch.[26] After Manuel finished

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[18] Records (Criminal Case No. 2390), p. 8; Exhibit "B".

[19] *Id*. at 10; Exhibit "D".

[20] TSN, 17 July 2009, p. 4.

[21] *Id*. at 5.

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

[23] *Id*. at 11.

[24] *Id*. at 3.

[25] TSN, 1 June 2010, pp. 7-8.

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

plowing Nestor's rice field, they left and arrived at their house at around 6:00 o'clock in the afternoon.[27] In answer to the clarificatory questions by the judge, Annabelle stated that the distance between their house in Brgy. Maitom and Nestor's house is the same as the distance from the courtroom to the market place, estimated to be around 200 meters.[28]

The defense further submitted in evidence a copy of the police blotter[29] taken when Leonilo and Juaquinito reported the incident to the Abuyog Police Station. In the said police blotter, it was stated that the suspect was still unknown; and that Leonilo saw the dead bodies of Leonila and Romana, without any indication about witnessing the actual hacking of the two by Manuel.

The RTC Ruling

In its decision, the RTC found Manuel guilty beyond reasonable doubt of two (2) counts of murder. The trial court gave credence to the testimony of Leonilo considering that he knew Manuel prior to the incident; that the incident happened in broad daylight; and that no improper motive was attributed to him in testifying against the accused. The trial court was also convinced that the qualifying aggravating circumstance of abuse of superior strength attended the commission of the crimes. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the Court finds accused **MANUEL CORPUZ** guilty beyond reasonable doubt of the crime of **MURDER** and is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** in each of the aforesaid cases and to pay each of the heirs of the victims ₱75,000.00 by way of civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages to the heirs of the victims.[30]

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[27] *Id.* at 15.

[28] *Id.*

[29] Records (Criminal Case No. 2390), p. 124; Exhibit "1".

[30] Records (Criminal Case No. 2390), p. 164.

Aggrieved, Manuel appealed before the CA.[31]

The CA Ruling

In its appealed decision, the CA affirmed with modification the RTC decision. The appellate court ruled that Manuel offered no sufficient reason to disturb the trial court's evaluation of the prosecution eyewitness' credibility. The appellate court further ruled that treachery and abuse of superior strength attended the commission of the crimes thereby qualifying them to murder. The appellate court, however, modified the RTC decision with respect to the award of damages by increasing exemplary damages to ₱30,000.00 from ₱25,000.00, and additionally awarding ₱25,000.00 as temperate damages for each count of murder. The dispositive portion of the appealed decision provides:

> **WHEREFORE**, premises considered, the Appeal is **DENIED**. The *Decision* dated 25 March 2011 of the Regional Trial Court, Branch 10, Abuyog, Leyte in Criminal Case Nos. 2389 and 2390 finding accused-appellant Manuel Corpuz guilty beyond reasonable doubt for the crime of Murder is hereby **AFFIRMED with MODIFICATION**. He is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole.
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> He is further ordered to pay the heirs of Leonila Histo and Romana Arcular the following:
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> 1. Seventy-Five Thousand Pesos (Php 75,000.00) as civil indeminity;
> 2. Fifty Thousand Pesos (Php 50,000.00) as moral damages;
> 3. Thirty Thousand Pesos (Php 30,000.00) as exemplary damages; and
> 4. Twenty-Five Thousand Pesos (Php 25,000.00) as temperate damages.
>
> All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.[32]

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[31] *Id*. at 165.

[32] *Rollo*, pp. 18-19.

Hence, this appeal.

ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN CONVICTING ACCUSED-APPELLANT MANUEL CORPUZ FOR THE DEATHS OF ROMANA ARCULAR AND LEONILA HISTO DESPITE THE PROSECUTION's FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[33]

THE COURT'S RULING

The appeal lacks merit.

No reason to disturb factual findings by the trial court; prosecution eyewitness is credible.

Manuel insists that the trial and appellate courts erred in ruling that the prosecution was able to prove his guilt beyond reasonable doubt. He argues that his conviction was based mainly on the testimony of Leonilo who, however, is not a credible witness. He points out that the police blotter clearly contradicts Leonilo's testimony that he actually saw Manuel hack Leonila and Romana. Thus, there is reasonable doubt on Leonilo's identification of Manuel as the person responsible for the deaths of the two victims.

The Court is not persuaded.

Entries in the police blotter are not evidence of the truth thereof but merely of the fact that the entries were made.[34] Affidavits executed before the police or entries in such police blotters cannot prevail over the positive testimony given in open court.[35] The entry in the police blotter is not necessarily entitled

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[33] CA *rollo*, p. 41.

[34] *People v. Gomez*, 357 Phil. 684, 694 (1998); *People v. Ledesma*, 320 Phil. 215, 221-222 (1995).

[35] *People v. Ledesma*, 320 Phil. 215, 222 (1995); *People v. Gomez*, *id.* at 694; *People v. Matildo*, 300 Phil. 681, 688 (1994); *People v. Malazarte*, 330 Phil. 193, 201-202 (1996).

to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries. Without the aid of such the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter.[36]

In this case, Leonilo positively identified Manuel as the person who hacked the two victims. He was certain that it was Manuel whom he saw having known him for years prior to the incident, thus:

> PROS. MONTALLA:
>
> Q. Did you recognize the person who hacked your mother-in-law?
> A. Yes, Sir.
>
> Q. Who was he?
> A. Manuel Corpuz.
>
> Q. If Manuel Corpuz is in court now, will you please point him out?
> A. That one.
>
> INTERPRETER:
>
> Witness pointing to a lone accused seated at the accused bench and identified himself as Manuel Corpuz.
>
> [PROS. MONTALLA:]
>
> Q. About how long have you known Manuel Corpuz?
> A. About six (6) years already.[37]

Moreover, Leonilo offered sufficient explanation regarding the apparent inconsistencies between his testimony and the police blotter. During cross-examination, Leonilo answered the questions in this wise:

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[36] *People v. San Gabriel*, 323 Phil. 102, 111 (1996).

[37] TSN, 13 September 2006, pp. 6-7.

ATTY. MAQUILAN:

Q. Was this your report to the Brgy. Captain blottered in their office?
A. Yes, Ma'am.

Q. And immediately after it was blottered you went together with him to the police station?
A. Yes, Ma'am.

Q. So what time was that when the [Brgy.] Captain and you went to the police station?
A. We reached there at the police station past 8:00 o'clock in the evening.

Q. And upon reaching the police station, you again made a report of what you have seen?
A. Yes, Ma'am.

Q. And did you tell exactly the name of the [person] whom you saw who hacked your mother-in-law?
A. Yes, Ma'am.

Q. And you have seen the same blottered on their blotter book?
A. I did not observe.[38]

Clearly, Leonilo had no part in the apparent inconsistencies caused by the contents of the police blotter. Indeed, he merely reported what he witnessed; whether the police officer accurately recorded his report is beyond his control. Thus, the statement in the said police blotter to the effect that the suspect was unknown could in no way prevail over his positive identification of the accused-appellant as the person who hacked and killed Leonila and Romana.[39]

As to Manuel's defense of alibi, suffice it to state that the same is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witness that accused-appellant has committed the crime. Further, for such defense to prosper, he must prove that he was somewhere

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[38] *Id.* at 16-17.

[39] *People v. Ledesma*, *supra* note 35.

else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[40]

In this case, Manuel's own wife testified that at the time of the incident, he was just 200 meters away from their house in Brgy. Maitom, where Leonila and Romana were killed. Clearly, the required physical impossibility due to distance for alibi to prosper was not sufficiently demonstrated.

The crime committed is Murder qualified by abuse of superior strength; presence of treachery not established.

The circumstance of abuse of superior strength is present whenever there is inequality of force between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime.[41] Evidence must show that the assailants consciously sought the advantage or that they had the deliberate intent to use this advantage.[42]

The appreciation of the aggravating circumstance of abuse of superior strength depends on the age, size, and strength of the parties.[43] Thus, in a long line of cases, the Court has consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[44] There is also abuse of

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[40] *People v. Piosang*, 710 Phil. 519, 527 (2013).

[41] *Espineli v. People*, 735 Phil. 530, 544-545 (2014); *People v. Quisayas*, 731 Phil. 577, 596 (2014).

[42] *Valenzuela v. People*, 612 Phil. 907, 917 (2009).

[43] *People v. Calpito*, 462 Phil. 172, 179 (2003).

[44] *People v. Appegu*, 429 Phil. 467, 482 (2002); *People v. Molas*, 291-A Phil. 516, 525 (1993).

such superiority when the victim is old and weak, while the accused is stronger on account of his relatively younger age.[45]

Here, it has been established that the two victims were defenseless old women — Romana at 74 years old, and Leonila at 65 years old. In contrast, Manuel was shown armed with a deadly weapon. Further, at the time of the incident, Manuel was around 36 years old, in the prime of his years. Thus, the trial and appellate courts correctly convicted Manuel of two (2) counts of murder for the deaths of Romana and Leonila.

The Court, however, disagrees with the appellate court with respect to its pronouncement that treachery attended the crime.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, tending directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[46] For treachery to be appreciated, the concurrence of two conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted.[47]

The appellate court opined that treachery attended the commission of the felony because of the suddenness of the attack. However, mere suddenness of an attack is not sufficient to constitute treachery where it does not appear that the aggressor adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.[48] In this case, the prosecution failed to present any evidence which would show that Manuel consciously adopted his mode of attack without risk to himself. Thus, treachery cannot be appreciated in this case.

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[45] *People v. Lopez*, 396 Phil. 604, 613 (2000).

[46] *People v. De Leon*, 428 Phil. 556, 581 (2002).

[47] *People v. De Gracia*, 765 Phil. 386, 396 (2015).

[48] *People v. Camilet*, 226 Phil. 316, 324 (1986).

Penalties and monetary awards

Under Article 63(2) of the RPC, in cases where the penalty prescribed is composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied. In this regard, Article 248 of the RPC, as amended by Section 6 of Republic Act *(R.A.)* No. 7659, punishes murder with the penalty of *reclusion perpetua* to death.

In this case, other than the circumstance of abuse of superior strength which already qualified the crimes to murder, no other modifying circumstance is present, whether aggravating or mitigating. Thus, the lesser penalty *reclusion perpetua* shall be imposed. The Court modifies the decision of the appellate court by deleting the phrase "without eligibility for parole" from the penalty imposed. The penalty of *reclusion perpetua* without eligibility for parole is applicable only when *reclusion perpetua* is imposed in lieu of death due to the latter's suspension under R.A. No. 9346.[49] Such is not the case here.

The Court further modifies the CA decision with respect to the monetary awards. In *People v. Jugueta*,[50] the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that when the penalty imposed is *reclusion perpetua*, the following amounts may be awarded: (1) ₱75,000.00, as civil indemnity; (2) ₱75,000.00, as moral damages; and (3) ₱75,000.00 as exemplary damages. The aforesaid amounts are proper in this case. The Court further retains the award of temperate damages in the amount of ₱25,000.00 in lieu of actual damages.

WHEREFORE, accused-appellant Manuel Corpuz is found **GUILTY** beyond reasonable doubt of two (2) counts of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended. He is sentenced to suffer the penalty of *reclusion perpetua* for each count. He is further ordered to pay the respective heirs of the deceased Romana P.

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[49] *People v. Sibbu*, G.R. No. 214757, 29 March 2017.

[50] G.R. No. 202124, 5 April 2016, 788 SCRA 331, 381-382.

Arcular and Leonila C. Histo for each count of murder in the following amounts: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; (3) ₱75,000.00 as exemplary damages; and (4) ₱25,000.00 as temperate damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.[51]

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 218390. February 28, 2018]

HONGKONG BANK INDEPENDENT LABOR UNION (HBILU), *petitioner, vs.* **HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); ALTHOUGH JURISPRUDENCE RECOGNIZES THE VALIDITY OF THE EXERCISE BY AN EMPLOYER OF ITS MANAGEMENT PREROGATIVE AND WILL ORDINARILY NOT INTERFERE WITH SUCH, THIS PREROGATIVE IS NOT ABSOLUTE AND IS SUBJECT TO LIMITATIONS IMPOSED BY LAW, COLLECTIVE BARGAINING AGREEMENT, AND GENERAL PRINCIPLES OF FAIR PLAY AND JUSTICE.

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[51] *People v. Combate*, 653 Phil. 487, 518 (2010).

— We deem it necessary to remind HSBC of the basic and well-entrenched rule that although jurisprudence recognizes the validity of the exercise by an employer of its management prerogative and will ordinarily not interfere with such, this prerogative is **not absolute** and is subject to limitations imposed by law, **collective bargaining agreement**, and general principles of fair play and justice. Indeed, being a product of said constitutionally-guaranteed right to participate, the CBA is, therefore, the law between the parties and they are obliged to comply with its provisions.

2. **ID.; ID.; ID.; ID.; THE PROVISIONS OF THE CBA MUST BE RESPECTED SINCE ITS TERMS AND CONDITIONS CONSTITUTE THE LAW BETWEEN THE PARTIES, AND UNTIL A NEW CBA IS EXECUTED BY AND BETWEEN THE PARTIES, THEY ARE DUTY-BOUND TO KEEP THE *STATUS QUO* AND TO CONTINUE IN FULL FORCE AND EFFECT THE TERMS AND CONDITIONS OF THE EXISTING AGREEMENT.—** A collective bargaining agreement or CBA is the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law. In *Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals,* this Court was emphatic in its pronouncement that the CBA during its lifetime binds all the parties. **The provisions of the CBA must be respected since its terms and conditions constitute the law between the parties. And until a new CBA is executed by and between the parties, they are duty-bound to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement**. This finds basis under Article 253 of the Labor Code.

3. **ID.; ID.; ID.; ID.; UNILATERAL MODIFICATION OF A CBA DURING ITS SUBSISTENCE AND EVEN THEREAFTER UNTIL A NEW AGREEMENT IS REACHED IS PROHIBITED.—** In the present controversy, it is clear from

the arguments and evidence submitted that the Plan was never made part of the CBA. As a matter of fact, HBILU vehemently rejected the Plan's incorporation into the agreement. Due to this lack of consensus, the bank withdrew its proposal and agreed to the retention of the original provisions of the CBA. The subsequent implementation of the Plan's external credit check provisions in relation to employee loan applications under Article XI of the CBA was then an imposition solely by HSBC. In this respect, this Court is of the view that tolerating HSBC's conduct would be tantamount to allowing a blatant circumvention of Article 253 of the Labor Code. It would contravene the express prohibition against the unilateral modification of a CBA during its subsistence and even thereafter until a new agreement is reached. **It would unduly license HSBC to add, modify, and ultimately further restrict the grant of Salary Loans beyond the terms of the CBA by simply adding stringent requirements in its Plan, and having the said Plan approved by BSP in the guise of compliance with the MoRB.**

4. ID.; ID.; ID.; ID.; LEAVING TO THE RESPONDENT THE DETERMINATION, FORMULATION, AND IMPLEMENTATION OF THE GUIDELINES, PROCEDURES, AND REQUIREMENTS FOR THE AVAILMENT OF SALARY LOANS GRANTED UNDER THE CBA, WHICH GUIDELINES, PROCEDURES, AND REQUIREMENTS UNDULY RESTRICT THE PROVISIONS OF THE CBA, WOULD IN EFFECT BE PERMITTING THE RESPONDENT BANK TO REPEATEDLY VIOLATE ITS DUTY TO BARGAIN COLLECTIVELY UNDER THE GUISE OF ENFORCING THE GENERAL TERMS OF THE PLAN.— If it were true that said credit checking under the Plan covers salary loans under the CBA, then the bank should have negotiated for its inclusion thereon as early as the April 1, 2010 to March 31, 2012 CBA which it entered into with HBILU. However, the express provisions of said CBA inked by the parties clearly make no reference to the Plan. And even in the enforcement thereof, credit checking was not included as one of its requirements. This leads Us to conclude that HSBC originally never intended the credit checking requirement under the Plan to apply to salary loans under the CBA. At most, its application thereto is a mere afterthought, as evidenced by its sudden, belated, and hurried enforcement on said salary loans via the disputed

email blast. x x x. If We were to allow this practice of leaving to HSBC the determination, formulation, and implementation of the guidelines, procedures, and requirements for the availment of salary loans granted under the CBA, which guidelines, procedures, and requirements unduly restrict the provisions of the CBA, this Court would in effect be permitting HSBC to repeatedly violate its duty to bargain collectively under the guise of enforcing the general terms of the Plan.

5. COMMERCIAL LAW; BANKS AND BANKING; GENERAL BANKING LAW OF 2000 (REPUBLIC ACT NO. 8791); THE CREDIT CHECKING REQUIREMENT UNDER THE MANUAL OF REGULATIONS FOR BANKS (MORB) DOES NOT APPLY TO LOANS EXTENDED TO BANK EMPLOYEES WHICH ARE GRANTED UNDER THE LATTER'S FRINGE BENEFITS PROGRAM.— It may also be argued that HSBC, being a bank, is statutorily required to conduct a credit check on all of its borrowers, even though it be made under a loan accommodation scheme, applying Section 40 of Republic Act No. (RA) 8791 (General Banking Law of 2000). A reading of RA 8791, however, reveals that loan accommodations to employees are not covered by said statute. Nowhere in the law does it state that its provisions shall apply to loans extended to bank employees which are granted under the latter's fringe benefits program. Had the law intended otherwise, it could have easily specified such, similar to what was done for directors, officers, stockholders and their related interests under Section 36 thereof. This conclusion is supported by the very wording of Subsection X338.3 of the MORB. x x x. Notably, even though the provision covers loans extended to both bank officers and employees, paragraph 3 thereof singled out loans and credit accommodations granted to **officers** when it provided for the applicability of RA 8791. *What the law does not include, it excludes.* These convince Us to conclude that RA 8791 only intended to cover loans by third persons and those extended to directors, officers, stockholders and their related interests. Consequently, Section 40 thereof, which requires a bank to ascertain that the debtor is capable of fulfilling his commitments to it before granting a loan or other credit accommodation, does not automatically apply to the type of loan subject of the instant case.

6. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; COLLECTIVE BARGAINING

AGREEMENT (CBA); UNILATERAL IMPOSITION OF CREDIT CHECKING REQUIREMENT ON SALARY LOANS GRANTED UNDER THE CBA DECLARED INVALID.— Withal, We cannot subscribe to HSBC's position that its imposition of the credit checking requirement on salary loans granted under the CBA is valid. **The evidence presented convinces Us to hold that the credit checking requirement imposed by HSBC under the questioned Plan which effectively and undoubtedly modified the CBA provisions on salary loans was a unilateral imposition violative of HSBC's duty to bargain collectively and, therefore, invalid**. HSBC miserably failed to present even an iota of concrete documentary evidence that the credit checking requirement has been imposed on salary loans even before the signing of the CBA subject of the instant dispute and that the Plan was sufficiently disseminated to all concerned. In contrast, HBILU sufficiently proved that HSBC violated its duty to bargain collectively under Article 253 of the Labor Code when it unilaterally restricted the availment of salary loans under Article XI of the CA on the excuse of enforcing the Plan approved by the BSP. As this Court emphasized in *Philippine Airlines, Inc. v. NLRC,* industrial peace cannot be achieved if the employees are denied their just participation in the discussion of matters affecting their rights, **more so in the case at bar where the employees have been led to believe that they were given the chance to participate in HSBC's policy-formulation with respect to the subject benefit, only to find out later that they would be deprived of the fruits of said involvement.**

7. ID.; ID.; ID.; ID.; INTERPRETATION AND ENFORCEMENT OF THE COLLECTIVE BARGAINING AGREEMENT, GUIDELINES.— We deem it proper to recall the basics in resolving issues relating to the provisions and enforcement of CBAs. In *United Kimberly-Clark Employees Union Philippine Transport General Workers Organization (UKCEU-PTGWO) v. Kimberly-Clark Philippines, Inc.,* this Court emphasized that: As a general proposition, an arbitrator is confined to the interpretation and application of the collective bargaining agreement. He does not sit to dispense his own brand of industrial justice: his award is legitimate only in so far as it draws its essence from the CBA, *i.e.,* when there is a rational nexus between the award and the CBA under consideration. It is said that an arbitral award does not draw its essence from the CBA; hence,

there is an unauthorized amendment or alteration thereof, if: 1. It is so unfounded in reason and fact; 2. It is so unconnected with the working and purpose of the agreement; 3. **It is without factual support in view of its language, its context, and any other indicia of the parties' intention;** 4. **It ignores or abandons the plain language of the contract;** 5. It is mistakenly based on a crucial assumption which concededly is a nonfact; 6. It is unlawful, arbitrary or capricious; and 7. It is contrary to public policy. x x x If the terms of a CBA are clear and [leave] no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail. However, if, in a CBA, the parties stipulate that the hirees must be presumed of employment qualification standards but fail to state such qualification standards in said CBA, **the VA may resort to evidence extrinsic of the CBA to *determine the full agreement intended by the parties.* When a CBA may be expected to speak on a matter, but does not, its sentence imports ambiguity on that subject. The VA is not merely to rely on the cold and cryptic words on the face of the CBA but is mandated to *discover the intention of the parties.*** Recognizing the inability of the parties to anticipate or address all future problems, gaps may be left to be filled in by reference to the practices of the industry, and the step which is equally a part of the CBA although not expressed in it. ***In order to ascertain the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. The VA may also consider and rely upon negotiating and contractual history of the parties, evidence of past practices interpreting ambiguous provisions.*** **The VA has to examine such practices to determine the scope of their agreement, as where the provision of the CBA has been loosely formulated.** Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it. Thus, in resolving issues concerning CBAs, We must not forget that the foremost consideration therein is upholding the intention of both parties as stated in the agreement itself, or based on their negotiations. Should it appear that a proposition or provision has clearly been rejected by one party, and said provision was ultimately not included in the signed CBA, then We should not simply disregard this fact. We are duty-bound to resolve the question presented, albeit on a different ground, so long as it is consistent with law and jurisprudence

and, more importantly, does not ignore the intention of both parties. Otherwise, We would be substituting Our judgment in place of the will of the parties to the CBA.

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

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; A COLLECTIVE BARGAINING AGREEMENT IS BINDING AND IS THE LAW BETWEEN ITS PARTIES, AND ITS TERMS AND CONDITIONS MUST BE RESPECTED AND COMPLIED WITH UNTIL IT EXPIRES, BUT WHERE A COLLECTIVE BARGAINING AGREEMENT RUNS CONTRARY TO LAWS, MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY, THE COURT HAS THE POWER TO STRIKE DOWN THE VIOLATIVE PROVISION THEREOF.— A collective bargaining agreement is a contract between an employer and his or her employees, establishing particular arrangements between them with respect to wages, hours of work, grievances, and other terms and conditions of employment. A collective bargaining agreement is binding and is the law between its parties. Its terms and conditions must be respected and complied with until it expires. x x x. Nonetheless, a collective bargaining agreement is still subject to laws and public policy. It is still a contract limited by Article 1306 of the Civil Code x x x. Thus, although it is not explicitly provided for, as in all contracts, laws, morals, good customs, public order, or public policy is deemed written in collective bargaining agreements. In case a collective bargaining agreement runs contrary to these limitations, this Court has the power to strike down the violative provision. x x x. Thus, a collective bargaining agreement cannot reign supreme where it is inconsistent with laws and public policy. This is especially so when the laws and public policy pertain to industries impressed with public interests and which necessarily warrant the protection of the State, such as the banking industry.

2. COMMERCIAL LAW; BANKS AND BANKING; BANKS ARE IMPRESSED WITH PUBLIC INTEREST, THUS, THE HIGHEST DEGREE OF DILIGENCE IS EXPECTED FROM IT. — It is of vital importance that the general public trusts and has confidence in the banking industry. It is impressed

with public interest and is so tied together with national economy and development. Its fiduciary nature likewise requires it to be stable, consistent, and reliable, thus, calling for high standards of integrity and performance. x x x. As such, compared to other industries and businesses, the diligence required of banks is at its highest standard in all aspects — from granting loan applications to the hiring and supervision of its employees. In *Far East Bank and Trust Co. v. Tentmakers Group, Inc.,* It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. *The highest degree of diligence* is expected. In handling loan transactions, banks are under obligation to ensure compliance by the clients with all the documentary requirements pertaining to the approval and release of the loan applications. x x x

3. ID.; ID.; THE FINANCING PLAN REQUIRED UNDER THE MANUAL OF REGULATIONS OF BANKS (MORB) AND APPROVED BY THE BANGKO SENTRAL IS INCLUDED IN THE COLLECTIVE BARGAINING AGREEMENTS AND TAKES THE FORM OF A REGULATION BY WHICH THE BANK IS BOUND AND MUST COMPLY WITH.— Pertinent to the case at bar is the [provision under the MORB which] states that banks may financially assist their employees for their housing, transportation, household, and personal needs, provided that a financing plan is approved first by the Bangko Sentral. Given the nature of the MORB, x x x all its provisions are deemed incorporated in all pertinent Collective Bargaining Agreements. Necessarily, the financing plans required under the MORB and approved by the Bangko Sentral are also included in the Collective Bargaining Agreements. A financing plan is not a mere contract of a bank with any other entity. It is an arrangement that becomes part of the regulations of the Bangko Sentral by which the bank is bound. This is bolstered by X339.4, which requires banks to submit regular reports on their transactions under their financing plans x x x. Thus, the financing plan is not only a one-sided exercise of the bank's management prerogative. It is a requirement under the MORB by the Bangko Sentral. Thus, it takes on the form of a regulation by which HSBC is bound and must comply with.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; THE CREDIT-CHECKING REQUIREMENT BEFORE GRANTING A FINANCIAL ASSISTANCE LOAN TO COVERED EMPLOYEES, ALTHOUGH NOT EXPLICITLY PROVIDED FOR IN THE PARTIES' COLLECTIVE BARGAINING AGREEMENT, IS DEEMED INCORPORATED IN IT.— At the time the subject financing plan became an issue (i.e., when HBILU Member Vince Mananghaya applied for a loan in September 2012), the then 2011 MORB provided: x x x. Before granting loans or other credit accommodations, *a bank must ascertain that the borrower, co-maker, endorser, surety and/or guarantor, if applicable, is/are financially capable of fulfilling his/their commitments to the bank. For this purpose, a bank shall obtain adequate information on his/their credit standing and financial capacities.* These provisions, thus, show that in approving a loan in favor of an obligor, financial institutions must look into, among other things, the obligor's repayment history, creditworthiness, integrity, reputation, and capacity to assume the liability. Thus, credit checks are a necessary component in loan approvals. They are required by all financial institutions that grant loans, taking into consideration credit risks and bearing in mind safe and sound banking practice. Given that loans granted under a bank's fringe benefits program is not necessarily subject to the same terms and conditions imposed on the regular lending operations of the bank, the Bangko Sentral still requires that it first approve a financial plan for such a case, thus, showing that these types of loans are still regulated. In this case, the Bangko Sentral approved a financing plan that provides for credit checking of covered employees. No malice was proved to have been committed by HSBC in requiring the credit checking. There is no showing that it was motivated by bad faith in imposing the requirements, and it is presumed to have been done so in good faith. In implementing the credit-checking requirement, the bank is simply guided by the financing plan required under the MORB and approved by the Bangko Sentral. Thus, although the credit-checking requirement is not explicitly provided for in the parties' Collective Bargaining Agreement, it is deemed incorporated in it. Their Collective Bargaining Agreement cannot prevail over a Bangko Sentral-approved financing plan.

5. ID.; ID.; ID.; ID.; WHILE THE STATE EMPHASIZES THE PRIMACY OF FREE COLLECTIVE BARGAINING AND NEGOTIATIONS, COLLECTIVE BARGAINING AGREEMENT MUST STILL BE CONSISTENT WITH THE BANKING INDUSTRY'S LAWS, STANDARDS, AND POLICIES.— [T]he signing of a collective bargaining agreement does not result in the amendment of laws and policies, especially where the policy pertains to an industry imbued with public interest. It cannot likewise undermine safe and sound banking practice. To reiterate, banks play a vital role in our economy and society as they deal with the public's money. x x x. The highest standards are imposed on the banking industry because of its fiduciary nature and the necessity of its integrity, reliability, and high performance. These standards do not apply in the same manner as to other businesses. As such, the banking business is governed by more rules that must be strictly complied with. A bank's management prerogative is further limited by the Bangko Sentral's policies and regulations, which are issued to protect public interests and to maintain trust and confidence in banks. As such, banks may not simply choose to ignore these on a whim. Thus, while the state emphasizes the primacy of free collective bargaining and negotiations, collective bargaining agreement must still be consistent with the banking industry's laws, standards, and policies.

APPEARANCES OF COUNSEL

Edgar C. Reciña for petitioner.
De La Rosa & Nograles for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

For consideration is a Petition for Review on Certiorari under Rule 45 of the Rules of Court questioning the Decision[1] and

[1] Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda.

Resolution of the Court of Appeals (CA), dated October 23, 2014 and May 21, 2015, respectively, in CA-G.R. SP No. 130798. The challenged rulings sustained the validity of the external credit check as a condition before respondent could grant the application for salary loans of petitioner's members. This is notwithstanding the non-mention of the said condition in the parties' Collective Bargaining Agreement (CBA).

The Facts

In 2001, the Bangko Sentral ng Pilipinas (BSP) issued the Manual of Regulations for Banks (MoRB). Relevant to the instant case is Section X338 thereof which reads:

> Banks may provide financial assistance to their officers and employees, as part of their fringe benefits program, to meet housing, transportation, household and personal needs of their officers and employees. **Financing plans and amendments thereto shall be with prior approval of the BSP.** (emphasis added)

Pursuant to the above-cited provision, respondent Hongkong and Shanghai Banking Corporation Limited (HSBC), on March 12, 2003, submitted its Financial Assistance Plan (Plan) to the BSP for approval. The Plan allegedly contained a credit checking proviso stating that "[r]epayment defaults on existing loans and adverse information on outside loans will be considered in the evaluation of loan applications." The BSP approved the Plan on May 5, 2003.[2] Said Plan was later amended thrice,[3] all of which amendments were approved by the BSP.[4]

Meanwhile, petitioner Hongkong Bank Independent Labor Union (HBILU), the incumbent bargaining agent of HSBC's rank-and-file employees, entered into a CBA with the bank covering the period from April 1, 2010 to March 31, 2012. Pertinent to the instant petition is Article XI thereof, which reads:

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[2] *Rollo*, p. 283.

[3] On July 27, 2006, February 11, 2008, and on July 4, 2011.

[4] *Rollo*, p. 128.

Article XI
Salary Loans

Section 1. Housing/house Improvement Loan. The BANK, or other financial institution when appropriate, shall extend housing loan to qualified employees with at least three (3) YEARS OF SERVICE, UP TO One Million Five Hundred Thousand Pesos (₱1,500,000.00) payable in twenty-five (25) years or up to the retirement date of the employee, whichever comes first. Subject to BSP approval, an additional Five Hundred Thousand Pesos (₱500,000.00) can be availed subject to the terms above with interest rate at the BLR less 3% but not less than six percent (6%) per annum.

Section 2. Personal Loans. The BANK, or the Retirement Trust Fund Inc. or other financial institutions, when appropriate, shall extend personal loan to qualified employees, with at least 1 year service, up to six months basic pay of the employees at six percent (6%) interest per annum, payable in three years.

Section 3. Car Loans. The BANK, or the Retirement Trust Fund Inc. or other financial institutions when appropriate, shall extend a car loan to qualified employees with at least 3 years service up to Five Hundred Fifty Thousand Pesos (PHP550,000.00) payable in seven (7) years. Interest rate shall be six percent (6%) per annum.

Section 4. Credit Ratio. The availment of any of the foregoing loans shall be subject to the BANK's credit ratio policy.

When the CBA was about to expire, the parties started negotiations for a new one to cover the period from April 1, 2012 to March 31, 2017. During the said negotiations, HSBC proposed amendments to the above-quoted Article XI allegedly to align the wordings of the CBA with its BSP-approved Plan. Particularly, HSBC proposed the deletion of Article XI, Section 4 (Credit Ratio) of the CBA, and the amendment of Sections 1 to 3 of the same Article to read as follows:

Article XI
Salary Loans

Section 1. Housing/house Improvement Loan. **Based on the Financial Assistance Plan duly approved by Bangko Sentral ng Pilipinas (BSP),** the BANK, or other financial institution when appropriate, shall extend housing loan to qualified employees with at least three

(3) YEARS OF SERVICE UP TO One Million Five Hundred Thousand Pesos (₱1,500,000.00) payable in twenty-five (25) years or up to the retirement date of the employee, whichever comes first, **subject to employee's credit ratio.** An additional Five hundred thousand Pesos (₱500,000.00) can be availed subject to the terms above with interest rates at the BLR less 3% but not less than six percent (6%) per annum.

Section 2. Personal Loans. **Based on the financial Assistance Plan duly approved by Bangko Sentral ng Pilipinas (BSP)**, the BANK, or other financial institutions when appropriate, shall extend personal loan to qualified employees, with at least 1 year service, up to six months basic pay of the employees at six percent (6%) interest per annum, payable in three (3) years, **subject to employee's credit ratio.**

Section 3. Car loans. **Based on the Financial Assistance Plan duly approved by Bangko Sentral ng Pilipinas (BSP),** the BANK, or other financial institutions when appropriate, shall extend a car loan to qualified employees with at least three years service, up to Five Hundred Fifty Thousand Pesos (PHP550,000.00) payable in seven (7) years. Interest rate shall be six percent (6%) per annum. (emphasis added)

HBILU vigorously objected to the proposed amendments, claiming that their insertions would curtail its members' availment of salary loans. This, according to the Union, violates the existing exceptions set forth in BSP Circular 423, Series of 2004,[5] and

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[5] SECTION X338. Financial Assistance to Officers and Employees. Banks may provide financial assistance to their officers and employees, as part of their fringe benefits program, to meet the housing, transportation, household and personal needs of their officers and employees. Financing plans and amendments thereto, shall be with prior approval of the Bangko Sentral.

Subsection X338.1 Mechanics. The mechanics of such financing plan shall have the following minimum features:

Participation shall be limited to full-time and permanent officers and employees of the bank;

Financial assistance shall only be for the following purposes:

(1) The acquisition of a residential house and lot, or the construction, renovation or repair of a residential house on a lot owned and to be occupied by the officer or employee;

(2) The acquisition of vehicles, household equipment and appliances for the personal use of the officer or employee or his immediate family; or

Section X338.3[6] of the MoRB. In view of HBILU's objection,

(3) To meet expenses for the medical, maternity, education, emergency and other personal needs of the officer or employee or his immediate family;

Financial assistance for purposes mentioned in Items b(1) and b(2) of this Section shall be granted in the form of a loan, advance or other credit accommodation, installment sale, lease with option to purchase or lease-purchase arrangement where the lessee is obliged to purchase the real estate or equipment;

The amount and maturity of financial assistance for each purpose shall be determined by the bank in consonance with the normal requirements thereof: Provided, That the maximum amount shall be stated as percentage or multiple of the total monthly compensation of the officer or employee and shall be within the paying capacity of the borrowing officer or employee.

Total monthly compensation shall include the basic salary and all fixed and regular monthly allowances of the officer or employee. Payments for sickness benefits and other special emoluments which are not fixed or regular in nature, or the commutation into cash of unused leave credits shall not be included in the computation of total monthly compensation;

The amortization payment shall include amounts necessary to cover mortgage redemption insurance and fire insurance premiums, taxes, special assessments, and other related fees and charges;

Availment of the financing plan to construct or acquire a residential house and lot shall be allowed only once during the officer's or employee's tenure with the bank, except where the right over the real estate previously acquired or constructed under the financing plan is absolutely transferred or assigned to another officer or employee of the bank or to a third party: Provided, That the bank must be fully paid or reimbursed for the outstanding availment on the financing plan before the officer/employee is allowed to re-avail himself of the same financing plan.

An officer or employee (or his spouse) who already owns a residential house and lot shall not be qualified to avail himself of financial assistance for purposes of acquiring a residential house and/or lot.

These prohibitions notwithstanding, financial assistance for the repair or renovation of a residential house may be allowed subject to such limitation as may be prescribed by the bank pursuant to Item d of this Section;

Availment of the financing plan for the acquisition of a specific type of equipment or appliance shall be allowed not oftener than once every three (3) years: Provided, That re-availment shall be allowed only after previous obligations in connection with the acquisition of the same type of equipment or appliances have been fully liquidated; and

The bank shall adopt measures to protect itself from losses such as by incorporating in the plan or contract provisions requiring co-makers or co-signor, chattel, or real estate mortgages, fire insurance, mortgage redemption insurance, assignment of money value of leave credits, pension or retirement benefits.

Subsection 1338.2 Funding by Foreign Banks. In the case of local branches of foreign banks, financial assistance for their officers and employees may be funded, through any of the following means:

HSBC withdrew its proposed amendments and, consequently, Article XI remained unchanged.

Through a local affiliate by special arrangement with the head office abroad in any of the following forms:

(1) Inward remittance from the head office of the affiliate;

(2) Assignment to the affiliate of equivalent amounts of profits otherwise remittable abroad under existing regulations; or

(3) Direct loans by the foreign bank to the affiliate; or

Through the local branch itself by:

(1) Segregation or transfer of undivided profits normally remitted to the head office abroad equivalent to the loans to officers and employees which shall be lodged under "Other Liabilities-Head Office Accounts". This account shall at all times have a balance equivalent to the outstanding loans to officers/employees financed under this scheme; or

(2) Inward remittance; or

Through the local branch from local sources without earmarking an equivalent amount of undivided profits: Provided, that the aggregate ceilings on such loans as provided under existing regulations shall apply.

Loans under Items b(1) and b(2) of this Section shall be treated in the branch books as loans granted by its head office. The documentation and collection of such loans shall be handled by the branch for the account of the head office.

Loans financed under Items a and b shall be subject to the reporting requirements of Section X335 but not to the ceilings provided under Sections X330 and X331. The same shall be excluded from the computation of the capital to risk assets ratio.

Subsection X338.3 Other conditions/limitations

The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.

The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.

All loans or other credit accommodations to bank officers and employees, except those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank. Loans or other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791 and Sections X326 to X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program.

The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers

Despite the withdrawal of the proposal, HSBC sent an e-mail to its employees on April 20, 2012 concerning the enforcement of the Plan, including the Credit Checking provisions thereof. The e-mail reads:

Dear All

We wish to reiterate the following provisions included in the Financial Assistance Plan (FAP) as approved by Bangko Sentral ng Pilipinas (BSP). Note that the FAP is the official guideline and policy governing Staff Loans and Credit Cards.

>>>> CREDIT CHECKING

Below are the specific provisions included in the FAP regarding credit checking.

Housing Loan, Car Loan, Personal Loan & Computer/Club Membership/Medical Equipment Loan	Repayment defaults on existing loans and adverse information considered in the evaluation of loan applications.
Credit Card	Repayment defaults on existing loans and adverse information considered in the evaluation of loan applications.

in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio. *See* <http://www.bsp.gov.ph/regulations/regulations.asp?type=1&id=165> (last visited December 12, 2017).

[6] All loans or credit accommodations to bank officers and employees, except those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank. Loans of other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791 and Sections X326 and X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program.

The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.

With the strict implementation of these provisions, adverse credit findings may result to disapproval of loan or credit card applications. These findings will include the following:

(1) Frequency of confirmed ADA failure on staff/commercial loans and credit cards (3 consecutive incidents within the past 6 months or 6 incidents within the past 12 months). Note that applications with pending ADA for investigation will only be processed upon confirmation of status (Confirmed or Reprieved);
(2) Adverse findings on HSBC cards; or
(3) Adverse findings from external credit checks.[7]

Thereafter, in September 2012, HBILU member Vince Mananghaya (Mananghaya) applied for a loan under the provisions of Article XI of the CBA. His first loan application in March 2012 was approved, but adverse findings from the external checks on his credit background resulted in the denial of his September application.[8] HBILU then raised the denial as a grievance issue with the National Conciliation Mediation Board (NCMB). It argued that the imposition of an additional requirement—the external credit checking prior to approval of any loan application under Article XI of the CBA—is not sanctioned under the CBA. The Union emphasized that under the terms of Article XI, there is no such requirement and that it cannot, therefore, be unilaterally imposed by HSBC.

Justifying its denial of the loan application, HSBC countered that the external credit check conducted in line with Mananghaya's loan application was merely an implementation of the BSP-approved Plan. The adoption of the Plan, HSBC stressed, is a condition *sine qua non* for any loan grant under Section X338 of the MoRB. Moreover, the Credit Check policy has been in place since 2003, and is a sound practice in the banking industry to protect the interests of the public and preserve confidence in banks.

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[7] *Rollo*, p. 285.

[8] *Id*.

The issue was then submitted for resolution by the NCMB Panel of Accredited Voluntary Arbitrators (the Panel).[9] In the interim, the parties, on September 29, 2012, inked a new CBA for the period covering April 1, 2012 up to March 31, 2017.[10]

NCMB-PVA Decision

On May 17, 2013, the Panel rendered a Decision finding for HSBC. It held that herein respondent, as an employer, has the right to issue and implement guidelines for the availment of loan accommodations under the CBA as part of its management prerogative. The repeated use of the term "qualified employees" in Article XI of the CBA was deemed indicative of room for the adoption of further guidelines in the availment of the benefits thereunder. The Panel also agreed that HSBC's Plan is not a new policy as it has already been approved by the BSP as early as 2003. Thus, the Panel ruled that the salary loan provisions under Article XI of the CBA must be read in conjunction with the provisions of the Plan.

The Panel further discussed that HSBC's adoption of the Plan was not done for any whimsical or arbitrary reason, but because the bank was constrained to comply with Section X338 of the MoRB. As a banking institution, HSBC cannot divorce itself from the regulatory powers of the BSP. Observance of Section X338 of the MoRB was then necessary before the bank could have been allowed to extend loan accommodations to its officers and employees.

On the basis thereof, the Panel held that they are not ready to rule that HSBC's Plan violates Article XI of the CBA.

Aggrieved, HBILU elevated the case to the CA.

CA Decision

The CA sustained the findings and conclusions of the NCMB-PVA *in toto* on the ratiocination that HSBC was merely

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[9] Via a Notice to Arbitrate filed by HBILU on November 26, 2012.

[10] *Rollo*, p. 95.

complying with Section X338 of the MoRB when it submitted the Plan to BSP. When BSP, in turn, approved the said Plan, HSBC became legally bound to enforce its provisions, including the conduct of external credit checks on its loan applicants.[11] The appellate court further ruled that the Plan should be deemed incorporated in the CBA because it is a regulatory requirement of BSP without which the salary loan provisions of the CBA are rendered inoperative.

Petitioner's motion for reconsideration having been denied by the CA thru its May 21, 2015 Resolution, HBILU now seeks recourse from this Court.

The Issues

HBILU presents the following grounds to warrant the reversal of the assailed Decision, viz:

> The decisions and resolutions of the Hon. Panel of Voluntary Arbitrators and the Hon. Court of Appeals are tainted with grave abuse of discretion and it showed patent errors in the appreciation of facts which led to wrong conclusions of law; or stated otherwise;
>
> The Hon. Panel of Voluntary Arbitrators and Court of Appeals committed serious, reversible and gross error in law in ruling that the Bank's Financial Assistance Plan as not in violation of Article XI of the Parties' CBA provision on Salary Loans (Article XII of the new and existing CBA)[12]

Simply put, the issue for Our resolution is whether or not HSBC could validly enforce the credit-checking requirement under its BSP-approved Plan in processing the salary loan applications of covered employees even when the said requirement is not recognized under the CBA.

Arguments of Petitioner

In support of its position, HBILU argues, among others, that HSBC failed to present in court the Plan that was supposedly

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[11] *Id*. at 168.

[12] *Id*. at 90.

submitted to the BSP for approval, and to show that the requirement of external credit checking had already been included therein.[13] Too, said Plan is not a set of policies for salary loans that came from the BSP, but was devised solely by HSBC.[14]

Furthermore, HBILU claims that it is not privy to the Plan and has not been consulted, much less informed, of the impositions therein prior to its implementation. No proof was offered that the Plan had been disseminated to the employees prior to the April 20, 2012 e-mail blast.[15]

Lastly, the implementation of the Plan, according to HBILU, is tantamount to diminution of benefits[16] and a unilateral amendment of the existing CBA,[17] which are both proscribed under the Labor Code. Had the parties to the CBA intended to include the external credit check as an additional condition to the availment of employee salary loans, then it should have been plainly provided in their agreement.[18]

Arguments of Respondent

In its Comment, HSBC claims that the Plan is neither new nor was it issued on a mere whim or caprice. On the contrary, the Plan was established as early as 2003, way before Mananghaya's application was denied, to conform to Section X338 of the BSP MoRB. HSBC reminds the Court that the loan and credit accommodations could have only formed part of the employees' fringe benefit program if they were extended through a financing scheme (i.e., the Plan) approved by the BSP.

Moreover, HSBC argues that the dissemination of the Plan via e-mail blast on April 20, 2012 was but a reiteration, as

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[13] *Id*. at 92.

[14] *Id*. at 101.

[15] *Id*. at 93.

[16] *Id*. at 98.

[17] *Id*. at 102.

[18] *Id*. at 98.

opposed to a first publication. It contends that even prior to the establishment and approval of the Plan in 2003, the then-loan policy already included the requirement on external credit checking. According to the bank, there was already a provision that required the conduct of credit checking in the processing and evaluation of loan applications in their General Policies on Loans, cascaded through the Intranet system to HSBC employees on October 24, 2002, viz:

CREDIT CHECKING	
	Repayment defaults on existing loans and adverse information on outside loans will be considered in the evaluation of loan applications.

The union members cannot then feign ignorance of the external credit checking requirement in staff loan applications, according to HSBC. Consequently, petitioner's bare denial of any knowledge about it cannot be given any credence. Considering too that the Plan reiterating the requirement has been approved by the BSP in 2003, HBILU slept on its rights when it questioned its strict imposition almost a decade after its issuance.

Finally, HSBC postulates that the non-mention of the Plan in the CBA is no justification for the bank to disregard the same in processing employee loan applications. Provisions of applicable laws, especially those relating to matters affected with public policy, are deemed written into the contract.[19]

Our Ruling

The petition is meritorious.

The constitutional right of employees to participate in matters affecting their benefits and the sanctity of the CBA

Preliminarily, it is crucial to stress that no less than the basic law of the land guarantees the rights of workers to collective

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[19] Citing *Halagueña v. Philippine Airlines, Inc.*, G.R. No. 172013, October 2, 2009, 602 SCRA 297.

bargaining and negotiations as well as to participate in policy and decision-making processes affecting their rights and benefits. Section 3, Article XIII of the 1987 Constitution provides:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

Pursuant to said guarantee, Article 211 of the Labor Code, as amended, declares it a policy of the State:

(a) **To promote and emphasize the primacy of free collective bargaining and negotiations**, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;

x x x x x x x x x

(d) **To promote the enlightenment of workers concerning their rights** and obligations as union members and as employees;

x x x x x x x x x

(g) **To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare**. (Emphasis ours)

Corollary thereto, Article 255 of the same Code provides:

ART. 255. EXCLUSIVE BARGAINING REPRESENTATION AND WORKERS PARTICIPATION IN POLICY AND DECISION-MAKING.

x x x x x x x x x

Any provision of law to the contrary notwithstanding**, workers shall have the right,** subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, **to participate in policy and decision-making process of the establishment where they are**

employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and employers may form labor-management councils: *Provided*, That the representatives of the workers in such labor management councils shall be elected by at least the majority of all employees in said establishment. (Emphasis and underscoring ours)

We deem it necessary to remind HSBC of the basic and well-entrenched rule that although jurisprudence recognizes the validity of the exercise by an employer of its management prerogative and will ordinarily not interfere with such, this prerogative is **not absolute** and is subject to limitations imposed by law, **collective bargaining agreement**, and general principles of fair play and justice.[20]

Indeed, being a product of said constitutionally-guaranteed right to participate, the CBA is, therefore, the law between the parties and they are obliged to comply with its provisions.

Unilateral amendments to the CBA violate Article 253 of the Labor Code

A collective bargaining agreement or CBA is the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.[21]

In *Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals*,[22] this Court was emphatic in its

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[20] See *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 119-120.

[21] *Goya, Inc. v. Goya, Inc. Employees Union-FFW,* G.R. No. 170054, January 21, 2013, 689 SCRA 1, 15-16.

[22] G.R. No. 164060, June 15, 2007, 524 SCRA 709.

pronouncement that the CBA during its lifetime binds all the parties. **The provisions of the CBA must be respected since its terms and conditions constitute the law between the parties**. **And until a new CBA is executed by and between the parties, they are duty-bound to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement**.[23] This finds basis under Article 253 of the Labor Code, which states:

> **ARTICLE 253.** ***Duty to bargain collectively when there exists a collective bargaining agreement.*** **—** When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that **neither party shall terminate nor modify such agreement during its lifetime.** x x x **It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement** during the 60-day period and/or **until a new agreement is reached by the parties**. (emphasis added)

In the present controversy, it is clear from the arguments and evidence submitted that the Plan was never made part of the CBA. As a matter of fact, HBILU vehemently rejected the Plan's incorporation into the agreement. Due to this lack of consensus, the bank withdrew its proposal and agreed to the retention of the original provisions of the CBA. The subsequent implementation of the Plan's external credit check provisions in relation to employee loan applications under Article XI of the CBA was then an imposition solely by HSBC.

In this respect, this Court is of the view that tolerating HSBC's conduct would be tantamount to allowing a blatant circumvention of Article 253 of the Labor Code. It would contravene the express prohibition against the unilateral modification of a CBA during its subsistence and even thereafter until a new agreement is reached**. It would unduly license HSBC to add, modify, and ultimately further restrict the grant of Salary Loans beyond the terms of the CBA by simply adding stringent requirements in its Plan, and having the said Plan approved by BSP in the guise of compliance with the MoRB**.

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[23] *Id*.

HSBC's defense, that there was no modification of the CBA since the external credit check has been a long-standing policy of the Bank applied to all of its employees, is unconvincing. Noteworthy is that the bank failed to submit in evidence the very Plan that was supposedly approved by the BSP in 2003. Nevertheless, even if We were to rely on the later versions of the Plan approved by the BSP, Our ruling will not change.

The only provision relative to the credit checking requirement under the 2006 and 2011 Plans is this and nothing else:

CREDIT CHECKING	
	Repayment defaults on existing loans and adverse information on outside loans will be considered in the evaluation of loan applications.[24]

As for the manner in which said credit checking will be done, as well as any additional requirements that will be imposed for the purpose, the 2006 Plan and even its later 2011 version are silent thereon.[25] Nowhere in these Plans can We find the requirement for the submission of an "Authority to Conduct Checks Form," as well as the details on adverse credit finding, specifically:

With the strict implementation of these provisions, adverse credit findings may result to disapproval of loan or credit card applications. These findings will include the following:

(1) Frequency of confirmed ADA failure on staff/commercial loans and credit cards (3 consecutive incidents within the past 6 months or 6 incidents within the past 12 months). Note that applications with pending ADA for investigation will only be processed upon confirmation of status (Confirmed or Reprieved);
(2) Adverse findings on HSBC cards; or
(3) Adverse findings from external credit checks.[26]

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[24] *Rollo*, pp. 475-476.

[25] *Id*. at 475-488.

[26] *Id*. at 285.

In fact, regrettably, HSBC's only documentary basis for proving that the credit checking requirement and the manner of its enforcement have been set in place much earlier is the use of the term "reiterate" in its April 20, 2012 e-mail. Thus, we quote:

> Dear All
>
> We wish to **reiterate** the following provisions included in the Financial Assistance Plan (FAP) as approved by Bangko Sentral ng Pilipinas (BSP). x x x
>
> 20. Accordingly, **the above email dated 20 April 2012 clearly indicates that the dissemination therein of the FAP and its provisions is merely a reiteration, and not a first publication as the Union now conveniently claims.**[27] x x x (emphasis supplied)

What further convinces Us that the external credit check as well as the manner of its enforcement is a new imposition by HSBC is the fact that the bank made no attempt to rebut HBILU's evidence that **the former's requirements for the grant of salary loans changed only after the April 20, 2012 email blast**. HBILU sufficiently proved that **prior to the April 20, 2012 email, members of the bargaining unit were using only four (4) documents in applying for a loan**, to wit: 1) Application for Personal Loan Form; 2) Authority to Deduct Form; 3) Set-Off of Retirement Fund Form; and 4) Promissory Note Form.[28] Thereafter, management imposed a **new set of requirements**, which includes the "Authority to Conduct Checks Form."[29] As testified to by Mananghaya, he only signed the first four (4) requirements for his March 2012 loan. However, for the September 2012 loan, he was asked to complete a new set of documents which included the Authority to Conduct Checks Form.[30] Too, **even the email itself states that said credit**

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[27] HSBC Comment, p. 8.

[28] *Rollo*, p. 640.

[29] *Id*. at 642.

[30] *Id*. at 642-643.

checking requirement, among others, is to be strictly enforced effective May 2012.[31] Though HSBC claims that credit checking has been the bank's long-standing policy, **it failed to show that it indeed required such before its covered employees could avail of a salary loan under the CBA prior to April 20, 2012—the date of the email blast.**

Thus, no other conclusion can be had in this factual milieu other than the fact that **HSBC's enforcement of credit checking on salary loans under the CBA invalidly modified the latter's provisions thereon through the imposition of additional requirements which cannot be found anywhere in the CBA.**

If it were true that said credit checking under the Plan covers salary loans under the CBA, then the bank should have negotiated for its inclusion thereon as early as the April 1, 2010 to March 31, 2012 CBA which it entered into with HBILU. However, the express provisions of said CBA inked by the parties clearly make no reference to the Plan. And even in the enforcement thereof, credit checking was not included as one of its requirements. This leads Us to conclude that HSBC originally never intended the credit checking requirement under the Plan to apply to salary loans under the CBA. At most, its application thereto is a mere afterthought, as evidenced by its sudden, belated, and hurried enforcement on said salary loans via the disputed email blast.

In other words, it appears that, based on its actuations, HSBC never intended to apply the credit checking item under the Plan to salary loans under the CBA. Otherwise, it would have enforced such requirement from the moment the salary loans provisions under the old CBA were implemented, which it did not. It may be that said requirement was being applied to other types of loans under the Plan, but based on the evidence presented, We cannot say the same for salary loans under the CBA.

The minority argues that primacy is being accorded to the CBA over the Plan approved by the BSP. Such, however, is

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[31] *Id*. at 404.

not the case. We are not saying that the Plan should yield to the CBA. The point that we are driving at in this lengthy discussion is that on the basis of the evidence presented, We are convinced that the credit checking provision of the Plan was never intended to cover salary loans under the CBA. Otherwise, HSBC would have implemented such the moment said salary loans under the previous CBA were made available to its covered employees. Thus, HSBC cannot now insist on its imposition on loan applications under the disputed CBA provision without violating its duty to bargain collectively.

If We were to allow this practice of leaving to HSBC the determination, formulation, and implementation of the guidelines, procedures, and requirements for the availment of salary loans granted under the CBA, which guidelines, procedures, and requirements unduly restrict the provisions of the CBA, this Court would in effect be permitting HSBC to repeatedly violate its duty to bargain collectively under the guise of enforcing the general terms of the Plan.

Salary loans subject of this case are not covered by the credit checking requirement under the MORB

In maintaining that the credit checking requirement under the MoRB should be deemed written into the CBA, the minority makes reference to Sec. X304.1 of the 2011 MoRB in maintaining that financial institutions must look into the obligor's repayment history, among other things, before approving a loan application. Said provision reads:

> § X304.1 **General guidelines.** Consistent with safe and sound banking practices, a bank shall grant loans or other credit accommodations only in amounts and for the periods of time essential for the effective completion of the operation to be financed. Before granting loans or other credit accommodations, a bank must ascertain that the borrower, co-maker, endorser, surety, and/or guarantor, if applicable, is/are financially capable of fulfilling his/their commitments to the bank. For this purpose, a bank shall obtain adequate information on his/their credit standing and financial capacities x x x.

At this point it is well to draw attention to the fact that said provision is a general one as specifically indicated thereat. It is also equally important to emphasize that Sec. X304.1 must be interpreted in conjunction with Section X338.3, the provision which specifically applies to salary loans under the fringe benefit program of the bank. Thus:

> Subsection X338.3 Other conditions/limitations
>
> The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.
>
> The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.
>
> **All loans or other credit accommodations to bank officers and employees, EXCEPT those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank.** Loans or other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791 and Sections X326 to X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program. (emphasis ours)

In specifying that "[a]ll loans or other credit accommodations to bank officers and employees, *except those granted under the fringe benefit program of the bank*, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank," **Sec. X338.3 clearly excluded loans and credit accommodations under the bank's fringe benefits program from the operation of Sec. X304.1**. This fact is even recognized in the dissent. To ignore this clear exception and insist on interpreting the general guidelines under Section X304.1 would be to renege from Our duty to apply a clear and unambiguous provision.[32]

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[32] A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or

It may also be argued that HSBC, being a bank, is statutorily required to conduct a credit check on all of its borrowers, even though it be made under a loan accommodation scheme, applying Section 40[33] of Republic Act No. (RA) 8791 (General Banking Law of 2000). A reading of RA 8791, however, reveals that loan accommodations to employees are not covered by said statute. Nowhere in the law does it state that its provisions shall apply to loans extended to bank employees which are granted under the latter's fringe benefits program. Had the law intended otherwise, it could have easily specified such, similar to what was done for directors, officers, stockholders and their related interests under Section 36 thereof. This conclusion is supported by the very wording of Subsection X338.3 of the MORB. To reiterate:

Subsection X338.3 Other conditions/limitations

The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.

The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.

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interpretation. There is only room for application. *Twin Ace Holdings Corporation v. Rufina and Compan*y, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376.

[33] SECTION 40. Requirement for Grant of Loans or Other Credit Accommodations. — Before granting a loan or other credit accommodation, a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank. Toward this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or other credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation. In formulating rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral. (76a)

All loans or other credit accommodations to bank officers and employees, except those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank. **Loans or other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791** and Sections X326 to X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program.

Notably, even though the provision covers loans extended to both bank officers and employees, paragraph 3 thereof singled out loans and credit accommodations granted to **officers** when it provided for the applicability of RA 8791.

What the law does not include, it excludes.

These convince Us to conclude that RA 8791 only intended to cover loans by third persons and those extended to directors, officers, stockholders and their related interests. Consequently, Section 40 thereof, which requires a bank to ascertain that the debtor is capable of fulfilling his commitments to it before granting a loan or other credit accommodation, does not automatically apply to the type of loan subject of the instant case.

Furthermore, it is inaccurate to state that credit checking is necessary, or even indispensable, in the grant of salary loans to the bank's employees, since the business of banking is imbued with public interest and there is a fiduciary relationship between the depositor and the bank. It is also incorrect to state that allowing bank employees to borrow funds from their employer via salary loans without the prior conduct of a credit check is inconsistent with this fiduciary obligation. This is so because there are other ways of securing payment of said salary loans other than ascertaining whether the borrowing employee has the capacity to pay the loan. BSP Circular 423, Series of 2004 itself provides for such, thus:

Subsection X338.1 Mechanics. The mechanics of such financing plan shall have the following minimum features:

Participation shall be limited to full-time and permanent officers and employees of the bank;

x x x x x x x x x

The bank shall adopt measures to protect itself from losses such as by incorporating in the plan or contract provisions requiring co-makers or co-signor, chattel, or real estate mortgages, fire insurance, mortgage redemption insurance, assignment of money value of leave credits, pension or retirement benefits. (Emphasis ours)

Additionally, both the BSP Circular 423, Series of 2004 and Section X338.3 of the MoRB provide for a safeguard in order to protect the funds of the Bank's depositors while allowing the Bank to extend such benefits to its employees, in that both require that:

The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.[34]

There are, therefore, sufficient safety nets consistent with the bank's fiduciary duty to its depositors even without requiring the conduct of an external credit check in the availment of salary loans under the subject CBA. As a matter of fact, there is no showing that the bank's finances suffered because it has been granting said salary loans under the CBA without the external credit check.

Withal, We cannot subscribe to HSBC's position that its imposition of the credit checking requirement on salary loans granted under the CBA is valid. **The evidence presented convinces Us to hold that the credit checking requirement imposed by HSBC under the questioned Plan which effectively and undoubtedly modified the CBA provisions on salary loans was a unilateral imposition violative of HSBC's duty to bargain collectively and, therefore, invalid**. HSBC miserably failed to present even an iota of concrete documentary evidence that the credit checking requirement has

[34] *Supra* note 5.

been imposed on salary loans even before the signing of the CBA subject of the instant dispute and that the Plan was sufficiently disseminated to all concerned. In contrast, HBILU sufficiently proved that HSBC violated its duty to bargain collectively under Article 253 of the Labor Code when it unilaterally restricted the availment of salary loans under Article XI of the CBA on the excuse of enforcing the Plan approved by the BSP.

As this Court emphasized in *Philippine Airlines, Inc. v. NLRC*, industrial peace cannot be achieved if the employees are denied their just participation in the discussion of matters affecting their rights,[35] **more so in the case at bar where the employees have been led to believe that they were given the chance to participate in HSBC's policy-formulation with respect to the subject benefit, only to find out later that they would be deprived of the fruits of said involvement**.

On interpretation of CBAs

At this point, We deem it proper to recall the basics in resolving issues relating to the provisions and enforcement of CBAs. In *United Kimberly-Clark Employees Union Philippine Transport General Workers Organization (UKCEU-PTGWO) v. Kimberly-Clark Philippines, Inc.*, this Court emphasized that:

> As a general proposition, an arbitrator is confined to the interpretation and application of the collective bargaining agreement. He does not sit to dispense his own brand of industrial justice: his award is legitimate only in so far as it draws its essence from the CBA, *i.e.*, when there is a rational nexus between the award and the CBA under consideration. It is said that an arbitral award does not draw its essence from the CBA; hence, there is an unauthorized amendment or alteration thereof, if:
>
> 1. It is so unfounded in reason and fact;
> 2. It is so unconnected with the working and purpose of the agreement;
> **3. It is without factual support in view of its language, its context, and any other indicia of the parties' intention**;

[35] G.R. No. 85985, August 13, 1993, 225 SCRA 301, 309.

4. It ignores or abandons the plain language of the contract;
5. It is mistakenly based on a crucial assumption which concededly is a nonfact;
6. It is unlawful, arbitrary or capricious; and
7. It is contrary to public policy.

x x x x x x x x x

If the terms of a CBA are clear and [leave] no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail. However, if, in a CBA, the parties stipulate that the hirees must be presumed of employment qualification standards but fail to state such qualification standards in said CBA, **the VA may resort to evidence extrinsic of the CBA to *determine the full agreement intended by the parties.* When a CBA may be expected to speak on a matter, but does not, its sentence imports ambiguity on that subject. The VA is not merely to rely on the cold and cryptic words on the face of the CBA but is mandated to *discover the intention of the parties.*** Recognizing the inability of the parties to anticipate or address all future problems, gaps may be left to be filled in by reference to the practices of the industry, and the step which is equally a part of the CBA although not expressed in it. ***In order to ascertain the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. The VA may also consider and rely upon negotiating and contractual history of the parties, evidence of past practices interpreting ambiguous provisions.* The VA has to examine such practices to determine the scope of their agreement, as where the provision of the CBA has been loosely formulated.** Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it.[36] (emphasis ours)

Thus, in resolving issues concerning CBAs, We must not forget that the foremost consideration therein is upholding the intention of both parties as stated in the agreement itself, or based on their negotiations. Should it appear that a proposition or provision has clearly been rejected by one party, and said provision was ultimately not included in the signed CBA, then

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[36] G.R. No. 162957, March 6, 2006, 484 SCRA 187, 200-203.

We should not simply disregard this fact. We are duty-bound to resolve the question presented, albeit on a different ground, so long as it is consistent with law and jurisprudence and, more importantly, does not ignore the intention of both parties. Otherwise, We would be substituting Our judgment in place of the will of the parties to the CBA.

With these, We find no need to resolve the other matters presented.

WHEREFORE, premises considered, the petition is **GRANTED.** The Decision dated October 23, 2014 and Resolution dated May 21, 2015 of the Court of Appeals in CA-G.R. SP No. 130798 are hereby **REVERSED** and **SET ASIDE**.

Respondent Hongkong and Shanghai Banking Corporation's Financial Assistance Plan, insofar as it unilaterally imposed a credit checking proviso on the availment of Salary Loans by its employees under Article XI of the 2010-2012 CBA, is hereby declared legally ineffective and invalid for being in contravention of Article 253 of the Labor Code.

SO ORDERED.

Bersamin, Martires, and *Gesmundo, JJ.,* concur.

Leonen, J., dissents, see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

I dissent from the *ponencia* insofar as it accords primacy to the Collective Bargaining Agreement over the Financial Assistance Plan approved by the Bangko Sentral ng Pilipinas. A collective bargaining agreement cannot amend laws, regulations, or policies, especially when it involves the banking industry, which is impressed with public interest.

This is a Petition for Review on Certiorari under Rule 45 questioning the Decision dated October 23, 2014 and Resolution dated May 21, 2015 of the Court of Appeals, which ruled as

valid the requirement of an external credit check before the approval of an employee's salary loan, although this requirement was not stated in the parties' Collective Bargaining Agreement.

I submit that the Petition should be denied.

A collective bargaining agreement is a contract between an employer and his or her employees, establishing particular arrangements between them with respect to wages, hours of work, grievances, and other terms and conditions of employment.[1]

A collective bargaining agreement is binding and is the law between its parties. Its terms and conditions must be respected and complied with until it expires. Article 253 of the Labor Code provides:

> Article 264. [253] *Duty to bargain collectively when there exists a collective bargaining agreement.* — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that *neither party shall terminate nor modify such agreement during its lifetime.* However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

In *Faculty Association of Mapua Institute of Technology v. Court of Appeals*,[2]

> Until a new CBA is executed by and between the parties, they are duty-bound to keep the *status quo* and to continue in full force and

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[1] LABOR CODE, Art. 263. [252] *Meaning of Duty to Bargain Collectively*. — The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.

[2] 552 Phil. 77 (2007) [Per *J.* Quisumbing, Second Division].

effect the terms and conditions of the existing agreement. The law does not provide for any exception nor qualification on which economic provisions of the existing agreement are to retain its force and effect. Therefore, it must be understood as encompassing all the terms and conditions in the said agreement.

The CBA during its lifetime binds all the parties. The provisions of the CBA must be respected since its terms and conditions "constitute the law between the parties." Those who are entitled to its benefits can invoke its provisions. In the event that an obligation therein imposed is not fulfilled, the aggrieved party has the right to go to court and ask redress. The CBA is the norm of conduct between petitioner and private respondent and compliance therewith is mandated by the express policy of the law.[3] (Citations omitted)

Nonetheless, a collective bargaining agreement is still subject to laws and public policy. It is still a contract limited by Article 1306 of the Civil Code, which states:

Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to *law, morals, good customs, public order, or public policy.* (Emphasis supplied)

Thus, although it is not explicitly provided for, as in all contracts, laws, morals, good customs, public order, or public policy is deemed written in collective bargaining agreements.

In case a collective bargaining agreement runs contrary to these limitations, this Court has the power to strike down the violative provision. In *PNCC Skyway Traffic Management and Security Division Workers Organization v. PNCC Skyway Corp.*:[4]

Although it is a rule that a contract freely entered into between the parties should be respected, since a contract is the law between the parties, there are, however, certain exceptions to the rule, specifically Article 1306 of the Civil Code, which provides:

> The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient,

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[3] *Id*. at 84.

[4] 626 Phil. 700 (2010) [Per *J*. Peralta, Third Division].

provided they are not contrary to law, morals, good customs, public order, or public policy.

Moreover, 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* . . . ." The supremacy of the law over contracts is explained by the fact that labor contracts are not ordinary contracts; *they are imbued with public interest and therefore are subject to the police power of the state. However, it should not be taken to mean that provisions agreed upon in the CBA are absolutely beyond the ambit of judicial review and nullification. If the provisions in the CBA run contrary to law, public morals, or public policy, such provisions may very well be voided.*[5] (Citations omitted, emphasis supplied)

Thus, a collective bargaining agreement cannot reign supreme where it is inconsistent with laws and public policy. This is especially so when the laws and public policy pertain to industries impressed with public interests and which necessarily warrant the protection of the State, such as the banking industry.

It is of vital importance that the general public trusts and has confidence in the banking industry. It is impressed with public interest and is so tied together with national economy and development. Its fiduciary nature likewise requires it to be stable, consistent, and reliable, thus, calling for high standards of integrity and performance. Under Section 2 of Republic Act No. 8791 (General Banking Law),

Section 2. *Declaration of Policy*. — The State recognizes the vital role of banks in providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance. In furtherance thereof, the State shall promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy.

In *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation*:[6]

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[5] *Id*. at 715-716.

[6] 574 Phil. 495 (2008) [Per *J*. Corona, First Division].

Banks are entities engaged in the lending of funds obtained through deposits from the public. They borrow the public's excess money (*i.e.*, deposits) and lend out the same. Banks therefore redistribute wealth in the economy by channeling idle savings to profitable investments.

Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public. They plough back the bulk of said deposits into the economy in the form of loans. Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.

Protecting the integrity of the banking system has become, by large, the responsibility of banks. The role of the public, particularly individual borrowers, has not been emphasized. Nevertheless, we are not unaware of the rampant and unscrupulous practice of obtaining loans without intending to pay the same.[7] (Citations omitted)

As such, compared to other industries and businesses, the diligence required of banks is at its highest standard in all aspects—from granting loan applications to the hiring and supervision of its employees. In *Far East Bank and Trust Co. v. Tentmakers Group, Inc.*,[8]

It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. *The highest degree of diligence* is expected. In handling loan transactions, banks are under obligation to ensure compliance by the clients with all the documentary requirements pertaining to the approval and release of the loan applications. For failure of its branch manager to exercise the requisite diligence in abiding by the [Manual of Regulations for Banks] and the banking rules and practices, [Far East Bank and Trust Co.] was negligent in the selection and supervision of its employees. In *Equitable PCI Bank v. Tan*, the Court ruled:

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[7] *Id.* at 506-507.

[8] 690 Phil. 134 (2012) [Per *J.* Mendoza, Third Division].

> . . . Banks handle daily transactions involving millions of pesos. By the very nature of their works the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.[9] (Emphasis supplied, citations omitted)

Bangko Sentral ng Pilipinas (Bangko Sentral) is the central authority that provides policies on money, banking, and credit, and supervises and regulates bank operations. Republic Act No. 7653 (New Central Bank Act) states:

> Section 1. *Declaration of Policy*. — The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. . . .
>
> Section 2. *Creation of the Bangko Sentral*. — There is hereby established an independent central monetary authority, which shall be a body corporate known as the *Bangko Sentral ng Pilipinas,* hereafter referred to as the *Bangko Sentral*.
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> . . . . . .
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> Section 3. *Responsibility and Primary Objective*. — The *Bangko Sentral* shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.
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> The primary objective of the *Bangko Sentral* is to maintain price ability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.[10]

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

[10] *See also* Rep. Act No. 8791, Sec. 5. *Policy Direction*; *Ratios*, *Ceilings and Limitations*. — The Bangko Sentral shall provide policy direction in the areas of money, banking and credit.

The Bangko Sentral's supervisory powers under the General Banking Law include issuing rules, establishing standards for the operation of financial institutions based on sound business practice, and examining the institutions for compliance and irregularities:

Section 4. *Supervisory Powers.* — The operations and activities of banks shall be subject to supervision of the Bangko Sentral. "Supervision" shall include the following:

4.1. The issuance of rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered, taking into consideration the distinctive character of the operations of institutions and the substantive similarities of specific functions to which such rules, modes or standards are to be applied;

4.2. The conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board;

4.3. Overseeing to ascertain that laws and regulations are complied with;

4.4. Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis: *Provided*, That the deficiencies/irregularities found by or discovered by an audit shall be immediately addressed;

4.5. Inquiring into the solvency and liquidity of the institution (2-D); or

4.6. Enforcing prompt corrective action.

For this purpose, the Monetary Board may prescribe ratios, ceilings, limitations, or other forms of regulation on the different types of accounts and practices of banks and quasi-banks which shall, to the extent feasible, conform to internationally accepted standards, including those of the Bank for International Settlements (BIS). The Monetary Board may exempt particular categories of transactions from such ratios, ceilings and limitations, but not limited to exceptional cases or to enable a bank or quasi-bank under rehabilitation or during a merger or consolidation to continue in business with safety to its creditors, depositors and the general public.

In line with its supervisory powers, the Bangko Sentral codified the rules, regulations, and policies in 1996 to implement the General Banking Law and other banking laws. The codification resulted in the Manual of Regulations of Banks (MORB).[11] This was prepared by a multi-departmental Ad Hoc Review Committee created under the Bangko Sentral Monetary Board Resolution No. 1203 dated December 7, 1994. The MORB serves "as the principal source of banking regulations issued by the Monetary Board and the Governor of the Bangko Sentral and shall be cited as the authority for enjoining compliance with the rules and regulations embodied therein."[12]

Pertinent to the case at bar is the following provision under the MORB:

> Sec. X338 Financial Assistance to Officers and Employees. Banks may provide financial assistance to their officers and employees, as part of their fringe benefits program, to meet the housing, transportation, household and personal needs of their officers and employees.
>
> Financing plans and amendments thereto, shall be with prior approval of the Bangko Sentral.

This provision states that banks may financially assist their employees for their housing, transportation, household, and personal needs, provided that a financing plan is approved first by the Bangko Sentral.[13]

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[11] Manual of Regulations for Banks (2017).

[12] The Committee has been reconstituted several times to update the MORB and to keep it consistent with banking legislative reforms, and its implementing rules and regulations, and amendments to existing policies.

[13] The minimum features of the financing plan is provided for in X338.1 and X338.3 of the Manual of Regulations for Banks:

§ X338.1 Mechanics. The mechanics of such financing plan shall have the following minimum features:

a. Participation shall be limited to full time and permanent officers and employees of the bank;

b. Financial assistance shall only be for the following purposes:

In the case at bar, petitioner Hong Kong Bank Independent Labor Union (HBILU) insists that respondent Hong Kong and Shanghai Banking Corporation (HSBC) is violating their Collective Bargaining Agreement in imposing an additional

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(1) The acquisition of a residential house and lot, or the construction, renovation or repair of a residential house on a lot owned and to be occupied by the officer or employee;

(2) The acquisition of vehicles, household equipment and appliances for the personal use of the officer or employee or his immediate family; or

(3) To meet expenses for the medical, maternity, education, emergency and other personal needs of the officer or employee or his immediate family;

c. Financial assistance for purposes mentioned in Items "b(1)" and "b(2)" of this Subsection shall be granted in the form of a loan, advance or other credit accommodation, installment sale, lease with option to purchase or lease-purchase arrangement where the lessee is obliged to purchase the real estate or equipment;

d. The amount and maturity of financial assistance for each purpose shall be determined by the bank in consonance with the normal requirements thereof: Provided, That the maximum amount shall be stated as percentage or multiple of the total monthly compensation of the officer or employee and shall be within the paying capacity of the borrowing officer or employee.

Total monthly compensation shall include the basic salary and all fixed and regular monthly allowances of the officer or employee. Payments for sickness benefits and other special emoluments which are not fixed or regular in nature, or the commutation into cash of unused leave credits shall not be included in the computation of total monthly compensation;

e. The amortization payment shall include amounts necessary to cover mortgage redemption insurance and fire insurance premiums, taxes, special assessments, and other related fees and charges;

f. Availment of the financing plan to construct or acquire a residential house and lot shall be allowed only once during the officer's or employee's tenure with the bank, except where the right over the real estate previously acquired or constructed under the financing plan is absolutely transferred or assigned to another officer or employee of the bank or to a third party: Provided, That the bank must be fully paid or reimbursed for the outstanding availment on the financing plan before the officer/employee is allowed to re-avail himself of the same financing plan.

An officer or employee (or his spouse) who already owns a residential house and lot shall not be qualified to avail himself of financial assistance for purposes of acquiring a residential house and/or lot.

These prohibitions notwithstanding, financial assistance for the repair or renovation of a residential house may be allowed subject to such limitation as may be prescribed by the bank pursuant to Item "d" of this Subsection;

credit-checking requirement before granting a financial assistance loan to its members.

On the other hand, HSBC claims that the credit-checking requirement was provided for in its financing plan, which was duly approved by the Bangko Sentral, even before the execution of the parties' Collective Bargaining Agreement.

I find for HSBC.

Given the nature of the MORB, I opine that all its provisions are deemed incorporated in all pertinent Collective Bargaining Agreements. Necessarily, the financing plans required under

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g. Availment of the financing plan for the acquisition of a specific type of equipment or appliance shall be allowed not oftener than once every three (3) years: Provided, That re-availment shall be allowed only after previous obligations in connection with the acquisition of the same type of equipment or appliances have been fully liquidated; and

h. The bank shall adopt measures to protect itself from losses such as by incorporating in the plan or contract provisions requiring co-makers or co-signor, chattel, or real estate mortgages, fire insurance, mortgage redemption insurance, assignment of money value of leave credits, pension or retirement benefits.

. . . . . .

§ X338.3 Other conditions/limitations

a. The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.

b. The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.

c. *The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.*

Banks providing financial assistance to their officers/employees shall submit a regular report on "availments of financial assistance to officers and employees" to the BSP within fifteen (15) banking days after end of reference semester.

The appropriate department of the [Supervision and Examination Sector] may further require banks to submit such data or information as may be necessary to facilitate verification of such transactions by BSP examiners. (Emphasis supplied)

the MORB and approved by the Bangko Sentral are also included in the Collective Bargaining Agreements. A financing plan is not a mere contract of a bank with any other entity. It is an arrangement that becomes part of the regulations of the Bangko Sentral by which the bank is bound. This is bolstered by X339.4, which requires banks to submit regular reports on their transactions under their financing plans:

> § X339.4 Reportorial requirements. Financing plans and amendments thereto shall be submitted to Bangko Sentral within thirty (30) calendar days from approval thereof by the bank's board of directors. The appropriate department of the [Supervision and Examination Sector] may require the banks concerned to submit a regular report monitoring the various transactions under the bank's financing plans for officers/employees.
>
> All banks providing financial assistance to bank officers/employees shall submit a report on "Availments of Financial Assistance to Officers and Employees" to the Bangko Sentral within fifteen (15) banking days after end of reference semester.

Thus, the financing plan is not only a one-sided exercise of the bank's management prerogative. It is a requirement under the MORB by the Bangko Sentral. Thus, it takes on the form of a regulation by which HSBC is bound and must comply with.

The same can be said of credit checks in general. Consistent with sound banking practice and the public's interest in the banking system, banks are governed by guidelines before granting a loan to any obligor. Included in these guidelines is the requirement that a bank should first assess credit risks and ascertain the obligor's capacity to pay the loan. The General Banking Law provides:

> Section 40. *Requirement for Grant of Loans or Other Credit Accommodations*. — Before granting a loan or other credit accommodation, a bank *must ascertain that the debtor is capable of fulfilling his commitments to the bank.*
>
> Toward this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and *such information as may be prescribed by law or by rules and regulations of Monetary Board to enable the bank to*

properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or other credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation.

In formulating rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral. (Emphasis supplied)

Currently, the MORB provides:

§ X178.5 Credit policies, processes and procedures. [Financial institutions] (FIs) shall have in place a *sound, comprehensive and clearly defined credit policies, processes and procedures consistent with prudent standards, practices, and relevant regulatory requirements* adequate for the size, complexity and scope of an FI's operations. The board-approved policies, processes and procedures shall cover all phases of the credit risk management system.

a. FIs shall establish appropriate processes and procedures to implement the credit policy and strategy. These processes and procedures, as well as the credit policy, shall be documented in sufficient detail, effectively communicated throughout the organization to provide guidance to staff, and periodically reviewed and updated to take into account new activities and products, as well as new lending approaches. Subsequent major changes must be approved by the board.

b. The credit policy shall likewise provide for the maintenance of an audit trail documenting that the credit risk management process was properly observed and identifying the unit, individual(s) and/or committee(s) providing input into the process.

c. The credit culture, which reflects the FI's credit values, beliefs and behaviors, shall likewise be articulated in the credit policy and communicated to credit officers and staff at all levels through the strategic plan. The credit practices shall be assessed periodically to ensure that the officers and staff conform to the desired standard and value.[14]

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[14] Manual of Regulations for Banks *citing* Circ. No. 855 (2014).

B. Operating Under a Sound Credit Granting Process

§ X178.6 Credit approval process. The *approval process for new credits* as well as the amendment, renewal and refinancing of existing credit exposures shall be *aligned with the credit risk management structure and clearly articulated in an FI's written credit policy*. The process shall include the different levels of appropriate approving authority and the corresponding approving authority limits, which shall be *commensurate with the risks of the credit exposures*, as well as expertise of the approving individuals involved. It shall also include an escalation process where approval for restructuring of credits, policy exceptions or excesses in internal limits is escalated to units/officer with higher authorities. Further, there shall be proper coordination of relevant units and individuals and sufficient controls to ensure acceptable credit quality at origination.[15]

§ X178.7 Credit granting and loan evaluation/analysis process and underwriting standards. *Consistent with safe and sound banking practice*, an FI shall grant credits only in amounts and for the periods of time essential for the effective completion of the activity to be financed and *after ascertaining that the obligor is capable of fulfilling his commitments to the FI*. Towards this end, an FI shall establish *well-defined credit-granting criteria and underwriting standards*, which shall include a clear indication of the FI's target market and a *thorough understanding of the obligor or counterparty*, as well as the purpose and structure of the credit and its source of repayment.

a. *FIs shall conduct comprehensive assessments of the creditworthiness of their obligors, and shall not put undue reliance on external credit assessments. Credit shall be granted on the basis of the primary source of loan repayment or cash flow, integrity and reputation of the obligor or counterparty as well as their legal capacity to assume the liability.*

b. Depending on the type of credit exposure and the nature of the credit relationship, the factors to be considered and documented in approving credits shall include, but are not limited to, the following:

(1) The purpose of the credit which shall be clearly stated in the credit application and in the contract between the FI and the obligor;

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[15] Manual of Regulations for Banks *citing* Circ. No. 855 (2014).

(2) The current *risk profile* (including the nature and aggregate amounts of risks, risk rating or credit score, pricing information) *of the borrower*, collateral, other credit enhancements and its sensitivity to economic and market developments;

(3) The *sources of repayment, repayment history and current capacity to repay based on financial analysis from historical financial trends and indicators* such as equity, profitability, turnover, leverage, and debt servicing ability via cash flow projections, under various scenarios;

(4) For commercial credits, the borrower's business expertise, its credit relationships including its shareholders and company directors, as applicable, and the status of the borrower's economic sector and its track record vis-à-vis industry peers;

(5) The proposed terms and conditions of the credit (i.e., type of financing, tenor, repayment structure, acceptable collateral) including covenants designed to limit changes in the future risk profile of the obligor;

. . . . . .

f. When granting consumer credits, an FI shall conduct its credit assessment in a holistic and prudent manner, taking into account all relevant factors that could influence the prospect for the loan to be repaid according to its terms and conditions. This shall include an appropriate consideration of the potential obligor's other debt obligations and repayment history and an assessment of whether the loan can be expected to be repaid from the potential obligor's own resources without causing undue hardship and over-indebtedness. Adequate checkings, including with relevant credit bureaus, shall be made to verify the obligor's credit applications and repayment records.[16] (Emphasis supplied, citation omitted)

At the time the subject financing plan became an issue (i.e., when HBILU Member Vince Mananghaya applied for a loan in September 2012), the then 2011 MORB provided:

§ X304.1 General guidelines. Consistent with safe and sound banking practices, a bank shall grant loans or other credit

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[16] 2017 Manual of Regulations for Banks *citing* Circ. No. 855 (2014).

accommodations only in amounts and for the periods of time essential for the effective completion of the operation to be financed.

Before granting loans or other credit accommodations, *a bank must ascertain that the borrower, co-maker, endorser, surety and/or guarantor, if applicable, is/are financially capable of fulfilling his/their commitments to the bank. For this purpose, a bank shall obtain adequate information on his/their credit standing and financial capacities.*

These provisions, thus, show that in approving a loan in favor of an obligor, financial institutions must look into, among other things, the obligor's repayment history, creditworthiness, integrity, reputation, and capacity to assume the liability.

Thus, credit checks are a necessary component in loan approvals. They are required by all financial institutions that grant loans, taking into consideration credit risks and bearing in mind safe and sound banking practice.

Given that loans granted under a bank's fringe benefits program is not necessarily subject to the same terms and conditions imposed on the regular lending operations of the bank,[17] the Bangko Sentral still requires that it first approve a financial

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[17] BSP Circ. No. 423, series of 2004, subsec. X338.3 Other conditions/limitations

The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.

The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.

All loans or other credit accommodations to bank officers and employees, except those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank. Loans or other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791 and Sections X326 to X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program.

plan for such a case, thus, showing that these types of loans are still regulated.

In this case, the Bangko Sentral approved a financing plan that provides for credit checking of covered employees.

No malice was proved to have been committed by HSBC in requiring the credit checking. There is no showing that it was motivated by bad faith in imposing the requirements, and it is presumed to have been done so in good faith. In implementing the credit-checking requirement, the bank is simply guided by the financing plan required under the MORB and approved by the Bangko Sentral.

Thus, although the credit-checking requirement is not explicitly provided for in the parties' Collective Bargaining Agreement, it is deemed incorporated in it. Their Collective Bargaining Agreement cannot prevail over a Bangko Sentral-approved financing plan.

To reiterate, the signing of a collective bargaining agreement does not result in the amendment of laws and policies, especially where the policy pertains to an industry imbued with public interest. It cannot likewise undermine safe and sound banking practice. To reiterate, banks play a vital role in our economy and society as they deal with the public's money.

The ponencia cites the case of *Faculty Association of Mapua Institute of Technology v. Court of Appeals*[18] to support its claim that the Collective Bargaining Agreement must be respected. That case involves an employer trying to amend a collective bargaining agreement through the issuance of new rules and by adopting a new formula to determine the pay of its employees. However, this case does not involve the implementation of any law, or any conflict with any public policy.

The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.

[18] 552 Phil. 77 (2007) [Per *J.* Quisumbing, Second Division].

Likewise, the ponencia cites *United Kimberly-Clark Employees Union v. Kimberly-Clark Phil., Inc.*[19] to support its contention on how a collective bargaining agreement must be interpreted. However, this case does not involve a business affected with public interest.

The cited cases do not involve the banking industry, which as stated, plays a vital role in the State's economy as it deals with the public's money. The highest standards are imposed on the banking industry because of its fiduciary nature and the necessity of its integrity, reliability, and high performance. These standards do not apply in the same manner as to other businesses. As such, the banking business is governed by more rules that must be strictly complied with. A bank's management prerogative is further limited by the Bangko Sentral's policies and regulations, which are issued to protect public interests and to maintain trust and confidence in banks. As such, banks may not simply choose to ignore these on a whim.

Thus, while the State emphasizes the primacy of free collective bargaining and negotiations, collective bargaining agreements must still be consistent with the banking industry's laws, standards, and policies.

Accordingly, I vote to **DENY** the Petition for Review on Certiorari.

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[19] 519 Phil. 176 (2006) [Per *J.* Callejo, Sr., First Division].

FIRST DIVISION

[G.R. No. 220832. February 28, 2018]

BUREAU OF CUSTOMS (BOC), represented by COMMISSIONER ALBERTO D. LINA, AND DEPARTMENT OF BUDGET AND MANAGEMENT-PROCUREMENT SERVICE, (DBM-PS), represented by EXECUTIVE DIRECTOR JOSE TOMAS C. SYQUIA, *petitioners, vs.* **HON. PAULINO Q. GALLEGOS, in his capacity as PRESIDING JUDGE, REGIONAL TRIAL COURT, MANILA, BRANCH 47, and the purported JOINT VENTURE OF OMNIPRIME MARKETING, INC. AND INTRASOFT INTERNATIONAL, INC., represented by ANNABELLE A. MARGAROLI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* REQUIRES THE FILING OF A MOTION FOR RECONSIDERATION, AND TO DISPENSE WITH THIS REQUIREMENT, THERE MUST BE A CONCRETE, COMPELLING, AND VALID REASON FOR THE FAILURE TO COMPLY WITH THE REQUIREMENT.— *Certiorari* under Rule 65 inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself. The plain and adequate remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision, which in this case, is the RTC's omnibus order. The purpose of the motion is to enable the court or agency to rectify its mistakes without the intervention of a higher court. To dispense with this requirement, there must be a concrete, compelling, and valid reason for the failure to comply with the requirement. Here, petitioners maintain that since the petition raises purely questions of law, their failure to file a motion for reconsideration is not fatal. Except for this bare allegation, however, petitioners failed to show sufficient justification for dispensing with the requirement of a prior motion for reconsideration. Indeed,

"petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not."

2. ID.; ID.; ID.; ALTHOUGH THE SUPREME COURT HAS CONCURRENT JURISDICTION WITH THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT IN ISSUING THE WRIT OF *CERTIORARI*, DIRECT RESORT IS ALLOWED ONLY WHEN THERE ARE SPECIAL, EXTRAORDINARY OR COMPELLING REASONS THAT JUSTIFY THE SAME, AND THE ABSENCE THEREOF TO JUSTIFY THE DIRECT FILING OF THE PETITION WILL CAUSE THE DISMISSAL OF THE RECOURSE.— [T]he direct filing of this petition in this Court is in disregard of the doctrine of hierarchy of courts. The concurrence of jurisdiction among the Supreme Court, CA and the RTC to issue the writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction did not give petitioners the unrestricted freedom of choice of court forum. Stated differently, although this Court has concurrent jurisdiction with the CA and the RTC in issuing the writ of *certiorari*, direct resort is allowed only when there are special, extraordinary or compelling reasons that justify the same. The Court enforces the observance of the hierarchy of courts in order to free itself from unnecessary, frivolous and impertinent cases and thus afford time for it to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. Absent any showing of any special, important or compelling reason to justify the direct filing of the petition will cause the dismissal of the recourse, as in this case. Based on the foregoing, it is clear that this petition is procedurally infirm, and thus, dismissible.

3. ID.; ID.; ID.; FOR *CERTIORARI* TO LIE, IT MUST BE SHOWN THAT THE RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION, OR MORE SPECIFICALLY, THAT HE EXERCISED HIS POWER ARBITRARILY OR DESPOTICALLY WHEN HE ISSUED THE ORDER, BY REASON OF PASSION OR PERSONAL HOSTILITY, AND SUCH EXERCISE WAS SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF POSITIVE DUTY, OR TO A VIRTUAL REFUSAL TO PERFORM IT OR TO ACT IN CONTEMPLATION OF LAW.— Even if petitioners' direct resort to this Court is allowed, the dismissal of their petition remains. For *certiorari* to lie, it

must be shown that the respondent Judge acted with grave abuse of discretion, or more specifically, that he exercised his power arbitrarily or despotically when he issued the omnibus order and the WPI, by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law. Petitioners, however, failed in this respect.

4. ID.; ID.; ID.; THE AUTHORITY TO ISSUE WRITS OF *CERTIORARI,* PROHIBITION, AND *MANDAMUS* INVOLVES THE EXERCISE OF ORIGINAL JURISDICTION WHICH MUST BE EXPRESSLY CONFERRED BY CONSTITUTION OR BY LAW.— [T]he authority to issue writs of *certiorari*, prohibition, and *mandamus* involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law. Under Section 21 of Batas Pambansa Bilang 129 (BP 129), otherwise known as The Judiciary Organization Act of 1980, the RTC had the original jurisdiction to issue writs of *certiorari,* prohibition, *mandamus, quo warranto, habeas corpus* and injunction which may be enforced in any part of its respective region.

5. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT INFRASTRUCTURE CONTRACTS; REPUBLIC ACT NO. 8975 (AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS); DOES NOT APPLY WHERE THE PROCUREMENT, SUBJECT OF THE COMPETITIVE BIDDING, IS NOT CONSIDERED AS AN "INFRASTRUCTURE PROJECT" AS DEFINED UNDER THE LAW, BUT ONE WHICH INVOLVES A CONSULTANCY SERVICE CONTRACT.— Contrary to petitioners' insistence, R.A. No. 8975 does not apply in this case because the procurement of PNSW 2 is not considered as an "infrastructure project" as defined under R.A. No. 8975. As aptly put by the RTC, thus: Furthermore, an infrastructure project is also defined under the law as to include the construction improvement, rehabilitation, demolition, repair restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works, components of information technology projects, x x x. Thus, this does not include non-civil works components of consultancy

service contracts an information technology project, like the project PNSW 2 Project and accordingly the prohibition under R[.]A[.] No. 8975 hardly applies to the instant case where the subject matter is limited to information technology consultancy services, as explicitly stated and described in the Bidding Documents, where the classification is consulting Services, the category is Information Technology and participants are called upon as consultants. x x x Likewise, private respondent correctly pointed out that the nature of the procurement, subject of the competitive bidding, is one involving a "consulting service contract" for the PNSW 2 project of petitioner BOC, which is beyond the contemplation of R.A. No. 8975. The project includes design, implementation, operation, maintenance, and consulting services. In fact, even the RFEI issued by petitioner DBM-PS classified the project merely as "consulting services", indicating therein that the said project will be governed by R.A. No. 9184 and its Implementing Rules and Regulations (IRR).

6. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES TO BE ENTITLED TO AN INJUNCTIVE WRIT.— [T]he petitioners failed to show that respondent Judge gravely abused his discretion when he issued the injunctive writ, pursuant to his omnibus order, which effectively enjoined the implementation of Director Syquia's May 7, 2015 Notice of Cancellation, which in turn was issued as a consequence of Commissioner Lina's May 6, 2015 Letter requesting for the cancellation of the bidding. Measured against established rules and jurisprudence, respondent Judge's disposition to grant the writ was not without basis and, hence, could not have been arrived at capriciously, whimsically, arbitrarily or despotically. The purpose of a preliminary injunction under Section 3, Rule 58 of the Rules of Court, is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. "Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully." In *Medina v. Greenfield Dev't. Corp.*, the Court reiterated the following requisites to be entitled to an injunctive writ. *viz*: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. "While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ,

it is sufficient that the complainant, shows that he has an ostensible right to the final relief prayed for in his complaint." Here, private respondent amply justified the grant of the provisional relief it prayed for before the RTC.

7. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT; GOVERNMENT PROCUREMENT REFORM ACT (REPUBLIC ACT NO. 9184); THE AWARD OF CONTRACT AS A CONSEQUENCE OF THE BIDDING PROCESS SHALL NOT EXCEED THREE (3) MONTHS FROM THE OPENING OF THE BIDS, AND THE CONTRACT CONCERNED SHALL BE DEEMED APPROVED SHOULD THERE BE INACTION FROM THE HEAD OF THE PROCURING ENTITY UPON THE LAPSE OF THE THREE-MONTH PERIOD.—** [P]rivate respondent as the declared highest bidder, has a right under R.A. No. 9184 and its IRR to be awarded the contract upon the BAC's determination of its compliance with and responsiveness to the terms and conditions in the Bidding Documents. Section 38, Article XI of R.A. No. 9184 provides a time-limit within which to award a contract as a consequence of the bidding process, which is set at three (3) months from the opening of the bids. It likewise provides that the contract shall be deemed approved should there be inaction from the concerned entities. In this case, more than three (3) months have elapsed since the opening of the bids, yet the head of the procuring entity, petitioner DBM-PS, represented by Director Syquia failed to observe the parameters of the law and allowed Commissioner Lina of the BOC to exercise the discretion of canceling the bidding process. Due to petitioner DBM-PS' inaction, the contract between the private respondent and the government should have already been deemed approved upon the lapsed of the three-month period, in accordance with Section 38, Paragraph 2, Article XI of R.A. No. 9184.

8. **ID.; ID.; ID.; ID.; THE HEAD OF PROCURING ENTITY IS GRANTED THE RIGHT TO REJECT THE BID AND AWARDS CONTRACT; JUSTIFIABLE GROUNDS THEREOF.—** [P]rivate respondent's right was violated due to the issuance of the Director Syquia's May 7, 2015 Notice of Cancellation, which was prompted by Commissioner Lina's May 6, 2015 Letter, ordering the cancellation of the procurement of PNSW 2 project. These issuances were bereft of factual and

legal bases. The right to reject any bid contemplated by Section 41(c), Article XI of R.A. No. 9184, which was invoked by Commissioner Lina to support his May 6, 2015 Letter, must be read in conjunction with the "*justifiable ground*" defined in Section 41.1 of R.A. No. 9184's IRR, which reads, thus: Sec. 41. Reservation Clause. 41.1. The head of procuring entity reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations: x x x c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity; (ii) if the project is no longer necessary as determined by the head of the procuring entity; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity. A perusal of the May 6, 2015 Letter indicates that Commissioner Lina based his discretion to abandon the procurement of the PNSW 2 project simply because he intends "to conduct a thorough review of its details" such as its terms of reference, and specifications, among others. This is hardly a justifiable ground in abandoning the bidding for the said project. Likewise, a cursory reading of the May 7, 2015 Notice of Cancellation reveals that there was no proof, except for Director Syquia's bare statement, that the project is no longer economically, financially or technically feasible. Mere allegation is not evidence and is not equivalent to proof.

9. ID.; ID.; ID.; ID.; COURTS CANNOT DIRECT GOVERNMENT AGENCIES ENTRUSTED WITH THE FUNCTION TO ACCEPT OR REJECT THE BID AND AWARDS CONTRACT, TO DO A PARTICULAR ACT OR TO ENJOIN SUCH ACT WITHIN ITS PREROGATIVE; THUS, THE BIDDER HAS NO CAUSE TO COMPLAIN; EXCEPT WHEN SAID GOVERNMENT AGENCY USED ITS DISCRETION OR PREROGATIVE AS A SHIELD TO A FRAUDULENT AWARD, OR AN UNFAIRNESS OR INJUSTICE IS SHOWN, OR WHEN IN THE EXERCISE OF ITS AUTHORITY, IT GRAVELY ABUSES OR EXCEEDS ITS JURISDICTION.— Contrariwise, the records bear out that the PNSW 2 project was thoroughly conceived, carefully studied, and extensively evaluated prior to the decision

to initiate a competitive bidding, as a mode of procurement. No less than Director Syquia admitted that petitioner DBM-PS and the "BOC have spent more than three (3) years bidding, rebidding and redoing the project." There is also no indication that the conditions surrounding the procurement of the project have been changed with the appointment of Commissioner Lina, who as head of the BOC is fully aware of the country's commitment to the ASEAN and the need to improve the BOC's efficiency. x x x. We likewise made a similar ruling in *Urbanes, Jr. v. Local Water Utilities Administration*, thus: And so, where the Government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, **the losing bidder has no cause to complain nor right to dispute that choice, unless an unfairness or injustice is shown**. Accordingly, he has no ground of action to compel the Government to award the contract in his favor, nor to compel it to accept his bid. As can be gleaned from the aforementioned cases, it can be deduced that as a general rule, courts cannot direct government agencies entrusted with the function to accept or reject bid and awards contract, to do a particular act or to enjoin such act within its prerogative. Consequently, the bidder has no cause to complain. However, jurisprudence has carved out an exception, *i.e*., when said government agency used its discretion or prerogative as a shield to a fraudulent award; or an unfairness or injustice is shown; or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. To restate, the cancellation of an ongoing public bidding is not reasonable if it will cause unfairness or injustice to the bidder concerned or if it is attended by arbitrariness, fraudulent acts or grave abuse of discretion on the part of the government agencies entrusted with that function. Taking into consideration the circumstances surrounding the facts; this case falls under the exception.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Roque & Butuyan Law Offices for respondents.

R E S O L U T I O N

TIJAM, *J.*:

We resolve this petition for *certiorari*[1] under Rule 65 of the Rules of Court, assailing the Omnibus Order[2] dated August 24, 2015 of the Regional Trial Court (RTC) of the City of Manila, Branch 47, in Civil Case No. 15-134333.

Antecedent Facts

On December 20, 2006, the Association of Southeast Asian Nation (ASEAN) member-countries, including the Philippines, signed the Protocol to Establish and Implement the ASEAN Single Window (ASW Protocol),[3] under which the member-countries agreed to develop and implement their National Single Windows (NSW) based on international standards and best practices as established in international agreements and conventions concerning trade facilitation and modernization of customs techniques and practices.

Phase One of the Philippines' NSW project (PNSW 1) started in 2009 and completed in October 2010. Thereafter, Phase Two of the PNSW with Enhanced Customs Processing System project (PNSW 2) was undertaken.[4] The project was dubbed as Selection of System Integrator for Design, Implementation, Operation and Maintenance of Integrated Enhanced Customs Processing System and National Single Window for the Government of the Philippines: Component I: Design, Implementation, Operation and Maintenance of Enhanced Customs Processing System for the Bureau of Customs (BOC); and Component II: Development and Operationalization of PNSW 2 Project for the Government of the Philippines for the Bureau of Customs (Public Bidding No. 14-082). It is an information technology project which is

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[1] *Rollo*, pp. 3-79.

[2] Penned by Presiding Judge Paulino Q. Gallegos; *id*. at 83-99.

[3] *Id*. at 102-115.

[4] *Id*. at 84.

aimed at integrating the existing Electronic to Mobile Customs System and the PNSW 1 into a single system that will serve all the existing functionalities under the BOC's current electronic or mobile transaction system. Its purpose is to achieve a fully electronic, paperless, man-contact-free processing of Customs transactions while allowing traders a single submission of data and information, and for the BOC a single and synchronous processing of data and information and a single decision-making point for Customs release and clearance of cargo.[5]

Utilizing the funds appropriated by Congress in the General Appropriations Act (GAA) for calendar year (CY) 2010 and for CY 2012, petitioner BOC, through its procuring entity,[6] petitioner Department of Budget and Management-Procurement Service (DBM-PS), issued on October 15, 2014 a Request for Expression of Interest (RFEI),[7] inviting prospective bidders (consultants) in the eligibility screening and to be shortlisted for the competitive bidding of the PNSW 2 project with a total approved budget for the contract of ₱650 Million.[8] Among the bidders that submitted the eligibility documents were: (1) Joint Venture of Omniprime Marketing, Inc. and Intrasoft International, Inc. (private respondent); and (2) E-Konek & ILS & FS JV, whose biggest shareholder is petitioner BOC Commissioner Alberto D. Lina (Commissioner Lina).[9]

The announcement of the shortlist of eligible consultants and of the Highest Rated Bid (HRB) was delayed, due among others, to the interview of private respondent's Project Team Members, requested by former Deputy Commissioner Primo Aguas. The said interview, however, was neither required by law nor regulation.[10]

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[5] *Id*. at 605.

[6] *Id*. at 187.

[7] *Id*. at 116-118.

[8] *Id*. at 84.

[9] *Id*. at 573.

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

After the evaluation and determination of shortlisted bidders, the DBM-PS Bids and Awards Committee (BAC) issued on April 13, 2015, a Notice of HRB[11] and an Invitation to Negotiate[12] to private respondent, as the highest bidder.

On April 17, 2015, private respondent's financial proposal and contract negotiation commenced.[13]

On April 23, 2015, Commissioner Lina was appointed as BOC Commissioner.[14] He wrote a Letter[15] dated May 6, 2015 addressed to petitioner DBM-PS Executive Director Jose Tomas C. Syquia (Director Syquia). Commissioner Lina requested for the discontinuance of the procurement process of the PNSW 2 project, in line with Section 41(c)[16] of Republic Act (R.A.) No. 9184,[17] otherwise known as the Government Procurement Reform Act. This provision grants to the head of the procuring agency the right to reject bids for justifiable and reasonable grounds where the award of the contract will not redound to the benefit of the government.

Acting upon Commissioner Lina's letter, Director Syquia issued on May 7, 2015, a Notice of Cancellation,[18] aborting the bidding process for PNSW 2 project.

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[11] *Id.* at 119-120.

[12] *Id.* at 121-122.

[13] *Id.* at 85.

[14] *Id.*

[15] *Id.* at 123.

[16] Sec. 41. *Reservation Clause*.— The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

x x x x x x x x x

c. For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the government as defined in the IRR.

[17] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES. Approved on January 10, 2003.

[18] *Rollo*, p. 124.

Private respondent, through a Letter dated May 22, 2015, moved for a reconsideration[19] of the Notice of Cancellation, but the same was denied in petitioner BOC's Resolution dated July 31, 2015.[20]

This prompted the private respondent to file a Petition for *Certiorari and Mandamus*[21] with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Prohibitory Injunction (WPPI) and Writ of Preliminary Mandatory Injunction (WPMI), before the RTC against the petitioners. The petition prayed that a judgment be rendered annulling the decision of Director Syquia embodied in his Notice of Cancellation, made pursuant to Commissioner Lina's May 6, 2015 Letter and commanding the petitioners to refrain from cancelling, and, instead to continue the last remaining process of the competitive bidding for the PNSW 2 project, which is the signing of the contract and issuance of the Notice to Proceed. Pending such proceedings, the private respondent likewise prayed that the RTC restrain the petitioners from withholding or reducing the appropriation, or returning the appropriation for the project to the Bureau of Treasury, so as not to render ineffectual any judgment that may be issued by the RTC.

Ruling of the RTC

In its Order[22] dated July 28, 2015, the RTC issued a TRO in favor of the private respondent.

Consequently, on August 24, 2015, the RTC issued the assailed Omnibus Order,[23] granting private respondent's application for the issuance of an injunctive writ, the dispositive portion of which, reads:

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[19] *Id*. at 125-128.

[20] *Id*. at 162-164.

[21] *Id*. at 165-207.

[22] *Id*. at 234-237.

[23] *Id*. at 83-99.

WHEREFORE, premises considered, the Court rules:

a. Denying [petitioners'] Motion to Dismiss;

b. Granting [private respondent's] application for the issuance of a Writ of [P]reliminary [I]njunction and accordingly let an injunctive writ issue:

    1. Enjoining all the [petitioners] from implementing both the (a) 6 May 2015 Letter of [petitioner] Lina aborting the competitive bidding of the PNSW2 Project and the (b) 7 May 2015 Cancellation Notice of [petitioner] Syquia in the meantime that the case is heard upon its merit;

    2. Enjoining all the [petitioners] from initiating any other procurement, sourcing of funds and conducting any other procurement whether thru public bidding or negotiation to replace or upgrade the present customs system subject matter of this bid; and

    3. Ordering [petitioners] to continue with the remaining procurement process of signing the contract and to issue to [private respondent] the Notice to Proceed;

c. Ordering the [private respondent] to post an Injunctive writ Bond to be immediately done in cash, following this Order in the amount of Five Hundred Thousand Pesos (₱500,000.00) and be made answerable to any damage which [petitioners] may suffer by reason of issuing the Writ; and

d. Ordering the [petitioners] to file their Comment on the Petition pursuant to Section 6, Rule 65 of the Revised Rules of Court.

SO ORDERED.[24]

On August 26, 2015, the RTC issued the writ of preliminary injunction (WPI).[25]

The BOC, represented by Commissioner Lina, and DBM-PS, represented by Director Syquia (collectively, the petitioners) dispensing with the filing of a motion for reconsideration or any form of redress in the court *a quo*, filed this instant petition.

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[24] *Id.* at 98-99.

[25] *Id.* at 100-101.

Issue

The main issue for this Court's resolution is whether Judge Paulino Q. Gallegos (respondent Judge) gravely abused in his discretion when he issued the omnibus order and the injunctive writ.

Ruling of the Court

The petition fails.

Procedural Aspect

Certiorari under Rule 65 inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself.[26] The plain and adequate remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision, which in this case, is the RTC's omnibus order. The purpose of the motion is to enable the court or agency to rectify its mistakes without the intervention of a higher court. To dispense with this requirement, there must be a concrete, compelling, and valid reason for the failure to comply with the requirement.[27]

Here, petitioners maintain that since the petition raises purely questions of law, their failure to file a motion for reconsideration is not fatal. Except for this bare allegation, however, petitioners failed to show sufficient justification for dispensing with the requirement of a prior motion for reconsideration. Indeed, "petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not."[28]

Likewise, the direct filing of this petition in this Court is in disregard of the doctrine of hierarchy of courts. The concurrence of jurisdiction among the Supreme Court, CA and the RTC to

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[26] *Philtranco Service Enterprises, Inc. v. Philtranco Workers Union-Association of Genuine Labor Organizations (PWU-AGLO)*, 728 Phil. 99, 144 (2014).

[27] *Metro Transit Organization, Inc. v. CA*, 440 Phil. 743, 753 (2002).

[28] *Jiao, et al. v. National Labor Relations Commission, et al.*, 686 Phil. 171, 182 (2012).

issue the writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction did not give petitioners the unrestricted freedom of choice of court forum.[29] Stated differently, although this Court has concurrent jurisdiction with the CA and the RTC in issuing the writ of *certiorari*, direct resort is allowed only when there are special, extraordinary or compelling reasons that justify the same.[30] The Court enforces the observance of the hierarchy of courts in order to free itself from unnecessary, frivolous and impertinent cases and thus afford time for it to deal with the more fundamental and more essential tasks that the Constitution has assigned to it.[31] Absent any showing of any special, important or compelling reason to justify the direct filing of the petition will cause the dismissal of the recourse, as in this case.

Based on the foregoing, it is clear that this petition is procedurally infirm, and thus, dismissible.

Substantive Aspect

Even if petitioners' direct resort to this Court is allowed, the dismissal of their petition remains.

For *certiorari* to lie, it must be shown that the respondent Judge acted with grave abuse of discretion, or more specifically, that he exercised his power arbitrarily or despotically when he issued the omnibus order and the WPI, by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law.[32] Petitioners, however, failed in this respect.

For one thing, the authority to issue writs of *certiorari*, prohibition, and *mandamus* involves the exercise of original

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[29] *Heirs of Bertuldo Hinog v. Hon. Melicor*, 495 Phil. 422, 431-432 (2005).

[30] *Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. v. Judge Triel*, 750 Phil. 57, 68 (2015).

[31] *Bañez, Jr. v. Judge Concepcion, et al.*, 693 Phil. 399, 412 (2012).

[32] *Valencia v. Sandiganbayan*, 477 Phil. 103, 119 (2004).

jurisdiction which must be expressly conferred by the Constitution or by law.[33] Under Section 21[34] of Batas Pambansa Bilang 129 (BP 129),[35] otherwise known as The Judiciary Organization Act of 1980, the RTC had the original jurisdiction to issue writs of *certiorari,* prohibition, *mandamus, quo warranto, habeas corpus* and injunction which may be enforced in any part of its respective region.

Contrary to petitioners' insistence, R.A. No. 8975[36] does not apply in this case because the procurement of PNSW 2 is not considered as an "infrastructure project" as defined under R.A. No. 8975. As aptly put by the RTC, thus:

> Furthermore, an infrastructure project is also defined under the law as to include the construction improvement, rehabilitation, demolition, repair restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works, components of information technology projects, x x x. Thus, this does not include non-civil works components of consultancy service contracts an information technology project, like the project PNSW 2 Project and accordingly the prohibition under R[.]A[.] No. 8975 hardly applies to the instant case where the subject matter is limited

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[33] *The City of Manila, et al. v. Judge Grecia-Cuerdo, et al.*, 726 Phil. 9, 23 (2014).

[34] Sec. 21. *Original jurisdiction in other cases*.— Regional Trial Courts shall exercise original jurisdiction:

> (1) In the issuance of writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction which may be enforced in any part of their respective regions; and
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> (2) In actions affecting ambassadors and other public ministers and consuls.

[35] AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on August 14, 1981.

[36] AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRANING ORDERS. PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES. Approved on November 7, 2000.

to information technology consultancy services, as explicitly stated and described in the Bidding Documents, where the classification is consulting Services, the category is Information Technology and participants are called upon as consultants.

Indeed, in the case of DFA versus Falcon x x x, the Supreme Court ruled that the term infrastructure project was limited to only the civil works component of information technology projects and the non-civil works component of information technology projects would be treated as an acquisition of goods or consulting services.[37]

Likewise, private respondent correctly pointed out that the nature of the procurement, subject of the competitive bidding, is one involving a "consulting service contract" for the PNSW 2 project of petitioner BOC, which is beyond the contemplation of R.A. No. 8975.[38] The project includes design, implementation, operation, maintenance, and consulting services. In fact, even the RFEI issued by petitioner DBM-PS classified the project merely as "consulting services", indicating therein that the said project will be governed by R.A. No. 9184 and its Implementing Rules and Regulations (IRR).[39]

For another thing, the petitioners failed to show that respondent Judge gravely abused his discretion when he issued the injunctive writ, pursuant to his omnibus order, which effectively enjoined the implementation of Director Syquia's May 7, 2015 Notice of Cancellation, which in turn was issued as a consequence of Commissioner Lina's May 6, 2015 Letter requesting for the cancellation of the bidding. Measured against established rules and jurisprudence, respondent Judge's disposition to grant the writ was not without basis and, hence, could not have been arrived at capriciously, whimsically, arbitrarily or despotically.

The purpose of a preliminary injunction under Section 3,[40] Rule 58 of the Rules of Court, is to prevent threatened or

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[37] *Rollo*, p. 96.

[38] *Id*. at 607.

[39] *Id*. at 116-117.

[40] Sec. 3. *Grounds for issuance of preliminary injunction*. — A preliminary injunction may be granted when it is established:

continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated.[41] "Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully."[42] In *Medina v. Greenfield Dev't. Corp.*,[43] the Court reiterated the following requisites to be entitled to an injunctive writ. *viz*: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.[44] "While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant, shows that he has an ostensible right to the final relief prayed for in his complaint."[45] Here, private respondent amply justified the grant of the provisional relief it prayed for before the RTC.

First, private respondent as the declared highest bidder, has a right under R.A. No. 9184 and its IRR to be awarded the contract upon the BAC's determination of its compliance with

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(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

[41] *Bank of the Philippine Islands v. Spouses Santiago*, 548 Phil. 314, 329 (2007).

[42] *First Global Realty and Dev't. Corp. v. San Agustin*, 427 Phil. 593, 601 (2002).

[43] 485 Phil. 533, 542 (2004).

[44] *Id*. at 542.

[45] *Lukang v. Pagbilao Development Corporation, et al*., 728 Phil. 608, 618 (2014).

and responsiveness to the terms and conditions in the Bidding Documents.

Section 38, Article XI of R.A. No. 9184 provides a time-limit within which to award a contract as a consequence of the bidding process, which is set at three (3) months from the opening of the bids. It likewise provides that the contract shall be deemed approved should there be inaction from the concerned entities. Section 38, Article XI of R.A. No. 9184 provides:

> Sec. 38. *Period of Action on Procurement Activities*. — ***The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period*** to be determined by the procuring entity concerned. Without prejudice to the provisions of the preceding section, the different procurement activities shall be completed within reasonable periods to be specified in the IRR.
>
> ***If no action on the contract is taken by the head of the procuring entity*** or by his duly authorized representative, or by the concerned board, in the case of government-owned and/or -controlled corporations, ***within the periods specified in the preceding paragraph, the contract concerned shall be deemed approved***. (Emphasis ours)

In this case, more than three (3) months have elapsed since the opening of the bids, yet the head of the procuring entity, petitioner DBM-PS, represented by Director Syquia failed to observe the parameters of the law and allowed Commissioner Lina of the BOC to exercise the discretion of canceling the bidding process. Due to petitioner DBM-PS' inaction, the contract between the private respondent and the government should have already been deemed approved upon the lapsed of the three-month period, in accordance with Section 38, Paragraph 2, Article XI of R.A. No. 9184.

Second, private respondent's right was violated due to the issuance of the Director Syquia's May 7, 2015 Notice of Cancellation, which was prompted by Commissioner Lina's May 6, 2015 Letter, ordering the cancellation of the procurement of PNSW 2 project. These issuances were bereft of factual and legal bases.

The right to reject any bid contemplated by Section 41(c),[46] Article XI of R.A. No. 9184, which was invoked by Commissioner Lina to support his May 6, 2015 Letter, must be read in conjunction with the "*justifiable ground*" defined in Section 41.1 of R.A. No. 9184's IRR, which reads, thus:

> Sec. 41. Reservation Clause.
>
> 41.1. The head of procuring entity reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:
>
> x x x x x x x x x
>
> c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity; (ii) if the project is no longer necessary as determined by the head of the procuring entity; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity.

A perusal of the May 6, 2015 Letter indicates that Commissioner Lina based his discretion to abandon the procurement of the PNSW 2 project simply because he intends "to conduct a thorough review of its details" such as its terms of reference, and specifications, among others. This is hardly a justifiable ground in abandoning the bidding for the said project. Likewise, a cursory reading of the May 7, 2015 Notice of Cancellation reveals that there was no proof, except for Director Syquia's bare statement, that the project is no longer

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[46] Sec. 41. *Reservation Clause*. — The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

x x x x x x x x x

c. For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the government as defined in the IRR.

economically, financially or technically feasible. Mere allegation is not evidence and is not equivalent to proof.[47]

Contrariwise, the records bear out that the PNSW 2 project was thoroughly conceived, carefully studied, and extensively evaluated prior to the decision to initiate a competitive bidding, as a mode of procurement.[48] No less than Director Syquia admitted that petitioner DBM-PS and the "BOC have spent more than three (3) years bidding, rebidding and redoing the project."[49] There is also no indication that the conditions surrounding the procurement of the project have been changed with the appointment of Commissioner Lina, who as head of the BOC is fully aware of the country's commitment to the ASEAN and the need to improve the BOC's efficiency.[50]

In *First United Constructors Corp. v. Poro Point Mgm't. Corp., et al.*,[51] We held that:

> In any event, the invitation to bid contains a reservation for PPMC to reject any bid. It has been held that where the right to reject is so reserved, the lowest bid, or any bid for that matter, may be rejected on a mere technicality. The discretion to accept or reject bid and award contracts is vested in the government agencies entrusted with that function. This discretion is of such wide latitude that the Courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives unless it is apparent that it is used as a shield to a fraudulent award; or an unfairness or injustice is shown; or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. Thus, where PPMC as advertiser, availing itself of that right, opts to reject any or all bids, the losing bidder has no cause to complain or right to dispute that choice, unless fraudulent acts, injustice, unfairness or grave abuse of discretion is shown.[52] (Citations omitted)

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[47] *ECE Realty and Development, Inc. v. Mandap*, 742 Phil. 164, 171 (2014).

[48] *Rollo*, pp. 190, 584.

[49] *Id*. at 189-190.

[50] *Id*. at 191, 585.

[51] 596 Phil. 334 (2009).

[52] *Id*. at 344-345.

We likewise made a similar ruling in *Urbanes, Jr. v. Local Water Utilities Administration*,[53] thus:

> And so, where the Government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, **the losing bidder has no cause to complain nor right to dispute that choice, unless an unfairness or injustice is shown**. Accordingly, he has no ground of action to compel the Government to award the contract in his favor, nor to compel it to accept his bid.[54] (Emphasis and underscoring in the original)

As can be gleaned from the aforementioned cases, it can be deduced that as a general rule, courts cannot direct government agencies entrusted with the function to accept or reject bid and awards contract, to do a particular act or to enjoin such act within its prerogative. Consequently, the bidder has no cause to complain. However, jurisprudence has carved out an exception, *i.e.*, when said government agency used its discretion or prerogative as a shield to a fraudulent award; or an unfairness or injustice is shown; or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. To restate, the cancellation of an ongoing public bidding is not reasonable if it will cause unfairness or injustice to the bidder concerned or if it is attended by arbitrariness, fraudulent acts or grave abuse of discretion on the part of the government agencies entrusted with that function.

Taking into consideration the circumstances surrounding the facts; this case falls under the exception. As We have discussed earlier, neither Commissioner Lina nor Director Syquia justified the cancellation of the PNSW2 in accordance with the express provision of Section 41.1 of R.A. No. 9184's IRR.

In *SM Land, Inc. v. Bases Conversion Dev't. Authority, et al.*,[55] this Court held that the reservation clause under

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[53] 531 Phil. 447 (2006).

[54] *Id.* at 459.

[55] 741 Phil. 269 (2014).

Section 41 (c), Article XI of R.A. No. 9184 cannot be read in isolation from the circumstances surrounding the case. Thus:

> We find that the reservation clause cannot justify the cancellation of the entire procurement process. Respondent cannot merely harp on the lone provision adverted to without first explaining the context surrounding the reservation clause, The said provision cannot be interpreted in a vacuum and should instead be read in congruence with the other provisions in the TOR for Us to fully appreciate its import.[56]

As already mentioned, the tenor of Commissioner Lina's May 6, 2015 Letter and that of Director Syquia's May 7, 2015 Notice of Cancellation are devoid of any proof or explanation that would warrant the cancellation of the PNSW 2 project. This arbitrary act certainly caused unfairness and injustice upon the private respondents. These are anathema to the aforecited pronouncements by this Court, and thus, cannot be countenanced.

Third, there is an urgent necessity to preserve the *status quo*, considering that the unjustified cancellation would put to naught private respondent's considerable resources, time and efforts in order to hurdle the rigorous requirements in the Bidding Documents. Aside from this, the records show that the PNSW 2 project had long been overdue and our country had been lagging behind in its commitment to the ASEAN under the ASEAN Single Window Agreement signed back in December 9, 2005. To further delay the Philippines' international commitment by the mere expedient of arbitrarily canceling the procurement of the said project would create a deleterious effect in our international relations with other ASEAN members.

Prescinding from the foregoing discussion, We conclude that no grave abuse of discretion can be attributed to the respondent Judge when he issued the WPI.

We emphasize though that the evidence upon which the RTC based its August 24, 2015 Omnibus Order is not conclusive as to result in the automatic issuance of a final injunction. Indeed,

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[56] *Id*. at 300.

"the evidence submitted for purposes of issuing a WPI is not conclusive or complete for only a sampling is needed to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits."[57]

In the same vein, Our Resolution in this case is without prejudice to whatever final resolution the RTC may arrive at in Civil Case No. 15-134333.

WHEREFORE, premises considered, the petition is **DISMISSED.** The Omnibus Order dated August 24, 2015 of the Regional Trial Court of the City of Manila, Branch 47 is **AFFIRMED** *in toto*. This case is **REMANDED** to the RTC for the immediate resolution of the main petition in Civil Case No. 15-134333.

SO ORDERED.

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

SPECIAL FIRST DIVISION

[G.R. No. 224834. February 28, 2018]

JONATHAN Y. DEE, *petitioner, vs.* **HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BONDEAST PRIVATE LIMITED, and ALBERT HONG HIN KAY, as minority shareholders of ALLIANCE SELECT FOODS INTERNATIONAL, INC., and HEDY S.C. YAP-CHUA, as director and shareholder of ALLIANCE SELECT FOODS INTERNATIONAL, INC.,** *respondents.*

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[57] *Sps. Aldover v. CA, et al.*, 718 Phil. 205, 231 (2013).

[G.R. No. 224871. February 28, 2018]

HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BONDEAST PRIVATE LIMITED, ALBERT HONG HIN KAY, as minority shareholders of Alliance Select Foods International, Inc., and HEDY S.C. YAP-CHUA, as a Director and Shareholder of Alliance Select Foods International, Inc., *petitioners, vs.* **ALLIANCE SELECT FOODS INTERNATIONAL, INC., GEORGE E. SYCIP, JONATHAN Y. DEE, RAYMUND K.H. SEE, MARY GRACE T. VERA CRUZ, ANTONIO C. PACIS, ERWIN M. ELECHICON, and BARBARA ANNE C. MIGALLOS,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS FOR RECONSIDERATION; DENIED WITH FINALITY IN CASE AT BAR; FACTUAL MATTERS ARE BETTER THRESHED OUT BEFORE THE TRIAL COURT.— x x x [I]t must be reiterated that the only issues raised for the Court's resolution in its Decision dated March 15, 2017 are: (*a*) whether or not Harvest All, *et al*. paid insufficient filing fees for their complaint, as the same should have been based on the ₱1 Billion value of the SRO; and (*b*) if Harvest All, *et al*. indeed paid insufficient filing fees, whether or not such act was made in good faith and without any intent to defraud the government. Notably, such issues are only determinative of whether or not the RTC had acquired jurisdiction over COMM'L CASE NO. 15-234 through Harvest All, *et al.'s* payment of correct docket fees. Since the resolution of these issues is only a preliminary matter — and does not affect the merits of this case — the Court deems it appropriate to let the RTC make the proper determination as to whether or not the aforesaid supervening events had indeed rendered COMM'L CASE NO. 15-234 moot and academic. Besides, such determination will entail an examination and verification of the movants' various claims and allegations, all of which are factual matters which are better threshed out before the trial court. x x x [S]uffice it to say that the other issues raised in the aforesaid motions for reconsideration are but mere reiterations of the grounds already evaluated and

passed upon in the Assailed Decision. In view of the foregoing, there is no cogent reason to warrant a modification or reversal of the same.

APPEARANCES OF COUNSEL

Villaraza & Angangco Law Center for Jonathan Dee.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for Harvest All Investment Limited, Victory Fund Limited, *et al.*

Angara Abello Concepcion Regala & Cruz Law Offices for Alliance Select Foods International, Inc..

Sycip Salazar Hernandez & Gatmaitan for George E. Sycip.

Picazo Buyco Tan Fider & Santos Law Offices for Raymund K.H. See.

Rodrigo Berenguer & Guno for Vera-Cruz & Pacis.

Kapunan Garcia & Castillo for Erwin Elechicon.

Migallos & Luna for Barbara Anne Migallos.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court are various motions for reconsideration filed by Barbara Anne C. Migallos,[1] George E. SyCip,[2] Erwin M. Elechicon,[3] Alliance Select Foods International, Inc.,[4] Mary Grace T. Vera-Cruz and Antonio C. Pacis,[5] Jonathan Y. Dee,[6] and Raymund K.H. See,[7] assailing the Decision[8] dated March

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[1] Dated April 7, 2017. *Rollo* (G.R. No. 224871), Vol. XXII, pp. 14785-14801.

[2] Dated April 12, 2017. *Id*. at 14850-14872.

[3] Dated April 17, 2017. *Id*. at 14889-14897.

[4] Dated April 17, 2017. *Id.* at 14901-14910.

[5] Dated April 12, 2017. *Id*. at 14914-14918.

[6] Dated April 13, 2017. *Id*. at 14920-14977 and 15016-15073.

[7] Dated April 17, 2017. *Id*. at 14978-14992.

[8] *Id*. at 14699-14710.

15, 2017 of the Court which affirmed the Decision[9] dated February 15, 2016 and the Resolution[10] dated May 25, 2016 of the Court of Appeals in CA-G.R. SP No. 142213, with modification, remanding COMM'L CASE NO. 15-234 to the Regional Trial Court of Pasig City, Branch 159 (RTC) for further proceedings.[11]

In the said motions, the movants similarly claim, *inter alia*, that supervening events have rendered COMM'L CASE NO. 15-234 moot and academic. In particular, they point out that: (*a*) in COMM'L CASE NO. 15-234 pending before the RTC, Harvest All Investment Limited, Victory Fund Limited, Bondeast Private Limited, Albert Hong Hin Kay, and Hedy S.C. Yap Chua (Harvest All, *et al.*) prayed that the 2015 Annual Stockholders' Meeting (ASM) of Alliance Select Foods International, Inc. be held on the date set in the corporation's by-laws, *i.e.*, before the completion of the Stock Rights Offering (SRO); and (*b*) the SRO, the 2015 ASM, and the 2016 ASM were all conducted and finished on October 28, 2015, March 1, 2016, and June 28, 2016, respectively, absent any injunction or restraining order issued by any court for the same. Hence, it would be futile and a waste of court resources to remand the case to the RTC for further proceedings.[12]

On the other hand, Harvest All, *et al.* maintain,[13] among others, that the supervening events mentioned by the movants did not render the instant case moot and academic, as they cannot be permitted to render the same by their own positive actions.[14]

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[9] *Rollo* (G.R. No. 224834), Vol. I, pp. 12-22. Penned by Associate Justice Mario V. Lopez with Associate Justices Rosmari D. Carandang and Myra V. Garcia-Fernandez concurring.

[10] *Id.* at 24-28.

[11] See *rollo* (G.R. No. 224871), Vol. XXII, p. 14709.

[12] See *id.* at 14786-14788, 14855-14863, 14902-14904, 14915, and 14979-14982.

[13] See Consolidated Comment dated October 30, 2017; *id.* at 15147-15177.

[14] See *id.* at 15150-15152.

At the outset, it must be reiterated that the only issues raised for the Court's resolution in its Decision dated March 15, 2017 are: (*a*) whether or not Harvest All, *et al.* paid insufficient filing fees for their complaint, as the same should have been based on the ₱1 Billion value of the SRO; and (*b*) if Harvest All, *et al.* indeed paid insufficient filing fees, whether or not such act was made in good faith and without any intent to defraud the government.[15] Notably, such issues are only determinative of whether or not the RTC had acquired jurisdiction over COMM'L CASE NO. 15-234 through Harvest All, *et al.*'s payment of correct docket fees. Since the resolution of these issues is only a preliminary matter — and does not affect the merits of this case — the Court deems it appropriate to let the RTC make the proper determination as to whether or not the aforesaid supervening events had indeed rendered COMM'L CASE NO. 15-234 moot and academic. Besides, such determination will entail an examination and verification of the movants' various claims and allegations, all of which are factual matters which are better threshed out before the trial court.

Finally, suffice it to say that the other issues raised in the aforesaid motions for reconsideration are but mere reiterations of the grounds already evaluated and passed upon in the Assailed Decision. In view of the foregoing, there is no cogent reason to warrant a modification or reversal of the same.

WHEREFORE, the aforesaid motions are **DENIED** with **FINALITY.** Let entry of judgment be issued immediately.

SO ORDERED.

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

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[15] See *id*. at 14703.

[*] Designated Additional Member per Raffle dated February 22, 2017.

THIRD DIVISION

[G.R. No. 225730. February 28, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JULIA REGALADO ESTRADA,** *accused-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (REPUBLIC ACT NO. 8042); ILLEGAL RECRUITMENT; DEFINED; ILLEGAL RECRUITMENT IN LARGE SCALE, ELEMENTS THEREOF; ESTABLISHED IN CASE AT BAR.— Under Section 6 of R.A. No. 8042, illegal recruitment, when undertaken by a non-licensee or non-holder of authority as contemplated under Article 13(f) of the Labor Code, shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers, and including referring, contract services, promising or advertising for employment abroad, whether for profit or not. Further, to sustain a conviction for illegal recruitment under R.A. No. 8042 in relation to the Labor Code, the prosecution must establish two (2) elements: *first*, the offender has no valid license or authority required by law to enable one to lawfully engage in the recruitment and placement of workers; and *second*, the offender undertakes any of the activities within the meaning of recruitment and placement defined in Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Section 6 of R.A. No. 8042. Further, in case the illegal recruitment was committed in large scale, a *third* element must be established, that is, the offender commits the illegal recruitment activities against three or more persons, individually or as a group. The Court is convinced that the prosecution was able to establish the essential elements of the crime of illegal recruitment in large scale.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY EVIDENCE THAT THE PROSECUTION WITNESSES WERE MOTIVATED BY IMPROPER MOTIVES, THE TRIAL COURT'S ASSESSMENT WITH RESPECT TO THEIR CREDIBILITY

SHALL NOT BE INTERFERED WITH BY THE SUPREME COURT.— [T]he prosecution was able to establish that Estrada unlawfully engaged in activities which refer to recruitment and placement under Article 13(b) of the Labor Code and Section 6 of R.A. No. 8042. Specifically, the prosecution was able to sufficiently demonstrate that Estrada promised and recruited private complainants for employment abroad for a fee. This is amply supported by the testimonies of the private complainants who categorically testified that Estrada promised them employment and placement in Dubai as baker, waiter, and cashier. More particularly, the private complainants positively identified Estrada as the person with whom they transacted relative to their alleged deployment to Dubai; the person who instructed them to complete the documents necessary for their deployment and to undergo medical examination; the person to whom they submitted these documents; and the person to whom they directly paid the processing, placement, medical examination, and other fees. It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, especially when the CA affirmed such findings, are entitled to great weight and respect by this Court. Further, in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment with respect to their credibility shall not be interfered with by this Court. Thus, between the positive identification and categorical testimony by the private complainants and Estrada's unsubstantiated and uncorroborated denial, the Court finds the former more credible.

3. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; ELEMENTS; ESTABLISHED IN CASE AT BAR; A CONVICTION FOR ILLEGAL RECRUITMENT WILL NOT PRECLUDE PUNISHMENT FOR ESTAFA.— A conviction for illegal recruitment whether simple or committed in large scale would not preclude punishment for *estafa* under Article 315(2)(a) of the RPC. This is because no double jeopardy could attach from the prosecution and conviction of the accused for both crimes considering that they are penalized under different laws and involved elements distinct from one another. Conviction under Article 315(2)(a) requires the concurrence of the following elements: (1) the accused defraud another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party, suffered damage or prejudice capable of pecuniary estimation. These are elements completely different from those

required for illegal recruitment. In this regard, the Court is convinced that the prosecution was able to prove, beyond reasonable doubt, that Estrada committed three (3) counts of *estafa* under Article 315(2)(a) of the RPC x x x.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (REPUBLIC ACT NO. 8042); ILLEGAL RECRUITMENT; PENALTIES OF LIFE IMPRISONMENT AND A FINE SHALL BE IMPOSED UPON ANY PERSON WHO SHALL COMMIT ILLEGAL RECRUITMENT INVOLVING ECONOMIC SABOTAGE.— Section 6(m) of R.A. No. 8042 considers illegal recruitment in large scale as an offense involving economic sabotage. In this regard, Section 7 of R.A No. 8042 provides that the penalty of life imprisonment and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed upon any person who shall commit illegal recruitment involving economic sabotage. Accordingly, the Court affirms the trial court's imposition of the penalties of life imprisonment and payment of fine in the amount of ₱500,000.00 upon Estrada.

5. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; PENALTIES, AS AMENDED BY SECTION 85 OF R.A. NO. 10951; APPLICATION TO THE CASE AT BAR.— The Court, however, modifies the penalties imposed by the trial court with respect to the three (3) counts of *estafa* in view of the enactment of R.A. No. 10951 entitled *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as Amended* and became effective on 17 September 2017. As its title suggests, R.A. No. 10951 updated to the present monetary values some felonies in the RPC which penalties are dependent on the amount or value of damage involved, thereby effectively reducing the penalties for certain crimes, such as *estafa*. x x x. In this case, the prosecution proved that Estrada's fraud resulted in the damage to Sevillena, Antonio, and Cortez in the respective amounts which did not exceed ₱40,000.00. Thus, applying the penalties under Article 315 of the RPC, as emended by Section 85 of R.A. No. 10951, Estrada should be sentenced to suffer the

penalty of *arresto mayor* in its maximum period for each count of *estafa*.

6. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS. — The Court further modifies the sums awarded to Cortez and Antonio. With respect to Cortez, he testified that Estrada paid ₱5,000.00 as partial reimbursement for the amounts he paid to her. This amount shall thus be deducted from his total monetary award. As regards Antonio, it would seem that the trial court failed to consider the ₱3,500.00 she had paid to Estrada for her medical examination. The trial court may have overlooked that Sevillena and Cortez had each paid for their medical examination which amounts were not deducted from the final monetary awards. Thus, the total monetary awards to the private complainants shall be as follows: ₱29,000.00 for Sevillena: ₱28,500.00 for Antonio; and ₱24,000.00 for Cortez.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Gil A. Valera for accused-appellant.

D E C I S I O N

MARTIRES, *J.*:

On appeal is the 20 August 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 06771, which affirmed the 5 December 2013 Decision[2] of the Regional Trial Court of Manila, Branch 47, in Criminal Case Nos. 10-278205-07 and 10-278208, finding herein accused-appellant Julia Regalado Estrada *(Estrada)* guilty beyond reasonable doubt for Illegal Recruitment in Large Scale under Republic Act (R.A.) No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, and for three (3) counts of *Estafa* under Article 315(2)(a) of the Revised Penal Code *(RPC)*.

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justices Franchito N. Diamante, and Carmelita Salandanan-Manahan.

[2] Records, pp. 227-245; penned by Presiding Judge Paulino Q. Gallegos.

THE FACTS

Estrada was indicted for the crime of Illegal Recruitment in Large Scale and *Estafa* under four (4) separate Informations, the inculpatory averments of which read:

Criminal Case No. 10-278205:

That on or about and during the period comprised between February 2009 and March 2009, inclusive, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud NOEL SEVILLENA, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which she made to said NOEL SEVILLENA prior to and even simultaneously with the commission of the fraud, to the effect that she had the power and capacity to recruit and deploy the latter as Master Baker in Dubai, and could facilitate the processing of pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing said NOEL SEVILLANA to give and deliver as in fact he gave and delivered to the said accused the total amount of PhP61,500.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact, she did obtain the total amount of PhP61,500.00, which amount once in her possession, with intent to defraud, misappropriated, and misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of the said NOEL SEVILLENA in the aforesaid total amount of PhP61 ,500.00, Philippine currency.

CONTRARY TO LAW.[3]

Criminal Case No. 10-278206:

That on or about and during the month of March 2009, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud JANICE A. ANTONIO, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which she made to said JANICE A. ANTONIO prior to and even simultaneously with the commission of the fraud, to the effect that she had the power and

[3] *Id*. at 1.

capacity to recruit and deploy the latter as Service Crew in Dubai, and could facilitate the processing of pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing said JANICE A. ANTONIO to give and deliver as in fact she gave and delivered to the said accused the total amount of PhP25,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact, she did obtain the total amount of PhP25,000.00, which amount once in her possession, with intent to defraud, misappropriated, and misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of the said JANICE A. ANTONIO in the aforesaid total amount of PhP25,000.00, Philippine currency.

CONTRARY TO LAW.[4]

Criminal Case No. 10-278207:

That in (sic) or about and during the period comprised between April 2009 and May 2009, inclusive, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud ALBERT M. CORTEZ, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which she made to said ALBERT M. CORTEZ prior to and even simultaneously with the commission of the fraud, to the effect that she had the power and capacity to recruit and deploy the latter as waiter in Dubai, and could facilitate the processing of pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing said ALBERT M. CORTEZ to give and deliver as in fact he gave and delivered to the said accused the total amount of PhP37,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact, she did obtain the total amount of PhP37,000.00, which amount once in her possession, with intent to defraud, misappropriated, and misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of the said ALBERT M. CORTEZ in the aforesaid total amount of PhP37,000.00, Philippine currency.

CONTRARY TO LAW.[5]

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[4] *Id*. at 3.

[5] *Id*. at 5.

Criminal Case No. 10-278208 (Large Scale Illegal Recruitment):

That on or about and during the period comprised between February 2009 and May 2009, inclusive, in the City of Manila, Philippines, the said accused, representing herself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully for a fee, recruit and promise employment/job placement abroad to ALBERT M. CORTEZ, NOEL SEVILLENA and JANICE A. ANTONIO as Waiter, Master Baker and Service Crew, respectively, in Dubai, without first having secured the required license or authority from the Department of Labor and Employment, and without valid reason and without the fault of the said ALBERT M. CORTEZ, NOEL SEVILLENA and JANICE A. ANTONIO failed to actually deploy them and failed to reimburse expenses incurred by them in connection with their documentation and processing for purposes of their deployment.

CONTRARY TO LAW.[6]

On 28 September 2010, Estrada, with the assistance of counsel, was arraigned and pleaded not guilty to the charges against her.[7] Trial on the merits thereafter ensued.

Evidence for the Prosecution

The three (3) private complainants, Noel Sevillena (*Sevillena*), Albert Cortez (*Cortez*), and Janice A. Antonio (*Antonio*), testified for the prosecution. Mildred Versoza, Labor and Employment Officer at the Philippine Overseas and Employment Administration (*POEA*), was also offered as a witness for the prosecution, but her testimony was dispensed with in view of the defense's admission of the genuineness and due execution of the POEA Certification[8] stating that Estrada was not included in the list of employees submitted by ABCA International Corporation (*ABCA*) for acknowledgment.[9] Their respective testimonies sought to establish that Estrada, without the necessary

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[6] *Id*. at 7.

[7] *Id*. at 63.

[8] *Id*. at 110; Exhibit "D".

[9] TSN, dated 5 May 2011, pp. 3-5.

license or authority from the POEA, recruited them for overseas employment for a fee, as follows:

Private complainants separately met Estrada on various dates from February to April 2009.[10] Sevillena was encouraged by his father to seek the help of Estrada as he knew her to be recruiting for overseas work;[11] Cortez met Estrada through his aunt who also knew Estrada to be a recruiter for overseas work;[12] and Jacinto came to know Estrada after she chanced upon a tarpaulin advertisement for overseas work on which Estrada's number and address were posted.[13]

During their respective meetings, Estrada represented herself as having power and authority to deploy persons abroad for overseas employment.[14] Cortez recalled that in their initial meeting, Estrada told him that she works for Worldview International Corporation *(Worldview)*, a private recruitment agency for overseas employment. She later told him, however, that she changed agency because Worldview's license had expired.[15]

After their respective meetings, Estrada offered private complainants various jobs in Dubai. In particular, Sevillena was offered a job as a baker after he refused the initial job offer in Saudi Arabia;[16] Cortez was offered a job as a waiter;[17] and Antonio was offered a job as a cashier after she refused the first job offer as a saleslady.[18]

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[10] TSN, dated 8 February 2011, p. 4; TSN, dated 5 May 2011, pp. 7-8; TSN, dated 26 May 2011, p. 3.

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

[12] TSN, dated 5 May 2011, p. 7.

[13] TSN, dated 26 May 2011, pp. 3-4.

[14] TSN, dated 8 February 2011, p. 5; TSN, dated 5 May 2011, p. 8; TSN, dated 26 May 2011, p. 6.

[15] TSN, dated 5 May 2011, p. 26.

[16] TSN, dated 8 February 2011, pp. 5-6.

[17] TSN, dated 5 May 2011, p. 26.

[18] TSN, dated 26 May 2011, p. 6.

The private complainants transacted only with Estrada to whom they submitted all the documents necessary for their overseas placement and to whom they paid processing, placement, and other fees.[19] Specifically, Sevillena paid ₱8,000.00 as processing fee and ₱17,000.00 as placement fee;[20] Cortez similarly paid ₱8,000.00 as processing fee and ₱17,000.00 as placement fee;[21] Antonio paid ₱10,000.00 as processing fee and ₱15,000.00 as placement fee.[22] In addition to the fees they paid to Estrada, private complainants alleged incurring other amounts relative to their overseas placement. Cortez and Antonio paid the said fees personally to Estrada at her house in Canlubang, Laguna;[23] while Sevillena paid the said fees personally to Estrada at his godmother's house in Calamba City.[24] Estrada did not issue a single receipt for the said fees.[25]

Estrada also required the private complainants to submit themselves to medical examination at the Holy Angel Medical Clinic *(HAMC)* in Manila. Again, the private complainants paid the fees for said medical examination personally to Estrada: Sevillena and Cortez each paid ₱4,000.00;[26] while Antonio paid ₱3,500.00.[27] As in the processing and placement fees, no receipt was issued for the medical examination fees.[28]

Estrada further required private complainants, with the exception of Antonio, to undergo the Pre-Departure Orientation

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[19] TSN, dated 8 February 2011, p. 7; TSN, dated 5 May 2011, pp. 9-10; TSN, dated 26 May 2011, p. 8.

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

[21] TSN, dated 5 May 2011, pp. 10-11.

[22] TSN, dated 26 May 2011, pp. 9-11.

[23] TSN, dated 26 May 2011, p. 10; TSN, dated 26 May 2011, p. 11.

[24] TSN, dated 8 February 2011, p. 11.

[25] *Id.* at 11; TSN, dated 5 May 2011, p. 11; TSN, dated 26 May 2011, p. 11.

[26] TSN, dated 8 February 2011, p. 9; TSN, dated 5 May 2011, pp. 13-14.

[27] TSN, dated 26 May 2011, p. 19.

[28] TSN, dated 8 February 2011, p. 11; TSN, dated 5 May 2011, p. 30; TSN, dated 26 May 2011, p. 19.

Seminar *(PDOS)*.[29] However, even after undergoing PDOS, payment of the fees required, and submission of the documentary requirements, Estrada still failed to deploy them abroad. Estrada repeatedly promised them that their plane tickets were still being processed. Estrada, however, failed to deliver on her promised deployment of the private complainants; thus, they were prompted to file criminal cases against Estrada.[30]

Evidence for the Defense

The defense presented Estrada herself. The defense also presented as witness Emilia G. Cosmo-an (*Cosmo-an*), president of ABCA International Corporation (*ABCA*), another recruitment agency for deployment abroad. In the course of Cosmo-an's testimony, however, the defense moved to declare her as a hostile witness, but the trial court did not act on the said motion.[31] Their respective testimonies are as follows:

Estrada came to know the private complainants when they separately went to her house and asked her help for them to work abroad.[32] Estrada insisted that she merely mentioned ABCA and Worldview to the private complainants because she knew their respective owners.[33] She explained that prior to her meeting with the private complainants, she worked as a secretary at a military hospital in Riyadh; that the owner of Worldview, Madam Juico, was her friend; that she also knew the owner of ABCA because the owner's daughter was her former co-worker at the Riyadh hospital; and that the complainants went first to Worldview where they got her number.[34]

Estrada denied that her mobile number was posted on a tarpaulin advertisement for work abroad. She alleged that what

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[29] *Id*. at 14; *Id*. at 15; *Id*. at 18.

[30] TSN, dated 8 February 2011, pp. 15-16; TSN, dated 5 May 2011, pp. 17-18; TSN, dated 26 May 2011, p. 12.

[31] TSN, 18 September 2012, p. 9.

[32] TSN, 17 May 2012, pp. 3-4.

[33] *Id*. at 5.

[34] *Id*. at 5-6; TSN, 19 June 2012, p. 5.

was posted on the tarpaulin is the number of Worldview, and that the owner of Worldview merely gave Antonio her number.[35] She admitted that Antonio indeed went to her house but averred that the latter merely asked if she knew the owner of Worldview, to which she answered in the affirmative as Worldview is the agency which handles her documents every time she departs abroad for work. Antonio then left and went to Worldview.[36] Thereafter, Antonio's husband informed her that Antonio and her friends had already submitted their applications to ABCA.[37]

With respect to Sevillena and Cortez, Estrada averred that the two went to her house, together with their aunt,[38] to ask if she could deploy workers abroad to which she answered in the negative. While in her house, Sevillena and Cortez met Antonio. The three went to ABCA together.[39]

Estrada learned later from Sevillena and Cortez's aunt, as well as from the owner of ABCA, that the two had already submitted their requirements to ABCA.[40] She also learned that despite completing all the requirements, the two failed to depart because, according to Cortez, they did not sign the contract because of the low salary offered.[41] Subsequently, Sevillena and Cortez went to her house to ask for the return of the money they paid to ABCA. She insisted that she did not receive any money from the private complainants and that she did not recruit them for overseas work.[42]

On her part, Cosmo-an testified that she did not really know Estrada having talked to her only once. She recalled that she

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[35] TSN, 19 June 2012, p. 3.

[36] *Id*. at 4.

[37] *Id*. at 6.

[38] *Id*. at 7.

[39] *Id*. at 8.

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

[41] *Id*. at 10.

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

met Estrada at the parking lot of her office sometime in March 2010. Estrada followed her and asked help for her relatives who were looking for work abroad, to which she responded that she may be able to help if there was a job order.[43] Estrada returned to ABCA's office later but they were not able to talk.[44]

Cosmo-an also denied that her agency received money from the private complainants and claimed that her agency never required applicants to pay placement and other fees.[45] She insisted that Estrada was not and has never been connected with ABCA in any capacity.[46] In fact, after she heard unpleasant rumors about Estrada, she placed a newspaper ad/notice on 27 April 2010 that Estrada was not and had never been connected with ABCA.[47] Cosmo-an further denied knowing any of the private complainants.[48]

The RTC Ruling

In its decision, the RTC found Estrada guilty beyond reasonable doubt of the crimes of illegal recruitment in large scale and three (3) counts of *estafa* under Article 315(2) (a) of the Revised Penal Code.

The trial court was convinced that the prosecution was able to establish Estrada's guilt by proof beyond reasonable doubt. It noted that the certification from the POEA confirmed that Estrada had never been licensed or authorized to recruit workers for overseas employment. This fact, coupled with her pretenses that she had the ability or influence to recruit private complainants for work in Dubai clearly made her liable for the crime of illegal recruitment.

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[43] TSN, 18 September 2012, pp. 5-6.

[44] *Id*. at 7.

[45] *Id*. at 10-12.

[46] *Id*. at 11.

[47] *Id*. at 14-15; Exhibit"C"; Records, p. 192.

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

The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered against Julia Regalado Estrada, as follows:

1. In Criminal Case No. 10278208, for the offense Illegal Recruitment in a large scale, the Court finds accused Julia Regalado Estrada GUILTY beyond reasonable doubt of the said offense and she is hereby sentenced to suffer the penalties of Life Imprisonment and Fine of Five Hundred Thousand Pesos (₱500,000.00);

2. In Criminal Case No. 10278205, for the crime of Estafa (Under Art. 315, 2(a) of the Revised Penal Code) the Court finds accused Julia Regalado Estrada GUILTY beyond reasonable doubt of the crime of Estafa and she is hereby sentenced to suffer the indeterminate imprisonment of Four (4) years Two (2) months and One (1) day of *prision correccional* maximum as minimum to Six (6) years Eight (8) months and Twenty Five (25) days of *prision mayor* minimum as maximum.

   Accused is also ordered to indemnify private complainant Noel Sevillena the amount of Twenty Nine Thousand Pesos (₱29,000.00) representing the accused's civil liability therefor;

3. In Criminal Case No. 10278206, for the crime of Estafa (Under Art. 315, 2(a) of the Revised Penal Code) the Court finds accused Julia Regalado Estrada GUILTY beyond reasonable doubt of the crime of Estafa and she is hereby sentenced to suffer the indeterminate imprisonment of Four (4) years Two (2) months and One (1) day of *prision correccional* maximum as minimum to Six (6) years Eight (8) months and Twenty Five (25) days of *prision mayor* minimum as maximum.

   Accused is also ordered to indemnify private complainant Janice A. Antonio the amount of Twenty-Five Thousand Pesos (₱25,000.00) representing the accused's civil liability therefor;

4. In Criminal Case No. 10278207, for the crime of Estafa (Under Art. 315, 2(a) of the Revised Penal Code) the Court finds accused Julia Regalado Estrada GUILTY beyond reasonable doubt of the crime of Estafa and she is hereby sentenced to suffer the indeterminate imprisonment of Four (4) years Two (2) months and One (1) day of *prision correccional* maximum as minimu to Six (6) years Eight (8) months and Twenty Five (25) days of *prision mayor* minimum as maximum.

> Accused is also ordered to indemnify private complainant Albert M. Cortez the amount of Twenty-Nine Thousand Pesos (₱29,000.00) representing the accused's civil liability therefor.

SO ORDERED.[49]

Aggrieved, Estrada filed a Notice of Appeal.[50]

The CA Ruling

In its appealed decision, the CA affirmed the RTC decision. The appellate court ruled that private complainants' categorical and unequivocal avowal that Estrada promised and assured them of work in Dubai, and their positive identification of Estrada as the person who recruited and demanded payment from them naturally prevails over her defense of denial. As such, the trial court aptly ruled that the prosecution evidence convincingly demonstrated the presence of the elements of illegal recruitment in large scale.

The appellate court further opined that a person who commits illegal recruitment may be charged with and convicted separately of illegal recruitment under R.A. No. 8042, in relation to the Labor Code; and *estafa* under Article 315(2)(a) of the RPC.

The *fallo* of the appealed CA decision provides:

> WHEREFORE, the *Appeal* is hereby DENIED. The Decision dated 5 December 2013 of the Regional Trial Court of Manila, Branch 47 in Criminal Case Nos. 10-278205-07 and 10-278208, is AFFIRMED.

SO ORDERED.[51]

Hence, this appeal.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN FINDING ESTRADA GUILTY OF ILLEGAL

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[49] Records, pp. 243-245.

[50] *Id*. at 249.

[51] *Rollo*, p. 13.

RECRUITMENT IN LARGE SCALE AND THREE (3) COUNTS OF *ESTAFA* DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ESSENTIAL ELEMENTS OF THESE CRIMES BY PROOF BEYOND REASONABLE DOUBT.

THE COURT'S RULING

The appeal lacks merit.

Elements constituting illegal recruitment in large scale sufficiently established

Under Section 6 of R.A. No. 8042, illegal recruitment, when undertaken by a non-licensee or non-holder of authority as contemplated under Article 13(f) of the Labor Code, shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers, and including referring, contract services, promising or advertising for employment abroad, whether for profit or not.

Further, to sustain a conviction for illegal recruitment under R.A. No. 8042 in relation to the Labor Code, the prosecution must establish two (2) elements: *first*, the offender has no valid license or authority required by law to enable one to lawfully engage in the recruitment and placement of workers; and *second*, the offender undertakes any of the activities within the meaning of recruitment and placement defined in Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Section 6 of R.A. No. 8042.[52] Further, in case the illegal recruitment was committed in large scale, a *third* element must be established, that is, the offender commits the illegal recruitment activities against three or more persons, individually or as a group.[53]

The Court is convinced that the prosecution was able to establish the essential elements of the crime of illegal recruitment in large scale.

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[52] *People v. Ganigan*, 584 Phil. 710, 718 (2008).

[53] *People v. Baytic*, 446 Phil. 23, 29 (2003); *People v. Salvatierra*, 735 Phil. 383, 392 (2014).

First, it is not disputed that Estrada is not licensed or authorized to recruit workers for overseas placement. During the trial, the defense admitted the POEA Certification which stated that Estrada is not included among the list of employees submitted by ABCA for POEA acknowledgment. Therefore, Estrada is not authorized to recruit workers for overseas employment. This fact was not denied by Estrada in her defense anchored only on the allegation that she did not recruit the private complainants but merely mentioned ABCA and Worldview to them.

Second, the prosecution was able to establish that Estrada unlawfully engaged in activities which refer to recruitment and placement under Article 13(b) of the Labor Code and Section 6 of R.A. No. 8042. Specifically, the prosecution was able to sufficiently demonstrate that Estrada promised and recruited private complainants for employment abroad for a fee.

This is amply supported by the testimonies of the private complainants who categorically testified that Estrada promised them employment and placement in Dubai as baker, waiter, and cashier. More particularly, the private complainants positively identified Estrada as the person with whom they transacted relative to their alleged deployment to Dubai; the person who instructed them to complete the documents necessary for their deployment and to undergo medical examination; the person to whom they submitted these documents; and the person to whom they directly paid the processing, placement, medical examination, and other fees.

It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, especially when the CA affirmed such findings, are entitled to great weight and respect by this Court.[54] Further, in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment with respect to their credibility shall not be interfered with by this Court.[55]

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[54] *People v. Nogra*, 585 Phil. 712, 724 (2008).

[55] *People v. Lo*, 597 Phil. 110, 125 (2009).

Thus, between the positive identification and categorical testimony by the private complainants and Estrada's unsubstantiated and uncorroborated denial, the Court finds the former more credible.

Finally, it is clear that Estrada committed illegal recruitment activities against the three (3) private complainants. Thus, the trial and appellate courts properly convicted Estrada of the crime of illegal recruitment in large scale.

Elements constituting Estafa sufficiently established

The Court also sustains Estrada's conviction for three (3) counts of *estafa* under Article 315(2)(a) of the RPC.

A conviction for illegal recruitment whether simple or committed in large scale would not preclude punishment for *estafa* under Article 315(2)(a) of the RPC.[56] This is because no double jeopardy could attach from the prosecution and conviction of the accused for both crimes considering that they are penalized under different laws and involved elements distinct from one another. Conviction under Article 315(2)(a) requires the concurrence of the following elements: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party, suffered damage or prejudice capable of pecuniary estimation. These are elements completely different from those required for illegal recruitment.[57]

In this regard, the Court is convinced that the prosecution was able to prove, beyond reasonable doubt, that Estrada committed three (3) counts of *estafa* under Article 315(2)(a) of the RPC, which states that *estafa* is committed:

> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

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[56] *People v. Ortiz-Miyake*, 344 Phil. 598, 613-614 (1997); *People v. Bayker*, 780 Phil. 489, 505 (2016).

[57] *People v. Bayker*, *Id*. at 56.

(a) By using fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

In this case, testimonial evidence established by proof beyond reasonable doubt that Estrada falsely represented herself as possessing power to deploy persons for overseas placement. By these pretenses, Estrada deceived the private complainants into believing that she would provide them their desired jobs in Dubai. This active representation of having the capacity to deploy the private complainants abroad despite not having the authority or license to do so from the POEA constituted deceit — the first element of *estafa*. Moreover, because of her assurances, the private complainants parted with their money in order to pay Estrada the various fees which they thought were necessary for their deployment abroad resulting in damage to each of the private complainants — the second element of *estafa*.

From the foregoing, it is clear that the elements of *estafa* as charged have been established. Thus, the Court affirms Estrada's conviction for three (3) counts of estafa under Article 315(2)(a).

Penalties

Section 6(m) of R.A. No. 8042 considers illegal recruitment in large scale as an offense involving economic sabotage. In this regard, Section 7 of R.A. No. 8042 provides that the penalty of life imprisonment and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed upon any person who shall commit illegal recruitment involving economic sabotage.

Accordingly, the Court affirms the trial court's imposition of the penalties of life imprisonment and payment of fine in the amount of ₱500,000.00 upon Estrada.

The Court, however, modifies the penalties imposed by the trial court with respect to the three (3) counts of *estafa* in view of the enactment of R.A. No. 10951 entitled *An Act Adjusting the Amount or the Value of Property and Damage on which a*

Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as Amended and became effective on 17 September 2017. As its title suggests, R.A. No. 10951 updated to the present monetary values some felonies listed in the RPC which penalties are dependent on the amount or value of damage involved, thereby effectively reducing the penalties for certain crimes, such as *estafa*.

Section 85 of R.A. No. 10951 modified Article 315 of the RPC in this wise, to wit:

> SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended as follows:
>
> "ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> "1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (₱2,400,000.00) but does not exceed Four million four hundred thousand pesos (₱4,400,000.00), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (₱2,000,000.00); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.
>
> "2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (₱1,200,000.00) but does not exceed Two million four hundred thousand pesos (₱2,400,000.00);
>
> "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); and
>
> "4th. By *arresto mayor* in its maximum period, if such amount does not exceed Forty thousand pesos (₱40,000.00), x x x"

In this case, the prosecution proved that Estrada's fraud resulted in the damage to Sevillena, Antonio, and Cortez in the respective amounts which did not exceed ₱40,000.00. Thus, applying the penalties under Article 315 of the RPC, as amended by Section 85 of R.A. No. 10951, Estrada should be sentenced to suffer the penalty of *arresto mayor* in its maximum period for each count of *estafa*.

The Court further modifies the sums awarded to Cortez and Antonio. With respect to Cortez, he testified that Estrada paid ₱5,000.00 as partial reimbursement for the amounts he paid to her.[58] This amount shall thus be deducted from his total monetary award. As regards Antonio, it would seem that the trial court failed to consider the ₱3,500.00 she had paid to Estrada for her medical examination. The trial court may have overlooked that Sevillena and Cortez had each paid for their medical examination which amounts were not deducted from the final monetary awards. Thus, the total monetary awards to the private complainants shall be as follows: ₱29,000.00 for Sevillena; ₱28,500.00 for Antonio; and ₱24,000.00 for Cortez.

WHEREFORE, premises considered, the appeal is hereby **DISMISSED.** The 20 August 2015 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06771, which affirmed the 5 December 2013 Decision of the Regional Trial Court of Manila, Branch 47, in Criminal Case Nos. 10-278205-07 and 10-278208, is **AFFIRMED with MODIFICATION** as follows:

1. In Criminal Case No. 10278208, the Court finds accused-appellant Julia Regalado Estrada GUILTY beyond reasonable doubt of the crime of Illegal Recruitment committed in large scale. She is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00);

2. In Criminal Case No. 10278205, the Court finds accused-appellant Julia Regalado Estrada GUILTY beyond reasonable doubt of the crime of *Estafa* and sentences her

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[58] TSN, dated 05 May 2011, pp. 21-22.

to suffer the penalty of six (6) months of *arresto mayor* and to indemnify private complainant Noel Sevillena the amount of Twenty-Nine Thousand Pesos (₱29,000.00);

3. In Criminal Case No. 10278206, the Court finds accused-appellant Julia Regalado Estrada GUILTY beyond reasonable doubt of the crime of *Estafa* and sentences her to suffer the penalty of six (6) months of *arresto mayor* and to indemnify private complainant Janice A. Antonio the amount of Twenty-Eight Thousand Five Hundred Pesos (₱28,500.00);

4. In Criminal Case No. 10278207, the Court finds accused-appellant Julia Regalado Estrada GUILTY beyond reasonable doubt of the crime of *Estafa* and sentences her to suffer the penalty of six (6) months of *arresto mayor* and to indemnify private complainant Albert M. Cortez the amount of Twenty-Four Thousand Pesos (₱24,000.00).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 225745. February 28, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARSENIO ENDAYA, JR.** ***y*** **PEREZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; PLEA OF SELF-DEFENSE; BY ADMITTING THE COMMISSION OF THE ACT CHARGED AND PLEADING AVOIDANCE BASED ON

THE LAW, THE ACCUSED MUST RELY ON THE STRENGTH OF HIS OWN EVIDENCE TO PROVE THAT THE FACTS THAT THE LEGAL AVOIDANCE REQUIRES ARE PRESENT.— It is settled that when the accused pleads self-defense and effectively admits that he killed the victim, the burden of evidence shift to him. By admitting the commission of the act charged and pleading avoidance based on the law, he must rely on the strength of his own evidence to prove that the facts that the legal avoidance requires are present; the weakness of the prosecution's evidence is immaterial after he admitted the commission of the act charged. It becomes incumbent upon the accused to prove his lack of criminal responsibility by clear and convincing evidence.

2. **ID.; ID.; ID.; ID.; REQUISITES; NOT PROVED.—** To successfully claim self-defense, the accused must satisfactorily prove that: (1) the victim mounted an unlawful aggression against the accused; (2) that the means employed by the accused to repel or prevent the aggression were reasonable and necessary; and (3) the accused did not offer any sufficient provocation. Measured against these criteria, the Court finds that Endaya's claim of self-defense must fail. His appeal must, perforce, be dismissed for utter lack of merit.

3. **ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM; TO BE APPRECIATED, THERE MUST BE AN ACTUAL, SUDDEN AND UNEXPECTED ATTACK OR IMMINENT DANGER THEREOF, NOT MERELY A THREATENING OR INTIMIDATING ATTITUDE.—** It is elementary that unlawful aggression on the part of the victim is the primordial consideration in self-defense. Absent this element, there could be no self-defense, whether complete or incomplete. For unlawful aggression to be appreciated there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude. Endaya miserably failed to establish unlawful aggression on the part of De Torres and/or the victims. Aside from their absurdity, Endaya's claims are unsubstantiated by any physical evidence. The anatomical sketch, which was taken the day after the incident, bore nothing which would be consistent with his claims that De Torres hacked him several times. The anatomical sketch made no mention of any hack wound on Endaya's face, back, shoulder, or any other part of his body, but merely indicated

that Endaya sustained scratches, the gravest of which being a laceration on his left hand. Contrary to his claims, these minor injuries suggest that they may have been inflicted by Jocelyn and Marietta who resisted the attacks of their ruthless assailant. Thus, the Court could not simply accept Endaya's bare claim that he was hacked by De Torres several times considering the absence of wounds matching his allegation.

4. ID.; ID.; ID.; ID.; THE MULTIPLE STAB WOUNDS SUFFERED BY THE VICTIMS WHICH CAUSED THEIR DEATHS BELIE AND NEGATE ACCUSED'S CLAIM OF SELF-DEFENSE, AS THE STAB WOUNDS DEMONSTRATE A CRIMINAL MIND RESOLVED TO END THE LIFE OF THE VICTIMS.— Assuming *arguendo* that there was indeed unlawful aggression on the part of De Torres and/or of the two victim, the defense failed to sufficiently explain how the victims ended up with four (4) stab wounds each, nor to establish that the means employed by Endaya to repel the alleged unlawful aggression was reasonable and necessary. Indeed, Endaya admitted that he stabbed Jocelyn at least twice. The fact that the victims suffered multiple stab wounds — four each — which caused their deaths belies and negates Endaya's claim of self-defense. If at all, these stab wounds demonstrate a criminal mind resolved to end the life of the victims.

5. ID.; ID.; HOMICIDE; PROPER IMPOSABLE PENALTY.— The Court further concurs with the modifications made by the appellate court with respect to the penalty for homicide. Under Article 249 of the Revised Penal Code, any person found guilty of homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three (3) periods. In this regard, Article 64(2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period. Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be *reclusion temporal* in its minimum period, while the minimum penalty shall be *prision mayor* in any of its periods.

6. ID.; ID.; PARRICIDE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The Court further affirms the monetary awards as adjusted by the appellate court, but modifies it with respect to the amount of moral damages in Criminal Case No. RY2K-058. In *People v. Jugueta*, the Court opined that when parricide is consummated and *reclusion perpetua* is imposed for reasons

other than Republic Act No. 9346, the court may award moral damages in the amount of ₱75,000.00 and exemplary damages in the amount of ₱75,000.00. Thus, the Court finds it just to increase the amount of moral damages awarded to the heirs of Jocelyn from ₱50,000.00 to ₱75,000.00. In addition, exemplary damages in the amount of ₱75,000.00 is also awarded to the heirs of Jocelyn.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

On appeal is the 24 September 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 05156, which affirmed with modification the 10 December 2010 Decision[2] of the Regional Trial Court, Branch 87, Rosario, Batangas *(RTC)*, in Criminal Case Nos. RY2K-058 and RY2K-059 finding accused-appellant Arsenio Endaya, Jr. y Perez *(Endaya)* guilty of Parricide and Homicide, respectively.

THE FACTS

Endaya was charged with the crimes of Parricide and Murder committed against Jocelyn Quita-Endaya *(Jocelyn)*, Endaya's wife, and her mother Marietta Bukal-Quita *(Marietta)*, under the following Informations:

Criminal Case No. RY2K-058

That on or about the 21st day of November, 1999, at about 6:30 o'clock in the evening, at Barangay Talahiban 2nd, Municipality of

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[1] *Rollo*, pp. 2-11; penned by Associate Justice Noel G. Tijam (now a member of this Court), and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr.

[2] Records (Criminal Case No. RY2K-059), pp. 163-173; penned by Acting Presiding Judge Noel M. Lindog.

San Juan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon with intent to kill, with treachery and with evident premeditation and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said bladed weapon one Jocelyn Quita-Endaya, his legitimate wife, suddenly and without warning, thereby inflicting upon the latter stab wounds, which directly caused her instantaneous death.[3]

Criminal Case No. RY2K-059

That on or about the 21st day of November 1999, at about 6:30 o'clock in the evening, at Barangay Talahiban 2nd, Municipality of San Juan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon with intent to kill, with treachery and with evident premeditation and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said bladed weapon one Marietta Bukal-Quita, suddenly and without warning, thereby inflicting upon the latter stab wounds, which directly caused her instantaneous death.[4]

On 11 May 2000, Endaya, assisted by counsel, was arraigned and pleaded not guilty to the charges against him. Trial ensued thereafter, during which the parties stipulated the following amounts in civil liabilities: (1) ₱80,000.00, as expenses incurred in relation to the death of the victims; (2) ₱350,000.00, for Jocelyn's loss of income and earning capacity; and (3) ₱20,000.00, for loss of income and earning capacity of Marietta.[5]

Evidence for the Prosecution

The evidence presented by the prosecution, mainly through the testimony of Jennifer de Torres *(De Torres)*, Jocelyn's son from her previous marriage,[6] tended to establish the following:

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[3] Records (Criminal Case No. RY2K-058), p. 1.

[4] Records (Criminal Case No. RY2K-059), p. 1.

[5] *Id*. at 46; Order dated 16 August 2001.

[6] TSN, 8 February 2001, p. 3.

Endaya was Jocelyn's second husband.[7] They established their dwelling at Barangay Talahiban II, San Juan, Batangas.[8] However, several months prior to 21 November 1999, Jocelyn parted ways with Endaya and left him to live in the same barangay with her mother and son.[9]

On 21 November 1999, at around 6:30 in the evening, De Torres was watching television at their neighbor's house when he heard his mother shouting for help.[10] De Torres immediately ran towards their house where he saw Endaya in the comfort room stabbing his mother twice with a bladed weapon.[11] De Torres charged towards Endaya and pushed him, then ran inside their house to get a bolo.[12]

After arming himself with the bolo, De Torres ran out of their house and rushed to his mother's aid. De Torres saw Endaya stab his grandmother once just outside the comfort room. When Endaya saw De Torres approaching, he fled.[13] The victims were rushed to the San Juan District Hospital where they were pronounced dead on arrival.[14]

The prosecution also offered in evidence the postmortem examinations for both Jocelyn[15] and Marietta[16] which revealed that each of them had sustained four (4) stab wounds.

Evidence for the Defense

The defense presented Endaya himself as witness who admitted the killings but claimed that he had acted in self-defense.

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[7] *Id*. at 4.

[8] *Id*.

[9] *Id*. at 5.

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

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

[12] *Id*. at 7.

[13] *Id*. at 8.

[14] *Id*. at 9.

[15] Records, p. 12; Exhibit "B".

[16] *Id*. at 20; Exhibit "C".

Endaya testified that Jocelyn left him and their children to live with her mother and Jocelyn's son from a previous marriage.[17]

On 21 November 1999, at about 6:30 in the evening, Endaya went to Marietta's house to convince Jocelyn to return per request of their children.[18] However, he was met with Jocelyn's ardent refusal, thus, a heated argument and altercation ensued. During the confrontation, De Torres suddenly arrived and hacked Endaya with a bolo several times. Endaya was hit at the back of his shoulder, in his face, and in several other parts of his body.[19] Blood oozed from his eyes and blurred his vision causing him to fall to the ground.[20] De Torres was still hacking Endaya when the latter tried to get up. In order to defend himself, Endaya got hold of a knife and tried to stab De Torres with it more than once.[21] Unfortunately, because it was dark at that time, he stabbed Jocelyn instead.[22]

Thereafter, Endaya attempted to leave but De Torres and Marietta blocked his path.[23] Again, due to the darkness, Endaya mistakenly stabbed Marietta.[24] He then left the premises and proceeded to his cousin Eddie Almario's house where he spent the night.[25] The following day, he surrendered to the San Juan, Batangas police.[26]

The defense further offered in evidence the anatomical sketch,[27] dated 22 November 1999, allegedly issued by a certain

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[17] TSN, 14 May 2003, p. 2.

[18] *Id*. at 3.

[19] *Id*. at 4.

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

[21] TSN, 4 November 2004, p. 6.

[22] TSN, 14 May 2003, p. 4; *id*. at 5.

[23] *Id*. at 6.

[22] *Id*. at 7.

[25] TSN, 22 October 2003, pp. 3-4.

[26] *Id*. at 4.

[27] Records (Criminal Case No. RY2k-059), p. 152; Exhibit "1".

Dra. Olga Aceron Virtucion, Municipal Health Officer of San Juan, Batangas, to prove the injuries sustained by Endaya and that he had acted in self-defense; and the certification[28] from the San Juan Municipal Police Station to prove that he surrendered on 22 November 1999.

The RTC Ruling

In its decision, the RTC found Endaya guilty beyond reasonable doubt of the crimes of parricide and homicide. The trial court ratiocinated that Endaya failed to satisfy the requirements of self-defense. It found ludicrous Endaya's claim that he had mistakenly stabbed both Jocelyn and Marietta. It further noted that the anatomical sketch presented by the defense indicated no hack wound, but mere scratches and contusions. Lastly, the trial court opined that the multiple stab wounds sustained by the victims proved that the means used by Endaya to repel the alleged aggression were not reasonable nor necessary. It, nevertheless, credited in his favor the benefit of the mitigating circumstance of voluntary surrender. The dispositive portion reads:

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

In **Criminal Case No. 058**, the Court finds the accused **Arsenio Endaya Jr.** *alias* **"Pugo" GUILTY** [of] the crime of *Parricide* defined in and penalized by *Article 246 of the Revised Penal Code* and hereby imposes on said accused the penalty of *Reclusion Perpetua* with all the accessory penalties of the law.

In **Criminal Case No. 059**, the Court finds the same accused GUILTY [of] the crime of *Homicide* defined in and penalized under *Article 249 of the Revised Penal Code* with the mitigating circumstance of voluntary surrender to a person in authority. Applying the Indeterminate Sentence Law, the Court hereby imposes upon the said accused the penalty of imprisonment of Six (6) years and One (1) day of *prision mayor* as minimum to Eight (8) years of *prision mayor* as maximum.

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[28] *Id*. at 153; Exhibit "2".

Accused is ordered to pay the heirs of the victims the stipulated amounts of Eighty Thousand Pesos (Php 80,000.00) as actual damages for the wake, funeral and burial of the deceased; Three Hundred Fifty Thousand Pesos (Php 350,000.00) for the loss of income of victim **Jocelyn Quita-Endaya**; and Twenty Thousand Pesos (Php20,000.00) for the loss of income of **Marietta Bukal-Quita**.

Accused is further ordered to pay death indemnity of Fifty Thousand Pesos (Php 50,000.00) for each victim.

The period [in] which accused has undergone preventive imprisonment during the pendency of these cases shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.[29]

Aggrieved, Endaya appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed with modification the RTC's decision. The appellate court concurred with the trial court that the defense failed to prove that the acts charged were committed in self-defense, thus, it affirmed Endaya's conviction for parricide and homicide. The appellate court, however, noted that the RTC erred in its imposition of the penalty for homicide. It noted that applying the Indeterminate Sentence Law, the maximum penalty, considering the attendant mitigating circumstance, should be *reclusion temporal* in its minimum period, and not *prision mayor*. The appellate court further updated the award of civil indemnity to conform to prevailing jurisprudence on the matter. The dispositive portion of the assailed decision provides:

WHEREFORE, the appeal is **DENIED**. The Regional Trial Court (RTC), Branch 87 of Rosario, Batangas, dated December 10, 2010, in Criminal Case No. Ry2K-058 and Criminal Case No. RY2K-059 finding Accused-Appellant Arsenio [E]ndaya, [Jr.] guilty of the crimes charged is **AFFIRMED with MODIFICATION**. As modified, the ruling of the trial court should read as follows:

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

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[29] *Id.* at 172-173.

In Criminal Case No. [RY2K-]058, the Court finds the accused Arsenio [E]nday[a] Jr., alias "Pugo" GUILTY for the crime of Parricide defined in and penalized by Article 246 of the Revised Penal Code and hereby imposes on said accused the penalty of Reclusion Perpetua with all the accessory penalties of the law.

In Criminal Case No. [RY2k-]059, the Court finds the same accused GUILTY for the crime of Homicide defined in and penalized under Article 249 of the Revised Penal Code with tmitigating circumstance of voluntary surrender to a person in authority. Applying the Indeterminate Sentence Law, the Court hereby imposes upon the said accused the penalty of imprisonment of Six (6) years and One (1) day of prision mayor as minimum to **Twelve (12) years and One (1) day of reclusion temporal.**

Accused is ordered to pay the heirs of the victims the stipulated amounts of Eighty Thousand Pesos (Php80,000.00) as actual damages for the wake, funeral and burial of the deceased; Three Hundred Fifty Thousand Pesos (Php350,000.00) for the loss of income of victim Jocelyn Quita-Endaya; and Twenty Thousand Pesos (Php20,000.00) for the loss of income of Marietta Bukal-Quita.

Accused is further ordered to pay the death indemnity of **Seventy Five Thousand Pesos (Php75,000.00), and moral damages of Fifty Thousand Pesos (Php50,000.00)** for each victim.

Finally, interest at the rate of six percent (6%) per annum shall be applied to the award of civil indemnity, moral damages and exemplary damages from the finality of judgment until fully paid in the two (2) aforementioned criminal cases.

The period which accused has undergone preventive imprisonment during the pendency of these cases shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.[30] (emphases in the original)

Undaunted, Endaya elevated the present appeal to this Court.

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[30] *Rollo*, pp. 9-10.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED WHEN THEY FAILED TO APPRECIATE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF ENDAYA.

THE COURT'S RULING

The appeal lacks merit.

Requisites for the appreciation of self-defense

There is no question that Endaya was the author of the deaths of his wife, Jocelyn, and his mother-in-law, Marietta. What is left for the Court to determine whether the defense satisfied the requisites of self-defense to exculpate Endaya from criminal liability for parricide and homicide.

It is settled that when the accused pleads self-defense and effectively admits that he killed the victim, the burden of evidence shifts to him. By admitting the commission of the act charged and pleading avoidance based on the law, he must rely on the strength of his own evidence to prove that the facts that the legal avoidance requires are present; the weakness of the prosecution's evidence is immaterial after he admitted the commission of the act charged.[31] It becomes incumbent upon the accused to prove his lack of criminal responsibility by clear and convincing evidence.[32]

To successfully claim self-defense, the accused must satisfactorily prove that: (1) the victim mounted an unlawful aggression against the accused; (2) that the means employed by the accused to repel or prevent the aggression were reasonable and necessary; and (3) the accused did not offer any sufficient provocation.[33]

Measured against these criteria, the Court finds that Endaya's claim of self-defense must fail. His appeal must, perforce, be dismissed for utter lack of merit.

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[31] *Sabay v. People*, 744 Phil. 760, 773 (2014); *People v. Duavis,* 678 Phil. 166, 175 (2011).

[32] *People v. Samson*, 768 Phil. 487, 496 (2015).

[33] *People v. Roxas*, G.R. No. 218396, 10 February 2016, 784 SCRA 47, 55.

The defense failed to establish self-defense.

It is elementary that unlawful aggression on the part of the victim is the primordial consideration in self-defense. Absent this element, there could be no self-defense, whether complete or incomplete.[34] For unlawful aggression to be appreciated there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.[35]

Endaya miserably failed to establish unlawful aggression on the part of De Torres and/or the victims. Aside from their absurdity, Endaya's claims are unsubstantiated by any physical evidence. The anatomical sketch, which was taken the day after the incident, bore nothing which would be consistent with his claims that De Torres hacked him several times. The anatomical sketch made no mention of any hack wound on Endaya's face, back, shoulder, or any other part of his body, but merely indicated that Endaya sustained scratches, the gravest of which being a laceration on his left hand. Contrary to his claims, these minor injuries suggest that they may have been inflicted by Jocelyn and Marietta who resisted the attacks of their ruthless assailant. Thus, the Court could not simply accept Endaya's bare claim that he was hacked by De Torres several times considering the absence of wounds matching his allegation.

Assuming *arguendo* that there was indeed unlawful aggression on the part of De Torres and/or any of the two victims, the defense failed to sufficiently explain how the victims ended up with four (4) stab wounds each, nor to establish that the means employed by Endaya to repel the alleged unlawful aggression was reasonable and necessary. Indeed, Endaya admitted that he stabbed Jocelyn at least twice. The fact that the victims suffered multiple stab wounds — four each — which caused their deaths belies and negates Endaya's claim of self-

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[34] *Flores v. People*, 705 Phil. 119, 758 (2013).

[35] *People v. Arnante*, 439 Phil. 754, 758 (2002).

defense. If at all, these stab wounds demonstrate a criminal mind resolved to end the life of the victims.[36]

Clearly, there is no showing that the trial court nor the appellate court overlooked, misunderstood, or misapplied facts or circumstances of weight which would have affected the outcome of the case. Thus, the Court finds no reason to deviate from the findings of both the trial and appellate courts.

Penalties and Monetary Awards

The Court further concurs with the modifications made by the appellate court with respect to the penalty for homicide.

Under Article 249 of the Revised Penal Code, any person found guilty of homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three (3) periods. In this regard, Article 64(2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period. Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be *reclusion temporal* in its minimum period, while the minimum penalty shall be *prision mayor* in any of its periods.

The Court further affirms the monetary awards as adjusted by the appellate court, but modifies it with respect to the amount of moral damages in Criminal Case No. RY2K-058. In *People v. Jugueta*,[37] the Court opined that when parricide is consummated and *reclusion perpetua* is imposed for reasons other than Republic Act No. 9346, the court may award moral damages in the amount of ₱75,000.00 and exemplary damages in the amount of ₱75,000.00.[38] Thus, the Court finds it just to increase the amount of moral damages awarded to the heirs of Jocelyn from ₱50,000.00 to ₱75,000.00. In addition, exemplary damages in the amount of ₱75,000.00 is also awarded to the heirs of Jocelyn.

WHEREFORE, the assailed Decision, dated 24 September 2015, of the Court of Appeals in CA-G.R. CR-HC No. 05156

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[36] *People v. Sevillano*, 753 Phil. 412, 419 (2015); *People v. Lalog*, 733 Phil. 597 (2014).

[37] G.R. No. 202124, 5 April 2016, 788 SCRA 331, 382.

[38] *Id*.

which affirmed with modifications the 10 December 2010 Decision of the Regional Trial Court, Branch 87, Rosario, Batangas, in Criminal Case Nos. RY2K-058 and RY2K-059, is hereby **AFFIRMED** with **MODIFICATION**.

In Criminal Case No. RY2K-058, accused-appellant Arsenio Endaya, Jr. *y* Perez is found **GUILTY** beyond reasonable doubt of the crime of Parricide attended by the mitigating circumstance of voluntary surrender. He is hereby sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties imposed by law. He is further ordered to pay the heirs of the deceased Jocelyn Quita-Endaya the following amounts: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; and (3) ₱75,000.00 as exemplary damages.

In Criminal Case No. RY2K-059, accused-appellant Arsenio Endaya, Jr. *y* Perez is found **GUILTY** beyond reasonable doubt of the crime of Homicide attended with the mitigating circumstance of voluntary surrender. He is hereby sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum. He is ordered to pay the heirs of the deceased Marietta Bukal-Quita the following amounts: (1) ₱75,000.00, as civil indemnity, and (2) ₱50,000.00, as moral damages.

Accused-appellant Arsenio Endaya, Jr. *y* Perez is further ordered to pay the heirs of the victims the stipulated amounts of ₱80,000.00 as expenses for the wake, funeral, and burial of the two deceased; ₱350,000.00 for the loss of income of victim Jocelyn Quita-Endaya; and ₱20,000.00 for the loss of income of Marietta Bukal-Quita.

All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.[39]

SO ORDERED.

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

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[39] *People v. Combate*, 653 Phil. 487, 518 (2010).

SECOND DIVISION

[G.R. No. 229712. February 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELIA C. MOLINA,** *accused-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042); ILLEGAL RECRUITMENT; ANY PERSON, WHETHER A NON-LICENSEE, NON-HOLDER, LICENSEE OR HOLDER OF AUTHORITY MAY BE HELD LIABLE FOR ILLEGAL RECRUITMENT WHERE IT FAILED TO REIMBURSE EXPENSES INCURRED BY THE WORKER IN CONNECTION WITH HIS DOCUMENTATION AND PROCESSING FOR PURPOSES OF DEPLOYMENT, IN CASES WHERE THE DEPLOYMENT DOES NOT ACTUALLY TAKE PLACE WITHOUT THE WORKER'S FAULT.— The testimonies of private respondents and the records show that: (1) private complainants Wilfredo Logo, Maylen Bolda and Maria Luya applied at the recruitment agency for employment in South Korea and paid for their respective placement/processing fee when the agency's provisional license was already issued; (2) Benjamin Delos Santos applied before the issuance of the provisional license but paid the placement fee when the provisional license was already issued, and (3) Gilbert Ubiña's application and payments were made after the agency's license was suspended and before it was alleged lifted on July 31, 2000, but before the agency's license expired on March 31, 2007. Hence, it appears that the recruitment agency, which accused-appellant headed, was a licensee or holder of authority when the recruitment of private complainants was made as the agency's license expired on March 31, 2007. Nevertheless, accused-appellant is still liable under Section 6 of R.A. No. 8042, which provides: x x x [Illegal recruitment] shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, **licensee or holder of authority**: x x x (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the

deployment does not actually take place without the worker's fault.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FACTUAL FINDINGS OF THE COURT OF APPEALS, WHICH AFFIRM THOSE OF THE TRIAL COURT, ARE BINDING ON THE SUPREME COURT, AND SUCH FINDINGS MAY BE REVISED ONLY WHEN THE ACCUSED-APPELLANT CONVINCINGLY DEMONSTRATES THAT SUCH FINDINGS WERE ERRONEOUS, OR BIASED, OR UNFOUNDED, OR INCOMPLETE, OR UNRELIABLE, OR CONFLICTED WITH THE FINDINGS OF FACT OF THE COURT OF APPEALS.—** The Court agrees with the Court of Appeals that accused-appellant cannot escape from liability for large scale illegal recruitment on the ground that she did not recruit private complainants and participate in their transactions with Juliet Pacon to whom complainants made their payments, as the recruitment was made in the recruitment agency of which accused-appellant is the President. Moreover, private complainants Logo, Ubiña, Bolda and Luya testified that they saw accused-appellant at the agency and she was introduced to them by Pacon as the owner of the agency, and she even assured them that they would be deployed for employment soon. Private respondent Delos Santos also testified that he saw accused-appellant at the agency and Pacon told him that she was the boss and owner of the agency. Further, the cash vouchers, evidencing the payments made by private complainants to Pacon, contained the name of the recruitment agency or its office address in Makati City, showing that it was received by Pacon in behalf of the agency whose President was accused-appellant. x x x. The factual findings of the Court of Appeals, which affirm those of the trial court, are binding on the Court. The Court may revise such findings only when the accused-appellant convincingly demonstrates that such findings were erroneous, or biased, or unfounded, or incomplete, or unreliable, or conflicted with the findings of fact of the Court of Appeals, which has not been demonstrated by the accused-appellant in this case.

3. **LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042); ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.—** Under Section 6, paragraph (m) of R.A. No.

8042, illegal recruitment "is deemed committed in large scale if committed against three (3) or more persons individually or as a group," and "[i]llegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage." Thus, the offense charged in the Information is illegal recruitment in large scale because it was committed against the five private complainants.

4. ID.; ID.; ID.; THE OFFICERS HAVING CONTROL, MANAGEMENT OR DIRECTION OF THE BUSINESS SHALL BE HELD CRIMINALLY LIABLE FOR ILLEGAL RECRUITMENT.— [S]ection 6, paragraph (m) of R.A. No. 8042 provides that in case of juridical persons, the officers having control, management or direction of their business shall be liable. Accused-appellant, as President of the recruitment agency, is therefore liable for illegal recruitment in large scale for failure to reimburse the expenses incurred by private complainants in connection with their documentation and processing for purposes of deployment to South Korea, which did not actually take place without their fault under Section 6, paragraph (m) of R.A. No. 8042.

5. ID.; ID.; ID.; PROPER IMPOSABLE PENALTY.— Since illegal recruitment in large scale is an offense involving economic sabotage under Section 6, paragraph (m) of R.A. No. 8042, the Court of Appeals correctly affirmed the decision of the trial court imposing upon accused-appellant the penalty of life imprisonment and a fine of ₱500,000.00 under Section 7 (b) of R.A. No. 8042. Although R.A. No. 10022, which took effect on May 7, 2010, amended the fine under Section 7 (b) of R.A. No. 8042 and increased it to "not less than Two million pesos (₱2,000,000.00) nor more than Five million pesos (₱5,000,000.00) x x x if illegal recruitment constitutes economic sabotage," the said amendment does not apply in this case because the offense was committed in 2006, before the amendment took effect in May 2010.

6. ID.; ID.; ID.; ID.; INTEREST IMPOSED ON THE AWARD OF ACTUAL DAMAGES SHOULD BE COMPUTED FROM THE DATE OF FINALITY OF THE JUDGMENT UNTIL FULLY PAID.— The Court of Appeals also correctly affirmed the ruling of the trial court ordering accused-appellant to reimburse to each of the private complainants the amount she respectively received from each of them, but the imposition

of interest on the actual damages awarded should be modified as computed from the date of finality of the judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] dated January 14, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 05977, affirming the Decision of the Regional Trial Court (*RTC*) of Makati City, Branch 137, finding accused-appellant Delia C. Molina guilty beyond reasonable doubt of the crime of illegal recruitment in large scale.

On December 21, 2007, accused-appellant Delia C. Molina and Juliet Pacon were charged with the crime of Illegal Recruitment in Large Scale in an Information[2] that reads:

The undersigned Prosecutor accuses DELIA C. MOLINA and JULIET PACON of the crime of Illegal Recruitment in Large Scale, defined and penalized under Section[s] 6 and 7 of Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), committed as follows:

That in or about and sometime in the months of April 2006 to September 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously recruit for a fee, promise employment/job placement abroad to five (5) persons, hence, committed in large scale, and received payments from complainants, to wit:

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[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez, concurring; *rollo*, pp. 2-14.

[2] Records, p. 1.

MARIA C. LUYA	-	₱75,000.00
GILBERT B. UBIÑA	-	130,000.00
WILFREDO I. LOGO	-	100,000.00
BENJAMIN B. DELOS SANTOS	-	75,000.00
MAYLEN S. BOLDA	-	70,000.00

in connection with the documentation and processing of their papers for purposes of their deployment, but said accused failed or refused to deploy herein complainants abroad without the fault of the latter and to reimburse the above-enumerated amounts to said complainants, to the damage and prejudice of the latter.

CONTRARY TO LAW.[3]

The case proceeded only against accused-appellant Delia C. Molina, as co-accused Juliet Pacon was at-large. When arraigned on April 7, 2009, accused Delia C. Molina pleaded not guilty.[4] After pre-trial, trial on the merits ensued.

The prosecution presented as witnesses the five private complainants and Eraida Dumigpi, Senior Labor and Deployment Officer of the Philippine Overseas Employment Administration (*POEA*). On the other hand, the defense presented accused-appellant Delia C. Molina as its lone witness.

Prosecution witness Wilfredo I. Logo, from Baliwag, Bulacan,testified that in May 2006, he was referred by a certain Lita to Juliet Pacon of Southern Cotabato Landbase Management Corporation,a recruitment agency, to apply for a job in Korea as a factory worker. At the agency, he met Juliet Pacon who discussed with him the work in Korea, the placement fee and the salary of Nine Hundred Won, or about ₱45,000.00. He was told to pay half of the placement fee, and once there is a job order, he was told to pay the remaining balance. For this job application, he paid the agency through Pacon, in cash and on installment basis, the total sum of ₱100,000.00 on the following dates: (1) May 22, 2006 - ₱3,000.00; (2) May 23, 2006 - ₱7,000.00; (3) August 29, 2006 - ₱60,000.00; and (4) September

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[3] *Id.*

[4] *Id.* at 43.

14, 2006 - ₱30,000.00, all covered by cash vouchers.[5] The payments were all received by Juliet Pacon as shown by her signature on the cash vouchers. Years passed and despite compliance with all the requirements of the agency, the promised deployment did not materialize. Logo entertained doubt as to his deployment abroad. He went back and forth to the agency, but Pacon already went into hiding and could not be located. He then went to the POEA and discovered that the agency had no job order for Korea. He got confirmation that accused Molina was the President of the agency as reflected in the POEA Certification[6] dated July 13, 2011. Thereafter, he filed a complaint against Molina and executed in support thereof his affidavit.[7]

Logo positively identified accused Molina as the owner of the agency. He came to know accused Molina not only because Pacon introduced her as the owner of the agency, but also because he frequently saw Molina in her office in the agency everytime he went there and paid his placement fee between the months of April to September 2006.[8] He was able to talk to accused Molina who assured him of his deployment abroad.[9]

The second witness, Gilbert Ubiña, a resident of Cubao, Quezon City, testified that in June 2006, his Auntie Lita accompanied him to the agency located in Makati City to apply for a job abroad. At the agency, he talked to Juliet Pacon who discussed with him the requirements of the job order for a factory worker in South Korea such as visa, passport, medical certificate, training and the payment of ₱130,000.00 as placement fee. He paid the placement fee in two installments: (1) ₱10,000.00 on June 9, 2009; and (2)₱120,000.00 on July 13, 2006, both evidenced by cash vouchers.[10] The payments were received by

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[5] Exhibits "H", "I", "K" and "J", *id*. at 16-17.

[6] Exhibit "T", *id*. at 162.

[7] Exhibit "G", *id*. at 15.

[8] TSN, January 27, 2011, pp. 12-18.

[9] *Id.* at 39-44.

[10] Exhibits "E" and "F", records, p. 14.

Pacon in behalf of the agency as evidenced by her signature on the cash vouchers of the agency. He was assured by both accused Molina and Pacon of a monthly salary of ₱45,000.00, but the promised job was not attained. Upon inquiry from the POEA, he found out that there was no job order for the agency. He also learned that accused Molina was the owner of the agency.

In open court, Ubiña positively identified accused Molina,[11] who advised him and other applicants to complete all their requirements for their immediate deployment to Korea where allegedly there were many jobs waiting for them.

The third witness, Benjamin Delos Santos, a resident of San Juan City, testified that in February 2006, he went to the agency, Southern Cotabato Landbase Management Corporation, located in Palanan, Makati City, and applied as a factory worker in South Korea. At the agency, he talked to Juliet Pacon who told him that he would earn US$900.00 per month, and that he could leave immediately upon submission of the requirements such as NBI clearance, resume, pictures and a placement fee of ₱75,000.00. He paid the placement fee in two installments: (1) ₱10,000.00 on April 26, 2006; and (2) ₱65,000.00 on May 8, 2006.[12] Although he complied with all the requirements, the agency failed to deploy him. Thus, he went to the POEA where he found out that accused Molina, whom he identified in open court,[13] did not have any job orders, and that Pacon was not licensed to get workers fordeployment abroad. Despite his demand for the return of his money, he only received promises, but his money was never returned.[14] Then he filed a complaint and executed his affidavit.[15]

The fourth witness, Maylen Bolda, a resident of San Juan, Metro Manila, testified that she gave ₱70,000.00 to Juliet Pacon

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[11] TSN, January 27, 2011, p. 65.

[12] Exhibits "N" and "M", records, p. 21.

[13] TSN, March 22, 2011, pp. 4-5.

[14] *Id.* at 2-20.

[15] Exhibit "L", records, p. 20.

in connection with her application for employment in South Korea. She paid in two installments: (1) ₱10,000.00 on April 12, 2006; and (2) ₱60,000.00 on April 26, 2006.[16] Like her co-applicants, the payments were evidenced by vouchers signed by Pacon. Upon receipt of the money, Pacon told her to complete all the requirements, which she did through the submission of the payment, medical result, NBI clearance and pictures. Pacon assured her that she would be able to depart for Korea as soon as she completes the requirements. She was also able to talk to accused Molina, who was introduced by Pacon to her as the owner of the agency. As the promised employment did not materialize, she demanded for the return of the money she paid, but only her passport was given back to her. She positively identified accused Molina in open court. Molina acknowledged that she was the owner of the agency and she assured Bolda of her employment abroad.

The fifth witness, Maria Luya, from Lemery, Batangas, testified that in April 2006, she came to know both accused Pacon and Molina when she applied with the agency for a job in South Korea, upon referral of her older sister who was in Korea. At the agency, she met Pacon who was assigned as her recruiter. She also saw accused Molina, who Pacon said was the President of the company and that she does not talk with applicants as there are recruiters for them. Pacon told her that there were job orders already, so she had to pay and complete the requirements because in a few months, she could leave for South Korea as a factory worker. She submitted the required documents such as NBI clearance, resume, photocopies of passport, birth certificate, medical certificate, and identification pictures. She paid to Pacon the processing fee of ₱75,000.00 in two installments: (1) ₱10,000.00 on April 17, 2006 and (2) ₱65,000.00 on May 2, 2006.[17] Despite submission of all the requirements of the agency, the promised deployment did not materialize, so she went back and forth to the agency many

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[16] Exhibits "Q" and "P", *id.* at 23.

[17] Exhibits "B" and "C", *id.* at 11.

times to demand for the return of her money, but to no avail. Based on the Certification[18] dated July 20, 2007 issued by the POEA, she found out that while the agency was registered, it did not have any job order, and that the agency was in the name of accused Molina who told her and her co-applicants to just wait as there were job orders already and that in a few months, they would be able to go abroad and that their papers were already being processed.

The last prosecution witness, Eraida Dumigpi, Senior Labor Deployment Officer of the Licensing Branch of the POEA, identified the two certifications[19] dated July 13, 2011 and September 8, 2011 as having been issued by her office. She likewise confirmed and affirmed the contents of both certificates, which stated that the Southern Cotabato Landbase Management Corporation, represented by Ms. Delia C. Molina, President, was a private recruitment agency whose license expired on March 31, 2007 and was cancelled on May 30, 2008.

The defense presented as its lone witness the accused, Delia C. Molina. Molina admitted that she was the former President of the Southern Cotabato Landbase Management Corporation, which was a duly licensed recruitment agency established on March 31, 2006 as evidenced by the provisional license[20] issued by the POEA. The agency was not able to do its business for failure to submit the requirements of the POEA, *i.e.,* to submit new job orders. She traveled abroad to look for such job orders. She departed from the Philippines on May 21, 2006[21] as stamped on her passport.[22] She went to Egypt[23] and on June 25, 2006, she went to Kuala Lumpur, Malaysia[24] where she was able to

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[18] Exhibit "S", *id*. at 161.

[19] Exhibits "T" and "U", *id*. at 162-163.

[20] Exhibit "1", *id*. at 215.

[21] Exhibit "4-A", *id*. at 218.

[22] Exhibit "4", *id*.

[23] Exhibit "5", *id*.

[24] Exhibit "6", *id*. at 219.

obtain a new job order. The suspension order against the agency was lifted on July 31, 2006, and the agency started its operation on August 6, 2006 (but no documents were marked and offered to this effect). During the time that she was out of the country, from May 21, 2006 to June 29, 2006, her former secretary Angelita Palabay took charge of the agency. She stated that co-accused Juliet Pacon had no relation to her or to the agency in any capacity as Pacon was a total stranger to her and had no authority to act for the agency. It was only in the hearing of this case that she learned of the name Juliet Pacon. Moreover, she has not met personally all the private complainants in this case.

On cross-examination, accused Molina admitted that there were about 100 cases of illegal recruitment filed against her in different courts and that she was convicted of illegal recruitment in the RTC of Makati City, Branch 148 and Branch 150 where the complainants were illegally recruited for South Korea. She denied the recruitment of private complainants and the payments made by them in this case, more so, the cash vouchers showing such payments.

The Ruling of the RTC

In a Decision[25] dated January 16, 2013, the trial court found accused Molina guilty beyond reasonable doubt of illegal recruitment in large scale.

The trial court held:

x x x [T]he crime of illegal recruitment in large scale is generally committed when the following elements concur, to wit: (1) the offender has no valid license or authority required by law to enable one to engage lawfully in recruitment and placement of workers; (2) he or she undertakes any of the activities within the meaning of recruitment and placement as defined thereunder in relation to Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines; and (3) that the accused commits the acts against three or more persons, individually or as a group. In addition thereto, and more apt to the case at bar, even if one is **a licensee**

[25] CA *rollo*, pp. 13-21.

or holder of authority, he or she will still be deemed liable for illegal recruitment in large scale if he or she commits any of the defined acts under Section 6 of R.A. 8042.

After going over the pieces of testimonial and documentary evidence of the prosecution, *vis-a-vis* the defense of general denial by the accused, this court finds that all the requisite elements necessary to sustain a judgment of conviction for the defense of illegal recruitment in large scale were established during the trial. The attendance of the first element — that is, absence of a valid license or authority to enable one to lawfully engage in recruitment and placement of workers — is supported by the POEA certifications and further bolstered and strengthened by the testimony at the witness [stand] of Eraida Dumigpi, Senior Labor Deployment Officer from the Licensing Branch of the POEA. The second element pertaining to the performance of activities within the meaning of recruitment and placement as defined under Section 6 of R.A. 8042 is substantiated by the testimonies of private complainants Luya, Ubiña, Logo, Delos Santos and Bolda. The third element is evident from the number of complainants, in the instant case herein five (5) complainants, against whom the accused committed illegal recruitment.[26]

The dispositive portion of the Decision of the RTC reads:

WHEREFORE, PREMISES CONSIDERED, the prosecution having established the guilt of accused Delia C. Molina beyond reasonable doubt, judgment is hereby rendered convicting the accused as principal of large scale illegal recruitment and she is sentenced to life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00), plus cost of suit. Accused Delia C. Molina is further ordered to pay the following complainants the amounts opposite their names as actual or compensatory damages, to wit:

1.	Maria C. Luya	- ₱ 75,000.00
2.	Gilbert B. Ubiña	- ₱130,000.00
3.	Wilfredo I. Logo	- ₱100,000.00
4.	Benjamin B. Delos Santos	- ₱ 75,000.00
5.	Maylen S. Bolda	- ₱ 70,000.00

with interest thereon at the legal rate of 6% per annum from the date of filing this criminal case, February 7, 2008, until the amount shall have been fully paid.

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[26] *Id.* at 19. (Emphasis in the original; citation omitted)

The case against co-accused Juliet Pacon is ordered ARCHIVED, with standing alias warrant of arrest dated September 6, 2012.

SO ORDERED.[27]

The accused-appellant appealed the Decision of the RTC to the Court of Appeals, raising this assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ILLEGAL RECRUITMENT.

Before the Court of Appeals, the accused-appellant professed her innocence, arguing that while she was the President of Southern Cotabato Landbase Management Services, a duly licensed recruitment agency, she never recruited or promised private complainants any work in South Korea. She had no contractual obligations or duty to deploy them for employment abroad. It was accused Juliet Pacon who recruited and promised employment in South Korea to private complainants. In fact, it was Pacon who received private complainants' payments. Thus, considering that she never demanded or received any amount from private complainants as placement fee or other incidental expenses in relation to their purported deployment, she had no contractual obligation to reimburse any amount of money to them due to accused Pacon's failure to deploy them abroad. Accused-appellant asserted that there was no direct evidence that she gave private complainants the impression that she had the power or ability to send them abroad for work such that the latter were convinced to part with their money in order to be employed. In fact, she had no participation in the transactions between the private complainants and accused Pacon. Hence, the charge of illegal recruitment against her has no leg to stand on.

The Ruling of the Court of Appeals

On January 14, 2016, the Court of Appeals rendered a Decision,[28] the dispositive portion of which reads:

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[27] *Id.* at 21. (Citations omitted)

[28] *Rollo*, pp. 2-14.

WHEREFORE, the appeal is DISMISSED. The decision is AFFIRMED en toto.[29]

The Court of Appeals did not give credence to accused-appellant's allegation that she neither knew Juliet Pacon nor authorized Pacon to act in behalf of the agency, because the transactions happened in her office. Moreover, private complainants identified accused-appellant as the President of the agency.The Court of Appeals agreed with the trial court's findings that the elements of the crime charged are present in this case. It found no reversible error on the part of the trial court in finding accused-appellant guilty of illegal recruitment in large scale.

Thereafter, the case was certified and the entire records thereof were elevated to this Court for review.

In lieu of filing their respective Supplemental Briefs, the parties manifested to the Court that they were adopting their respective Appellee's Brief and Appellant's Brief filed with the Court of Appeals for the instant appeal.

The issue is whether or not the Court of Appeals erred in ruling that accused-appellant is guilty beyond reasonable doubt of the crime of illegal recruitment in large scale.

The Court's Ruling

The Court affirms the Decision of the Court of Appeals with modification.

Republic Act (*R.A.*) No. 8042, known as the "*Migrant Workers and Overseas Filipinos Act of 1995,*" defines illegal recruitment in Section 6 thereof, thus:

SEC. 6. *Definition*. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a **non-licensee or non-holder of authority** contemplated under Article 13(f) of Presidential Decree

[29] *Id*. at 14.

No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. **It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:**

(a) x x x

x x x x x x x x x

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.[30]

In this case, the provisional license[31] granted by the POEA to the recruitment agency Southern Cotabato Landbase Management Corporation, of which accused-appellant was the President, was valid from March 31, 2006 to March 31, 2007. On May 31, 2006, Rosalinda Dimapilis-Baldoz, Administrator of the POEA Licensing and Regulation Office, issued an Order[32] stating that the license of Southern Cotabato Landbase Management Corporation "is hereby suspended effective immediately for non-compliance with its undertaking to submit requirements within 30 days from the date of issuance of its

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[30] Emphasis supplied; underscoring supplied.

[31] Exhibit "1", records, p. 215.

[32] Exhibit "2", *id*. at 216.

license as a landbased agency, pursuant to Section 16, Rule IV, Part VI of the 2002 POEA Rules and Regulations." Accused-appellant testified that she travelled abroad, particularly to Egypt and Kuala Lumpur, Malaysia, to look for job orders, and these trips were reflected on her passport. She stated that she obtained a new job order in Kuala Lumpur, Malaysia; hence, the suspension order against the agency was lifted on July 31, 2006 (but no documentary evidence was submitted to support her allegation) and that the agency started operating again on August 6, 2006. Based on a Certification[33] dated September 8, 2011 issued by the POEA, the license of Southern Cotabato Landbase Management Corporation expired on March 31, 2007 and the license was cancelled on May 30, 2008.

The testimonies of private respondents and the records show that:(1) private complainants Wilfredo Logo, Maylen Bolda and Maria Luya applied at the recruitment agency for employment in South Korea and paid for their respective placement/processing fee when the agency's provisional license was already issued; (2) Benjamin Delos Santos applied before the issuance of the provisional license but paid the placement fee when the provisional license was already issued, and (3) Gilbert Ubiña's application and payments were made after the agency's license was suspended and before it was alleged lifted on July 31, 2000, but before the agency's license expired on March 31, 2007. Hence, it appears that the recruitment agency, which accused-appellant headed, was a licensee or holder of authority when the recruitment of private complainants was made as the agency's license expired on March 31, 2007. Nevertheless, accused-appellant is still liable under Section 6 of R.A. No. 8042, which provides:

> x x x [Illegal recruitment] shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, **licensee or holder of authority**:
>
> x x x x x x x x x
>
> (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of

[33] Exhibit "U", *id*. at 163.

deployment, in cases where the deployment does not actually take place without the worker's fault.[34]

As the trial court stated:

> Although it might be argued by the accused that her license/authority as a private recruitment agency expired only in March 2007, and cancelled only in May 2008, and as such during the period of time material to the instant criminal indictment she would seem to be possessed of the requisite license and authority to recruit, still, accused Molina cannot escape liability for the offense charged because of her failure to reimburse to private complainants the expenses they incurred in connection with the documentation and processing for purposes of deployment when her agency, and of which she is the President, failed to actually deploy them without the private complainants' fault. The existence of a valid license at the commencement of the recruitment process will not justify an acquittal, for the provision and mandate of the special law violated is clear, categorical and specific on this point.[35]

The Court agrees with the Court of Appeals that accused-appellant cannot escape from liability for large scale illegal recruitment on the ground that she did not recruit private complainants and participate in their transactions with Juliet Pacon to whom complainants made their payments, as the recruitment was made in the recruitment agency of which accused-appellant is the President. Moreover, private complainants Logo, Ubiña, Bolda and Luya testified that they saw accused-appellant at the agency and she was introduced to them by Pacon as the owner of the agency, and she even assured them that they would be deployed for employment soon. Private respondent Delos Santos also testified that he saw accused-appellant at the agency and Pacon told him that she was the boss and owner of the agency. Further, the cash vouchers,[36] evidencing the payments made by private complainants to Pacon,contained the name of the recruitment agency or its office address in Makati City, showing that it

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[34] Emphasis supplied.

[35] CA *rollo*, p. 19.

[36] Records, pp. 11, 14, 16-17, 21, 23.

was received by Pacon in behalf of the agency whose President was accused-appellant. As stated by the trial court:

> To the mind and appreciation of this Court, it is of no moment that in the cash vouchers evidencing payments of the placement fee by all five (5) private complainants, the name of accused Molina did not appear and all were paid to and accepted not by her, but by her alleged agent, co-accused Juliet Pacon who remains at large to date. Scrutiny of these vouchers, however, would show that all payments were in the name of Southern Cotabato Landbase Management Services, the private recruitment agency owned, managed and presided by accused Molina. As held in the case of *People v. Crispin Billaber y Matbanua*, "[T]he absence of receipts to evidence payment to the recruiter would not warrant an acquittal, a receipt not being fatal to the prosecution's cause." The clear, categorical and straightforward testimonies of the private complainants pertaining to the assurances given by accused Molina herself about the existence of job orders in South Korea, the certainty of deployment for work abroad upon completion of all the requirements — which includes the payment of the placement fees — and her subsequent failure to deploy them and return the money paid by the private complainants have only been met and controverted by a general denial by the accused. Such negative assertion, definitely pales in comparison to the affirmative testimonies of the private complainants.[37]

The factual findings of the Court of Appeals, which affirm those of the trial court, are binding on the Court. The Court may revise such findings only when the accused-appellant convincingly demonstrates that such findings were erroneous, or biased, or unfounded, or incomplete, or unreliable, or conflicted with the findings of fact of the Court of Appeals,[38] which has not been demonstrated by the accused-appellant in this case.

Under Section 6, paragraph (m) of R.A. No. 8042, illegal recruitment "is deemed committed in large scale if committed against three (3) or more persons individually or as a group," and "[i]llegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic

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[37] *Id.* at 230. (Citations omitted)

[38] *People v. Owen Marcelo Cagalingan*, G.R. No. 198664, November 23, 2016, citing *People v. Reyes*, 714 Phil. 300, 306-307 (2013).

sabotage." Thus, the offense charged in the Information is illegal recruitment in large scale because it was committed against the five private complainants.

Moreover, Section 6, paragraph (m) of R.A. No. 8042 provides that in case of juridical persons, the officers having control, management or direction of their business shall be liable. Accused-appellant, as President of the recruitment agency, is therefore liable for illegal recruitment in large scale for failure to reimburse the expenses incurred by private complainants in connection with their documentation and processing for purposes of deployment to South Korea, which did not actually take place without their fault under Section 6, paragraph (m) of R.A. No. 8042.

Section 7 of R.A. No. 8042 provides for the penalties for illegal recruitment as follows:

SEC. 7. *Penalties*. —

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

(b) **The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein**.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.[39]

Since illegal recruitment in large scale is an offense involving economic sabotage under Section 6, paragraph (m) of R.A. No. 8042, the Court of Appeals correctly affirmed the decision of the trial court imposing upon accused-appellant the penalty of life imprisonment and a fine of ₱500,000.00 under Section 7 (b) of R.A. No. 8042. Although R.A. No. 10022, which took effect on May 7, 2010, amended the fine under Section 7 (b) of

[39] Emphasis supplied.

R.A. No. 8042 and increased it to "not less than Two million pesos (₱2,000,000.00) nor more than Five million pesos (₱5,000,000.00) x x x if illegal recruitment constitutes economic sabotage," the said amendment does not apply in this case because the offense was committed in 2006, before the amendment took effect in May 2010.

The Court of Appeals also correctly affirmed the ruling of the trial court ordering accused-appellant to reimburse to each of the private complainants the amount she respectively received from each of them, but the imposition of interest on the actual damages awarded should be modified as computed from the date of finality of the judgment until fully paid.[40]

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Court **AFFIRMS** with **MODIFICATION** the Decision of the Court of Appeals dated January 14, 2016 in CA-G.R. CR-HC No. 05977, sustaining the Decision of the RTC of Makati City, Branch 137, finding accused-appellant Delia C. Molina guilty beyond reasonable doubt of the crime of illegal recruitmentin large scale and imposing on her the penalty of life imprisonment and ordering her to pay a fine of Five Hundred Thousand Pesos (₱500,000.00), plus cost of suit, and to pay actual damages to private complainants as follows:

Maria C. Luya	-	₱ 75,000.00
Gilbert B. Ubiña	-	₱130,000.00
Wilfredo I. Logo	-	₱100,000.00
Benjamin B. Delos Santos	-	₱ 75,000.00
Maylen S. Bolda	-	₱ 70,000.00

with interest on the actual damages awarded at the legal rate of six percent (6%) *per annum* with the modification that the said interest imposed on the actual damages shall be computed from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[40] See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SECOND DIVISION

[G.R. No. 231050. February 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROY MAGSANO *y* SAGAUINIT,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — Magsano 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 for illegal sale of dangerous drugs, the following elements must be proven with moral certainty: (*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.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [T]o convict an accused for illegal possession of dangerous drugs, the prosecution must establish the necessary elements thereof, to wit: (*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.

4. ID.; ID.; ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE ILLEGAL DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME.— In both instances, it is equally essential that the identity of the prohibited drugs be established beyond reasonable doubt, considering that the prohibited 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 illegal drugs are seized up to their presentation in court as evidence of the crime.

5. ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; PROCEDURE IN THE HANDLING OF THE SEIZED DRUGS IN ORDER TO PRESERVE THEIR INTEGRITY AND EVIDENTIARY VALUE.— [S]ection 21, Article II of RA 9165, as amended by RA 10640, 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 in the presence of the accused or the person from whom the items were seized, or his representative or counsel, with an elected public official *AND* a representative from the National Prosecution Service (NPS) (which falls under the Department of Justice [[DOJ]) *OR* the media** 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 "**[w]ithout the insulating presence of the representative from the media or the [NPS/DOJ], [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."

6. **ID.; ID.;ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT IN SECTION 21 OF RA 9165 DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THAT 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 IRR of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — 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**. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 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 evidentiary 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.

7. ID.; ID.; ID.; ID.; UNJUSTIFIED NON-COMPLIANCE WITH THE PRESCRIBED PROCEDURE UNDER SECTION 21 OF RA 9165 PUTS INTO QUESTION THE INTEGRITY AND EVIDENTIARY VALUE OF THE DRUGS PURPORTEDLY SEIZED FROM THE ACCUSED.— In this case, the Court finds that the police officers committed an unjustified deviation from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Magsano. An examination of the records reveals that while the inventory of the seized drugs was conducted in the presence of Magsano and an elected public official, the same was not done in the presence of a representative from the media or the DOJ. By their own account, both PO3 Marcelo and PO1 Pagulayan explicitly admitted that there were no witnesses from either the media or the DOJ during the inventory of the seized drugs x x x. Despite such admissions, the police officers did not provide any plausible explanation as to why the presence of these required witnesses was not procured. Thus, their unjustified non-compliance with the prescribed procedure under Section 21, Article II of RA 9165 puts into question the integrity and evidentiary value of the drugs purportedly seized from the accused.

8. ID.; ID.; ID.; ID.; OBJECTIONS AGAINST THE INTEGRITY AND EVIDENTIARY VALUE OF THE DANGEROUS DRUGS SEIZED FROM THE ACCUSED, EVEN IF RAISED ONLY FOR THE FIRST TIME ON APPEAL, DO NOT PRECLUDE THE COURT OF APPEALS, OR EVEN THE SUPREME COURT, FROM PASSING UPON THE SAME, BECAUSE 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.— Notably, as held in *People v. Miranda* (*Miranda*), "the fact that [an accused such as Magsano in this case] raised his objections against the integrity and evidentiary value of the [dangerous] drugs seized from him only for the first time [on appeal] x x x **does not preclude** [the CA], or even this Court[,] from passing upon the same." This is because "[a]n 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 [therefore] be corrected *motu propio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case." In *Miranda*, the Court explained: 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**.

9. ID.; ID.; ID.; ID.; ACCUSED MUST BE ACQUITTED WHERE THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN COMPROMISED. — [T]he prosecution failed to provide justifiable grounds for the police officers' non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR. Thus, even if the same 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, Magsano's acquittal is in order.

10. ID.; ID.; ID.; ID.; PROSECUTORS HAVE THE POSITIVE DUTY TO PROVE COMPLIANCE WITH THE PROCEDURE SET FORTH IN SECTION 21, ARTICLE II 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.— [T]he 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. "In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] 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."

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 Roy Magsano *y* Sagauinit (Magsano) assailing the Decision[2] dated November 4, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08001, which affirmed the Decision[3] dated December 1, 2015 of the Regional Trial Court of Makati City, Branch 65 (RTC) in Criminal Case Nos. 15-1652 to 15-1653, finding Magsano 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 Magsano with the crimes of illegal sale and illegal possession of dangerous drugs, the accusatory portions of which state:

Criminal Case No. 15-1652

On the 19th day of May 2015, in the [C]ity of Makati, the Philippines, accused, without the necessary license of prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute a total of zero point ten (0.10) gram of white crystalline substance containing methamphetamine hydrochloride, a dangerous drug, in consideration of Php500.

CONTRARY TO LAW.[6]

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[1] See Notice of Appeal dated November 28, 2016; *rollo*, pp. 16-17.

[2] *Id*. at 2-15. Penned by Associate Justice Romeo F. Barza with Associate Justices Franchito N. Diamante and Agnes Reyes-Carpio, concurring.

[3] CA *rollo*, pp. 13-20. Penned by Presiding Judge Edgardo M. Caldona.

[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 May 22, 2015. Records, pp. 2-5.

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

Criminal Case No. 15-1653

On the 19th day of May 2015, in the [C]ity of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully, and feloniously have in his possession, direct custody, [sic] and control a total of zero point zero nine (0.09) gram of white crystalline substance containing methamphetamine hydrochloride (shabu), a dangerous drug.

CONTRARY TO LAW.[7]

The prosecution alleged[8] that an informant tipped the operatives of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) that a certain "Taroy," who was later on identified as Magsano, was engaged in illegal drug activities at Barangay South Cembo, Makati City (Brgy. South Cembo). After verifying the said tip, or at around five o'clock in the afternoon of May 19, 2015, the SAID-SOTG team, together with the informant and in coordination with the Philippine Drug Enforcement Agency,[9] organized a buy-bust operation and thereafter, proceeded to the target area. Upon arriving thereat, the informant introduced Police Officer (PO) 3 Luisito Leif F. Marcelo (PO3 Marcelo), the designated poseur-buyer, to Magsano, who then asked PO3 Marcelo how much *shabu* he intended to buy. When PO3 Marcelo informed Magsano that he wanted to buy ₱500.00 worth of *shabu*, the former immediately handed over the marked money to the latter. Afterwards, Magsano took out three (3) small plastic sachets of white crystalline substance and instructed PO3 Marcelo to choose one. Accordingly, PO3 Marcelo took one sachet and after examining the same, executed the pre-arranged signal by scratching his forehead. Consequently, PO1 Mauro A. Pagulayan (PO1 Pagulayan) rushed towards the scene and performed a body search on Magsano, which search yielded two (2) more sachets

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

[8] See Appellee's Brief dated July 12, 2016; CA *rollo*, pp. 61-78.

[9] See Coordination Form dated May 19, 2015; records, p. 15.

of suspected *shabu* and the buy-bust money. Moments later, Magsano was taken to the barangay hall of Brgy. South Cembo, where the confiscated drugs were marked and inventoried in the presence of Barangay *Kagawad* George Achacoso.[10] After the inventory, PO3 Marcelo turned over the confiscated items to PO3 Voltaire A. Esguerra (PO3 Esguerra), who then prepared the requests for laboratory examination[11] and drug testing.[12] Subsequently, PO3 Esguerra returned the items to PO3 Marcelo and provided him with the investigation report[13] and requests for examination. Shortly after, PO3 Marcelo delivered the seized items to the Philippine National Police (PNP) Crime Laboratory, where they were received by Police Chief Inspector May Andrea A. Bonifacio (PCI Bonifacio) at 10:10 in the evening.[14] In Chemistry Report No. D-551-15,[15] PCI Bonifacio revealed that the specimen drugs contained the presence of *methamphetamine hydrochloride*, a dangerous drug.

In his defense,[16] Magsano simply denied the charges against him, claiming that at around eight o'clock in the evening of May 19, 2015, some men suddenly barged into his house, handcuffed him, and conducted a search therein. When the search proved futile, the men took Magsano to the office of the SAID-SOTG. Subsequently, he was brought to the barangay hall of Brgy. South Cembo, where he allegedly saw for the first time the sachets of *shabu* that were supposedly recovered from him.[17]

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[10] See Inventory Receipt dated May 19, 2015; *id*. at 16. See also *rollo*, pp. 3-4 and CA *rollo*, pp. 68-69.

[11] Records, p. 20.

[12] *Id*. at 21.

[13] See Spot Report; *id*. at 17.

[14] See Chain of Custody Form dated May 19, 2015; *id*. at 23.

[15] *Id*. at 22.

[16] See Brief for the Accused-Appellant dated June 13, 2016; CA *rollo*, pp. 30-51.

[17] See CA *rollo*, pp. 15-16 and 38-39. See also *rollo*, p. 5.

During trial, Shabina Agas testified[18] in behalf of Magsano to corroborate his claims. She maintained that she was outside their house when some men arrived and asked for Magsano's whereabouts. She added that after learning where Magsano was, they forcibly entered his house and arrested him.[19]

The RTC Ruling

In a Decision[20] dated December 1, 2015, the RTC found Magsano guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165 and respectively sentenced him as follows: (*a*) in Crim. Case No. 15-1652, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. 15-1653, to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.[21]

The RTC ruled that the prosecution proved all the essential elements of the crimes charged.[22] Further, it found an unbroken chain of custody in the handling of the dangerous drugs, as it was established that: (*a*) after seizing the drugs at the place of arrest, PO3 Marcelo marked and inventoried them at the barangay hall of Brgy. South Cembo; (*b*) subsequently, PO3 Marcelo turned them over to PO3 Esguerra, who prepared and signed the request for laboratory examination; (*c*) thereafter, PO3 Esguerra returned the seized items to PO3 Marcelo for delivery to the PNP Crime Laboratory; (*d*) the said items were then received by PCI Bonifacio, who confirmed the presence of *methamphetamine hydrochloride* therein; and (*e*) finally, PCI Bonifacio brought the items to the court for presentation as evidence. In this relation, it held that the absence of representatives from the media and the DOJ during the inventory

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[18] TSN, November 25, 2015, pp. 236-246.

[19] *Id*. See also *rollo*, p. 5 and CA *rollo*, p. 16.

[20] CA *rollo,* pp. 13-20.

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

[22] See *id*. at 16-17.

did not render the buy-bust operation illegal, since it was shown that the integrity and evidentiary value of the seized drugs was nevertheless preserved.[23]

Aggrieved, Magsano appealed to the CA.[24]

The CA Ruling

In a Decision[25] dated November 4, 2016, the CA affirmed *in toto* the conviction of Magsano. It rejected Magsano's claim that the seized drugs were not the same items presented in court as the police officers allegedly failed to put them in a separate sealed plastic container before delivery to the PNP Crime Laboratory, considering that RA 9165 and its Implementing Rules and Regulations (IRR) do not require the observance of such procedure. It ruled that the facts of this case do not fall squarely with the case of *People v. Martinez*,[26] as it was established that the seized drugs were properly identified from the time of their marking and inventory until their presentation in court.[27]

Moreover, the CA observed that the seized drugs were adequately handled before, during, and after the conduct of the laboratory examination.[28] Further, it declared that Magsano could no longer raise the issue with respect to the police officers' purported non-compliance with Section 21, Article II of RA 9165 on appeal, since he failed to question the same during

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[23] *Id*. at 18.

[24] See Notice of Appeal dated November 2, 2015; *id*. at 22.

[25] *Rollo,* pp. 2-15.

[26] *Cf.* In this case, the Court could not determine with moral certainty whether or not the seized drugs were the same ones subjected to laboratory examination and presentation in court as evidence, as it was not shown who and when the requisite marking was made. Further, the seized drug paraphernalia were inaccurately identified, as they were simply described as "pieces," "several pcs.," and "*shabu* paraphernalias [sic]." (652 Phil. 347, 378 [2010].)

[27] See *rollo*, pp. 8-9.

[28] *Id*. at 9.

trial. In fact, he had every opportunity to object to the exhibits and testimonies of the prosecution, yet he did not.[29] He instead relied on his defense of denial, which was, however, insufficient to overcome the positive testimonies of the prosecution witnesses.[30]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Magsano's conviction should be upheld.

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.[31] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[32]

In this case, Magsano 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 for illegal sale of dangerous drugs, the following elements must be proven with moral certainty: (*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.[33] Meanwhile, to convict an accused

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

[30] See *id*. at 14.

[31] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

[33] *People v. Sumili*, 753 Phil. 342, 348 (2015).

for illegal possession of dangerous drugs, the prosecution must establish the necessary elements thereof, to wit: (*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.[34]

In both instances, it is equally essential that the identity of the prohibited drugs be established beyond reasonable doubt, considering that the prohibited 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 illegal drugs are seized up to their presentation in court as evidence of the crime.[35]

In this regard, Section 21,[36] Article II of RA 9165, as amended

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[34] *People v. Bio*, 753 Phil. 730, 736 (2015).

[35] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[36] 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

by RA 10640,[37] outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[38] 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, with an elected public official *AND* a representative from the National Prosecution Service (NPS) (which falls under the Department of Justice [[DOJ]])**[39] ***OR*** **the media** 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.[40] In the case

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> 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"

[37] 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.

[38] See *People v. Sumili*, *supra* note 33, at 349-350.

[39] See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" (APRIL 11, 1978) AND Section 3 OF RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" (lapsed into law on April 8, 2010).

[40] See Section 21 (1) and (2), Article II of RA 9165, as amended by RA 10640.

of *People v. Mendoza*,[41] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the [NPS/DOJ], [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."[42]

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.[43] 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 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**.[44] Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution

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[41] 736 Phil. 749 (2014).

[42] *Id.* at 764; emphases and underscoring supplied.

[43] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[44] See also Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

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.[45] In *People v. Almorfe*,[46] **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 evidentiary value of the seized evidence had nonetheless been preserved**.[47] Also, *in People v. De Guzman*,[48] 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**.[49]

In this case, the Court finds that the police officers committed an unjustified deviation from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Magsano.[50]

An examination of the records reveals that while the inventory of the seized drugs was conducted in the presence of Magsano and an elected public official, the same was not done in the presence of a representative from the media or the DOJ. By their own account, both PO3 Marcelo and PO1 Pagulayan explicitly admitted that there were no witnesses from either the media or the DOJ during the inventory of the seized drugs:

PO3 Marcelo on Cross Examination

Q: Where did you conduct the inventory?

A: At the barangay hall of Brgy. South Cembo, sir.

Q: When you arrived at the barangay hall, was the barangay official already there?

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[45] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

[46] 631 Phil. 51 (2010).

[47] See *id.* at 60.

[48] 630 Phil. 637 (2010).

[49] *Id.* at 649.

[50] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

A: Not yet, sir.

Q: How long did you have to wait?

A: More or less ten (10) minutes, sir.

Q: And then when the barangay official arrived, you conducted the inventory?

Q: Yes, sir. We conducted the markings and inventory.

Q. Was there a representative from the DOJ?

A: None, sir.

Q. How about a representative from the media?

A: None, sir.

x x x x x x x x x[51]

PO1 Pagulayan on Cross Examination

Q: You did not conduct the inventory at the place of operation?

A: Yes, sir.

Q: You conducted it at the barangay, correct?

A: Yes, sir.

x x x x x x x x x

Q: And when you arrived at the barangay, was the barangay official already there?

A: No, sir.

Q: How long did you have to wait before the barangay official arrived?

A: Ten (10) minutes, sir.

Q. Was there any representative from the DOJ?

A: None, sir.

Q. How about any media personnel?

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[51] TSN, September 3, 2015, p. 180.

A: None also, sir.

x x x x x x x x x[52]

Despite such admissions, the police officers did not provide any plausible explanation as to why the presence of these required witnesses was not procured. Thus, their unjustified non-compliance with the prescribed procedure under Section 21, Article II of RA 9165 puts into question the integrity and evidentiary value of the drugs purportedly seized from the accused.

Notably, as held in *People v. Miranda*[53] (*Miranda*), "the fact that [an accused such as Magsano in this case] raised his objections against the integrity and evidentiary value of the [dangerous] drugs seized from him only for the first time [on appeal] x x x **does not preclude** [the CA], or even this Court[,] from passing upon the same."[54] This is because "[a]n appeal in criminal cases confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from."[55] Accordingly, "errors in an appealed judgment [of a criminal case], even if not specifically assigned, may [therefore] be corrected *motu proprio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case."[56] In *Miranda*, the Court explained:

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

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[52] TSN, September 3, 2015, p. 185.

[53] *Supra* note 50.

[54] See *id*.

[55] See *id*., citing *Sindac v. People*, *supra* note 59, at 278.

[56] See *People v. Miranda*, *id*., citing *Dela Cruz v. People*, G.R. No. 209387, January 11, 2016, 779 SCRA 34, 52.

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**.[57] (Emphasis and underscoring supplied)

All told, the prosecution failed to provide justifiable grounds for the police officers' non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR. Thus, even if the same 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,[58] Magsano'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.[59]

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[57] See *People v. Miranda*, *id*.

[58] See *People v. Sumili*, *supra* note 33, at 352.

[59] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988). Cited also in *People v. Miranda*, *supra* note 50.

"In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] 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."[60]

WHEREFORE, the appeal is **GRANTED.** The Decision dated November 4, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 08001 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Roy Magsano *y* Sagauinit 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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[60] See *People v. Miranda*, *id.*

FIRST DIVISION

[G.R. No. 232202. February 28, 2018]

DANIEL A. VILLAREAL, JR. (ON BEHALF OF ORLANDO A. VILLAREAL), *petitioner, vs.* **METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; DISTINGUISHED FROM SPECIAL CIVIL ACTION FOR *CERTIORARI*.— [I]t should be pointed out that petitioner resorted to a petition for review on *certiorari* under Rule 45, and not a special civil action for *certiorari* under Rule 65. The principle of hierarchy of courts does not find any application in this case. In *Ysidoro v. Justice Leonardo De Castro, et al.*, this Court differentiated the nature of the remedies provided under Rules 45 and 65 of the Rules of Court in this manner: [A] review on *certiorari* under a Rule 45 petition is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition. Under this mode, the Court determines whether a proper application of the law was made in a given set of facts. A Rule 65 review, on the other hand, is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.

2. ID.; ID.; ID.; ID.; DIRECT RESORT TO THE SUPREME COURT VIA PETITION FOR REVIEW ON *CERTIORARI* IS PROPER WHERE THE PARTY ASSAILING THE DECISIONS OF THE LOWER COURTS RAISES ONLY QUESTIONS OF LAW.— Under Section 2(c), Rule 41 of the Rules, it is provided that in all cases where only questions of law are raised, the appeal from a decision or order of the RTC shall be to the Supreme Court by petition for review on *certiorari* in accordance with Section 1 of Rule 45 x x x. Here,

it is patently clear that petitioner does not question whether the RTC has jurisdiction or authority to resolve his petition for *certiorari* under Rule 65. Rather, he assails the wisdom of the RTC's very judgment and appreciation in upholding the MeTC's issuance of the writ of execution in MWSS' favor. The error relates to a mistake in the application of law and jurisprudence regarding Section 6 of Rule 39, and not to an error of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction. This, obviously, is a question of law; consequently, direct resort to this Court is proper.

3. ID.; ID.; JUDGMENTS; MODES OF EXECUTION; EXECUTION BY MOTION AND EXECUTION BY INDEPENDENT ACTION, DISTINGUISHED.— "Execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry." This is a matter of right. "On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed." "[T]he said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court." "[T]he action must be filed before it is barred by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment." Corollary, "[a] final and executory judgment may be executed by motion within five years or by action for revival of judgment within ten years reckoned from the *date of entry of judgment*." The date of entry, in turn, is the same as the date of finality of judgment.

4. ID.; ID.; ID.; EXECUTION BY MOTION; FOR EXECUTION BY MOTION TO BE VALID, THE JUDGMENT CREDITOR MUST ENSURE THAT THE FILING OF THE MOTION FOR THE ISSUANCE OF THE WRIT OF EXECUTION, AND THE COURT'S ACTUAL ISSUANCE OF THE WRIT PURSUANT TO THE MOTION, BE ACCOMPLISHED WITHIN THE FIVE-YEAR PRESCRIPTIVE PERIOD FROM THE ENTRY OF JUDGMENT. — By jurisprudence, for execution by motion to be valid, the judgment creditor must ensure the accomplishment of two acts within the five-year prescriptive period, as follows: (a) the filing of the motion for the issuance of the writ of execution; and (b) the court's actual issuance of the writ. Here, the RTC Decision dated September 27, 2002

became final and executory on December 15, 2002. By operation of law, December 15, 2002 is likewise the date of entry of judgment. Consequently, the five-year prescriptive period for the execution of the RTC decision by mere motion must be reckoned from December 15, 2002. MWSS filed a Motion for Issuance of Writ of Execution of the RTC Decision on May 17, 2004. This is within five years from December 15, 2002 — the date when the decision became final and executory. Thus, the first act was accomplished. There is, however, non-compliance with the second act. We held in *Olongapo City v. Subic Water and Sewerage Co., Inc.* that: In *Arambulo v. Court of First Instance of Laguna*, we explained the rule that ***the jurisdiction of a court to issue a writ of execution by motion is only effective within the five-year period from the entry of judgment. Outside this five-year period, any writ of execution issued pursuant to a motion filed by the judgment creditor, is null and void. If no writ of execution was issued by the court within the five-year period, even a motion filed within such prescriptive period would not suffice. A writ issued by the court after the lapse of the five-year period is already null and void. The judgment creditor's only recourse then is to file an independent action, which must also be within the prescriptive period set by law for the enforcement of judgments***.

5. **ID.; ID.; ID.; ID.; ID.; AFTER THE LAPSE OF THE FIVE-YEAR PRESCRIPTIVE PERIOD RECKONED FROM THE ENTRY OF JUDGMENT, A WRIT OF EXECUTION ISSUED BY THE COURT PURSUANT TO A MOTION, IS ALREADY NULL AND VOID, SINCE THE COURT NO LONGER HAS JURISDICTION OVER THE ISSUANCE OF THE WRIT.—** [T]he five-year prescriptive period reckoned from the entry of judgment mentioned in Section 6, Rule 39 of the Rules, should be observed both by the winning party who filed the motion, *i.e., judgment obligee/creditor*, and the court that will resolve the same. Simply put, the winning party may file the motion for execution within the five-year period; and the court should issue the *actual* writ of execution pursuant to the motion within the same period. After the lapse of the five-year period, any writ issued by the court is already null and void, since the court no longer has jurisdiction over the issuance of the writ. Records show that after the filing of MWSS' Motion for Issuance of Writ of Execution, and Orlando's Comment/ Opposition thereto, the MeTC issued an Order granting the said

motion only on July 28, 2014. More than a year after the grant, or on October 26, 2015, the MeTC issued the Writ of Execution. Reckoned from the entry of judgment on December 15, 2002, more than 12 years have elapsed after the *actual* writ of execution was finally issued by the MeTC. This is clearly beyond the five-year prescriptive period within which the court may issue the writ of execution. By then, the MeTC was already stripped of its jurisdiction. Thus, the writ of execution it issued on October 26, 2015 is null and void.

6. ID.; ID.; ID.; ID.; A JUDGMENT MAY BE EXECUTED ON MOTION WITHIN FIVE YEARS FROM THE DATE OF ITS ENTRY OR FROM THE DATE IT BECOMES FINAL AND EXECUTORY; EXCEPTIONS.— [A] judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. Thereafter, before barred by the statute of limitations, by action. However, there are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds. These exceptions have one common denominator, *i.e., the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*. In *Yau v. Silverio, Sr.,* We stressed that: [I]n computing the time limit for enforcing a final judgment, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias*. Thus, the time during which execution is stayed should be excluded, and the said time will be extended by any delay occasioned by the debtor. In this case, there is an absence of any showing on the part of MWSS that the execution of the RTC decision was stayed "*by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise*," or by any circumstance that would further delay its implementation. Orlando merely filed a comment to MWSS' motion for the issuance of a writ of execution. He cannot be faulted in doing so. There is neither a law nor a rule which prevents him from filing a comment. Apparently, the delay was not brought about by the filing of the comment; but instead, the period within which the MeTC acted upon it.

7. ID.; ID.; ID.; PRESCRIPTIVE PERIOD FOR THE ENFORCEMENT OF JUDGMENTS, RATIONALE.— We conclude x x x with a reminder on the significance of prescriptive period for the enforcement of judgments on the part of the winning party, as held in *Villeza v. German Management and Services, Inc., et al.:* The Court has pronounced in a plethora of cases that it is revolting to the conscience to allow someone to further avert the satisfaction of an obligation because of sheer literal adherence to technicality; that although strict compliance with the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice; and that it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result. ***These though, remain exceptions to the general rule. The purpose of the law in prescribing time limitations for enforcing judgment by action is precisely to prevent the winning parties from sleeping on their rights***. This Court cannot just set aside the statute of limitations into oblivion every time someone cries for equity and justice. ***Indeed, "if eternal vigilance is the price of safety, one cannot sleep on one's right for more than a 10th of a century and expect it to be preserved in pristine purity.***"

APPEARANCES OF COUNSEL

Allan M. Mendoza for petitioner.
Benedicto R. Arellano for respondent.

D E C I S I O N

TIJAM, *J.*:

We resolve this petition[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated February 9, 2017 and the Order[3]

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[1] *Rollo*, pp. 15-33.

[2] Rendered by Presiding Judge Rafael G. Hipolito; *id*. at 36-42.

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

dated May 17, 2017 of the Regional Trial Court (RTC) of Quezon City, Branch 215, in Case No. R-QZN-16-03654-CV.

The Antecedent Facts

In a Decision[4] dated October 30, 2000, the Metropolitan Trial Court (MeTC) of Quezon City, Branch 39, dismissed a case entitled "*Metropolitan Waterworks and Sewerage System v. Orlando A. Villareal and other persons claiming Rights Under Him*" in Civil Case No. 21293 for Unlawful Detainer, for being prematurely filed and for lack of cause of action.

On appeal by respondent Metropolitan Waterworks Sewerage System (MWSS), the RTC-Branch 96 rendered a Decision[5] in September 27, 2002 in Civil Case Nos. Q-01-42773 and Q-01-42773-B, reversing the MeTC's judgment, and ordered, among others, that:

> 1. In Civil Case No. Q-01-42773, [Orlando] and all persons claiming rights under him to vacate the premises located at No. 18, V. Heizer, St., Balara Filters, Quezon City and surrender peacefully the possession thereof to [MWSS]; and to pay the amount of ₱2,500.00 as reasonable compensation from November 7, 1997 until the possession is restored to [MWSS];
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> x x x x x x x x x
>
> SO ORDERED.[6]

On December 15, 2002, the RTC Clerk of Court issued an Entry of Judgment/Order,[7] stating that the RTC Decision dated September 27, 2002 has become final and executory.

Within a period of two years or on May 17, 2004, MWSS filed a Motion for Issuance of Writ of Execution[8] with the MeTC.

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[4] Rendered by Presiding Judge Cesar O. Untalan; *id*. at 113-114.

[5] Rendered by Judge Lucas P. Bersamin (now a Member of this Court); *id*. at 104-107.

[6] *Id*. at 107.

[7] *Id*. at 120.

[8] *Id*. at 108-110.

On July 2, 2004, Orlando Villareal (Orlando) filed his Comment/Opposition,[9] praying that the motion be held in abeyance pending compliance by MWSS with the provision of Section 23 of Republic Act (R.A.) No. 7279,[10] also known as the Urban Development and Housing Act of 1992.

More than 10 years from the filing of MWSS' motion for execution or on July 28, 2014, the MeTC issued an Order[11] in Civil Case No. 35806, granting the motion.

Ruling of the MeTC

On October 26, 2015, the MeTC issued a Writ of Execution,[12] for the satisfaction of the RTC Decision dated September 27, 2002. In addressing Orlando's prayer, the MeTC held in its July 28, 2014 Order that R.A. No. 7279 does not find application, since Orlando failed to prove that he falls under the category of "underprivileged and homeless citizens," who are the beneficiaries of the said Act.[13]

Pursuant to the writ of execution, the MeTC Sheriff III sent on April 19, 2016 a Sheriffs Notice to Vacate and Pay[14] to Orlando.

On April 20, 2016, Daniel A. Villareal, Jr. (on behalf of Orlando), filed a Petition for *Certiorari*[15] under Rule 65 with the RTC-Branch 215, challenging the Writ of Execution dated October 26, 2015 and the Sheriffs Notice to Vacate and Pay dated April 19, 2016. He argued that the five-year period under

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[9] *Id*. at 125-127.

[10] AN ACT TO PROVIDE FOR COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES. Approved on March 24, 1992.

[11] Rendered by Judge Juvenal N. Bella; *rollo*, pp. 137-139.

[12] *Id*. at 43-44.

[13] *Id*. at 138.

[14] Issued by Sheriff Rogelio V. Clemente, Jr.; *id*. at 45.

[15] *Id*. at 54-66.

Section 6,[16] Rule 39 of the Rules was violated since the execution was done more than 10 years from the finality of the RTC decision.

In response, MWSS filed its Comment/Opposition,[17] and countered among others, that the five-year period under the Rules within which to enforce a judgment by mere motion run only against the judgment obligee and not the court that will resolve/decide it.[18] MWSS likewise alleged that Orlando's filing of Comment/Opposition dated July 2, 2004 caused the delay in the execution of judgment.

Ruling of the RTC

On February 9, 2017, the RTC, in its Decision[19] dismissed the petition and affirmed the October 26, 2015 Writ of Execution and the April 19, 2016 Sheriffs Notice to Vacate and Pay.

Petitioner's subsequent motion for reconsideration[20] was denied in the RTC Order[21] dated May 17, 2017.

Issue

Hence, this petition, anchored on this sole ground:

WHETHER OR NOT THE [RTC] ERRED IN DISMISSING THE PETITION BASED ON ERRONEOUS APPLICATION OF RULE 39, SECTION 6 OF THE RULES OF COURT AND APPARENT IGNORANCE OF APPLICABLE JURISPRUDENCE.[22]

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[16] Sec. 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

[17] *Rollo*, pp. 67-75.

[18] *Id.* at 70.

[19] *Id.* at 36-42.

[20] *Id.* at 76-86.

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

[22] *Id.* at 22.

Ruling of the Court

The petition is granted.

At the outset, it should be pointed out that petitioner resorted to a petition for review on *certiorari* under Rule 45, and not a special civil action for *certiorari* under Rule 65. The principle of hierarchy of courts does not find any application in this case.[23]

In *Ysidoro v. Justice Leonardo De Castro, et al.*,[24] this Court differentiated the nature of the remedies provided under Rules 45 and 65 of the Rules of Court in this manner:

> [A] review on *certiorari* under a Rule 45 petition is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition. Under this mode, the Court determines whether a proper application of the law was made in a given set of facts. A Rule 65 review, on the other hand, is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.[25]

Corollary, under Section 2(c), Rule 41 of the Rules, it is provided that in all cases where only questions of law are raised, the appeal from a decision or order of the RTC shall be to the Supreme Court by petition for review on *certiorari* in accordance with Section 1 of Rule 45 of which provides:

> Sec. 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

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[23] *Mendoza v. Salinas*, 543 Phil. 380, 385 (2007).

[24] 681 Phil. 1 (2012).

[25] *Id.* at 14-15.

Here, it is patently clear that petitioner does not question whether the RTC has jurisdiction or authority to resolve his petition for *certiorari* under Rule 65. Rather, he assails the wisdom of the RTC's very judgment and appreciation in upholding the MeTC's issuance of the writ of execution in MWSS' favor. The error relates to a mistake in the application of law and jurisprudence regarding Section 6 of Rule 39, and not to an error of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction. This, obviously, is a question of law; consequently, direct resort to this Court is proper.

Execution may be either through motion or an independent action. The two modes of execution under the Rules are available, depending on the timing when the prevailing party invoked his right to enforce the court's judgment. Section 6, Rule 39 of the Rules, states thus:

> Sec. 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

"Execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry."[26] This is a matter of right.[27] "On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed."[28] "[T]he said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court."[29] "[T]he action must be filed before it is barred

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[26] *Olongapo City v. Subic Water and Sewerage Co., Inc.*, 740 Phil. 502, 519 (2014).

[27] *Rubio, et al. v. Alabata*, 728 Phil. 257, 262 (2014).

[28] *Olongapo City v. Subic Water and Sewerage Co., Inc.*, *supra* at 519.

[29] *Rubio, et al. v. Alabata*, *supra* at 262.

by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment."[30] Corollary, "[a] final and executory judgment may be executed by motion within five years or by action for revival of judgment within ten years reckoned from the *date of entry of judgment*."[31] The date of entry, in turn, is the same as the date of finality of judgment.[32]

By jurisprudence, for execution by motion to be valid, the judgment creditor must ensure the accomplishment of two acts within the five-year prescriptive period, as follows: (a) the filing of the motion for the issuance of the writ of execution; and (b) the court's actual issuance of the writ.[33]

Here, the RTC Decision dated September 27, 2002 became final and executory on December 15, 2002. By operation of law, December 15, 2002 is likewise the date of entry of judgment. Consequently, the five-year prescriptive period for the execution of the RTC decision by mere motion must be reckoned from December 15, 2002.

MWSS filed a Motion for Issuance of Writ of Execution of the RTC Decision on May 17, 2004. This is within five years from December 15, 2002 — the date when the decision became final and executory. Thus, the first act was accomplished.

There is, however, non-compliance with the second act.

We held in *Olongapo City v. Subic Water and Sewerage Co., Inc.*[34] that:

> In *Arambulo v. Court of First Instance of Laguna*, we explained the rule that ***the jurisdiction of a court to issue a writ of execution by motion is only effective within the five-year period from the entry of judgment. Outside this five-year period, any writ of execution***

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[30] *Olongapo City v. Subic Water and Sewerage Co., Inc.*, *supra* at 519.

[31] *Phil. Veterans Bank v. Solid Homes, Inc.*, 607 Phil. 14, 21 (2009).

[32] *See* Section 2, Rule 36 of the Rules.

[33] *Olongapo City v. Subic Water and Sewerage Co., Inc.*, *supra* at 520-521.

[34] 740 Phil. 502 (2014).

issued pursuant to a motion filed by the judgment creditor, is null and void. If no writ of execution was issued by the court within the five-year period, even a motion filed within such prescriptive period would not suffice. A writ issued by the court after the lapse of the five-year period is already null and void. The judgment creditor's only recourse then is to file an independent action, which must also be within the prescriptive period set by law for the enforcement of judgments.

This Court subsequently reiterated its *Arambulo* ruling in *Ramos v. Garciano*, where we said:

> There seems to be no serious dispute that the 4th *alias* writ of execution was issued eight (8) days after the lapse of the five (5) year period from the date of the entry of judgment in Civil Case No. 367. **As a general rule, after the lapse of such period a judgment may be enforced only by ordinary action, not by mere motion** (Section 6, Rule 39, Rules of Court).
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> ***The limitation that a judgment been enforced by execution within five years, otherwise it loses efficacy, goes to the very jurisdiction of the Court. A writ issued after such period is void, and the failure to object thereto does not validate it, for the reason that jurisdiction of courts is solely conferred by law and not by express or implied will of the parties.***[35] (Citations omitted, emphasis and italics ours and emphasis in the original)

As can be gleaned from the aforementioned discussion, the five-year prescriptive period reckoned from the entry of judgment mentioned in Section 6, Rule 39 of the Rules, should be observed both by the winning party who filed the motion, *i.e., judgment obligee/creditor*, and the court that will resolve the same. Simply put, the winning party may file the motion for execution within the five-year period; and the court should issue the *actual* writ of execution pursuant to the motion within the same period. After the lapse of the five-year period, any writ issued by the court is already null and void, since the court no longer has jurisdiction over the issuance of the writ.

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[35] *Id*. at 520.

Records show that after the filing of MWSS' Motion for Issuance of Writ of Execution, and Orlando's Comment/ Opposition thereto, the MeTC issued an Order granting the said motion only on July 28, 2014. More than a year after the grant, or on October 26, 2015, the MeTC issued the Writ of Execution. Reckoned from the entry of judgment on December 15, 2002, more than 12 years have elapsed after the *actual* writ of execution was finally issued by the MeTC. This is clearly beyond the five-year prescriptive period within which the court may issue the writ of execution. By then, the MeTC was already stripped of its jurisdiction. Thus, the writ of execution it issued on October 26, 2015 is null and void.

We can not subscribe to MWSS' insistence that Orlando's filing of his Comment/Opposition to the Motion for Issuance of Writ of Execution, caused the delay in the execution of judgment, which in effect operates as an exception to the rule that execution by motion after the lapse of five years is no longer allowed.

As discussed earlier, a judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. Thereafter, before barred by the statute of limitations, by action. However, there are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds. These exceptions have one common denominator, *i.e., the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*.[36]

In *Yau v. Silverio, Sr.*,[37] We stressed that:

> [I]n computing the time limit for enforcing a final judgment, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate

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[36] *Camacho v. CA*, 351 Phil. 108, 113 (1998), citing *Republic v. CA*, 329 Phil. 115, 121-122 (1996).

[37] 567 Phil. 493 (2008).

as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias*. Thus, the time during which execution is stayed should be excluded, and the said time will be extended by any delay occasioned by the debtor.[38]

In this case, there is an absence of any showing on the part of MWSS that the execution of the RTC decision was stayed "*by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise*," or by any circumstance that would further delay its implementation.

Orlando merely filed a comment to MWSS' motion for the issuance of a writ of execution. He cannot be faulted in doing so. There is neither a law nor a rule which prevents him from filing a comment. Apparently, the delay was not brought about by the filing of the comment; but instead, the period within which the MeTC acted upon it.

We conclude this *ponencia* with a reminder on the significance of prescriptive period for the enforcement of judgments on the part of the winning party, as held in *Villeza v. German Management and Services, Inc., et al.*:[39]

The Court has pronounced in a plethora of cases that it is revolting to the conscience to allow someone to further avert the satisfaction of an obligation because of sheer literal adherence to technicality; that although strict compliance with the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice; and that it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result. ***These cases, though, remain exceptions to the general rule. The purpose of the law in prescribing time limitations for enforcing judgment***

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[38] *Id.* at 502-503, citing *Francisco Motors Corp. v. CA*, 535 Phil. 736, 751 (2006).

[39] 641 Phil. 544 (2010).

by action is precisely to prevent the winning parties from sleeping on their rights. This Court cannot just set aside the statute of limitations into oblivion every time someone cries for equity and justice. ***Indeed, "if eternal vigilance is the price of safety, one cannot sleep on one's right for more than a 10th of a century and expect it to be preserved in pristine purity.***"[40] (Citations omitted and emphasis and italics ours)

WHEREFORE, premises considered, the Decision dated February 9, 2017 and the Order dated May 17, 2017 of the Regional Trial Court of Quezon City, Branch 215, in Case No. R-QZN-16-03654-CV, are **REVERSED and SET ASIDE**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 233744. February 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILSON RAMOS *y* CABANATAN**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; 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.— [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

[40] *Id.* at 551-552.

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; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.** — Ramos was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In every prosecution of unauthorized sale of dangerous drugs, it is essential that the following elements 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.

3. **ID.; ID.; ID.; THE PROSECUTION MUST PROVE WITH MORAL CERTAINTY THE IDENTITY OF THE PROHIBITED DRUG, AS THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.—** x x x [T]he prosecution must prove with moral certainty the identity of the prohibited drug, as the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. It 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 the drugs are seized up to their presentation in court as evidence of the crime.

4. **ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; PROCEDURE IN THE HANDLING OF 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, prior to its amendment by RA 10640, 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. In the case of *People v. Mendoza*, the Court stressed that "**[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** 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 [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."

5. ID.; ID.;ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT IN SECTION 21 OF RA 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 — 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. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.

6. ID.; ID.; ID.; ID.; THE ABSENCE OF THE REQUIRED WITNESSES DOES NOT *PER SE* RENDER THE CONFISCATED ITEMS INADMISSIBLE, PROVIDED THE PROSECUTION ADDUCED JUSTIFIABLE REASON FOR SUCH FAILURE OR SHOWED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE REQUIRED WITNESSES.— [A]lthough it is true that the seized plastic sachets were marked in the presence of Ramos himself and an elected public official, *i.e.*, Kgd. Ruiz, the same was not done in the presence of any representative from the DOJ and the media. x x x. It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.

7. ID.; ID.; ID.; ID.; WHEN THE PROSECUTION FAILED TO ESTABLISH THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED HAD BEEN PRESERVED, IT LOSES THE BENEFIT OF INVOKING THE PRESUMPTION OF REGULARITY AND BEARS THE BURDEN OF PROVING — WITH MORAL CERTAINTY — THAT THE ILLEGAL DRUG PRESENTED IN COURT

IS THE SAME DRUG THAT WAS CONFISCATED FROM THE ACCUSED DURING HIS ARREST.— [T]he combined weight of the seized specimens, which initially weighed **0.2934** gram during the first qualitative examination, decreased to **0.2406** during the re-examination by the second forensic chemist. These were the same items that IO1 Dealagdon identified in court as those that he had previously marked. Although the discrepancy of 0.0528 in the amounts may be considered negligible, the prosecution, nonetheless, did not even venture to explain how the discrepancy came about. As already adverted to, the saving clause "applies only (*1*) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (*2*) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest."

8. **ID.; ID.; ID.; ID.; THE PROCEDURE IN SECTION 21 OF RA 9165, AS AMENDED, IS A MATTER OF SUBSTANTIVE LAW, AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY, OR IGNORED AS AN IMPEDIMENT TO THE CONVICTION OF ILLEGAL DRUG SUSPECTS; AS SUCH, THE ACCUSED MUST BE ACQUITTED WHERE THE PROSECUTION FAILED TO PROVIDE JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE THEREOF.—** Verily, the procedural lapses committed by the PDEA operatives, which were unfortunately left unjustified by the State, militate against a finding of guilt beyond reasonable doubt against Ramos, as the integrity and evidentiary value of the *corpus delicti* had been compromised. It is well-settled that the procedure in Section 21 of RA 9165, as amended by RA 10640, 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. As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Ramos's acquittal is perforce in order.

9. ID.; ID.; ID.; ID.; THE FACT THAT ANY ISSUE REGARDING COMPLIANCE WITH THE PROCEDURE SET FORTH IN SECTION 21 OF RA 9165, AS AMENDED, WAS NOT RAISED, OR THRESHED OUT IN THE COURT/S BELOW, WOULD NOT PRECLUDE THE APPELLATE COURT, INCLUDING THE SUPREME 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.— [T]he 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. In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21, Article II 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.

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 Wilson Ramos *y* Cabanatan (Ramos) assailing the Decision[2] dated March 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07864, which affirmed the Judgment[3] dated October 23, 2015 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case No. Q-10-167524 finding him guilty beyond reasonable doubt of violating Section 5, 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 an Information[5] filed before the RTC charging Ramos of the crime of Illegal Sale of Dangerous Drugs, the accusatory portion of which states:

That on or about the 12th day of November 2010, in Quezon City, Philippines, the above-named accused, without lawful authority, did then and there willfully and unlawfully sell, trade[,] administer,

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[1] See Notice of Appeal dated April 10, 2017; *rollo*, pp. 22-24.

[2] *Id*. at 2-21. Penned by Associate Justice Marie Christine Azcarraga-Jacob with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser concurring.

[3] *CA Rollo*, pp. 40-51. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

[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] Records, p. 1.

dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, dangerous drugs, to wit:

> one (1) heat[-]sealed transparent plastic sachet containing zero point zero eight ten (0.0810) gram of white crystalline subs[tance]
>
> one (1) heat[-]sealed transparent plastic sachet containing zero point zero four five nine (0.0459) gram of white crystalline subs[tance]
>
> one (1) heat[-]sealed transparent plastic sachet containing zero point zero six one six (0.0616) gram of white crystalline subs[tance]
>
> one (1) heat[-]sealed transparent plastic sachet containing zero point zero five one nine (0.0519) gram of white crystalline subs[tance]
>
> one (1) heat[-]sealed transparent plastic sachet containing zero point zero five thirty (0.0530) gram of white crystalline subs[tance]
>
> with a total of **ZERO POINT TWENTY NINE THIRTY FOUR (0.2934) grams**, all positive for Methamphetamine Hydrochloride otherwise known as shabu.

CONTRARY TO LAW.[6] (Emphasis and underscoring supplied)

The prosecution alleged that at around 8:00 o'clock in the evening of November 12, 2010, the operatives of the Philippine Drug Enforcement Agency (PDEA) went to Pingkian, Pasong Tamo, Quezon City, in order to implement a pre-organized buy-bust operation targeting a certain "Wilson" (later identified as Ramos) who was known to be a notorious drug pusher in the area. Upon arrival, the poseur-buyer, Intelligence Officer 1 Cesar Dealagdon, Jr. (IO1 Dealagdon) and the confidential informant met with Ramos, who immediately demanded the money. Since IO1 Dealagdon requested that the "item" be shown first, Ramos took out a black coin purse from his pocket and pulled out five (5) sachets containing the suspected *shabu* therefrom. After

[6] *Id.*

giving the marked money to Ramos and receiving the sachets from him, IO1 Dealagdon performed the pre-arranged signal, prompting his back-ups to swoop in and arrest Ramos. Ramos was then frisked, resulting in the recovery of the marked money, and thereafter, was brought to the police station. Thereat, the PDEA operatives conducted the inventory and photography of the seized items in the presence of Barangay Kagawad Jose Ruiz (Kgd. Ruiz). IO1 Dealagdon then brought the seized items to the PDEA Crime Laboratory where the contents were confirmed[7] to be methamphetamine hydrochloride or *shabu*.[8]

For his part, Ramos pleaded not guilty to the charge against him and interposed the defenses of denial and frame-up.[9] He maintained that at around 3 o'clock in the afternoon of the day he was arrested, he was driving his tricycle towards home when he decided to park at a jeepney terminal. After a while, a motor vehicle stopped near him, from which armed men came out. He was asked where the "items" were but after answering that he did not know, the armed men mauled him and forcefully boarded him inside their vehicle. He was then taken to Camp Crame where he saw the man arrested before him released from custody. Finally, Ramos claimed that he only saw the black coin purse and the five (5) small plastic sachets for the first time after they came from Barangay Pinyahan *en route* to the PDEA Office.[10]

The RTC Ruling

In a Judgment[11] dated October 23, 2015, the RTC found Ramos guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[12]

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[7] See Chemistry Report No. PDEA-DD010-443 signed by Chemist Jappeth M. Santiago; *id*. at 12.

[8] See *rollo*, pp. 4-5.

[9] See *id*. at 6. See also Order dated February 23, 2011; records, p. 33.

[10] See *id*. at 6-7. See also TSN, October 6, 2015, pp. 3-5.

[11] *CA Rollo*, pp. 40-51.

[12] *Id*. at 50.

The RTC found that all the essential elements in the Illegal Sale of Dangerous Drugs have been proven, to wit: (*a*) the transaction or sale took place; (*b*) the *corpus delicti* or the illicit drug was presented as evidence; and (*c*) the buyer and seller were identified. It found that the prosecution was able to establish that a sale actually took place between IO1 Dealagdon, the poseur-buyer, and Ramos, who was caught in *flagrante delicto* selling *shabu*, during the conduct of a buy-bust operation. Moreover, the RTC held that the prosecution has sufficiently shown that the integrity and evidentiary value of the confiscated items were duly preserved in this case, pointing out that the chain of custody of the said items was shown to be continuous and unbroken, from the time IO1 Dealagdon recovered the same from Ramos until they were turned over to the PDEA Crime Laboratory and examined. Accordingly, the RTC upheld the presumption of regularity in the performance of duty of the arresting officers in the absence of showing that they were motivated by ill will against Ramos. Finally, the RTC rejected Ramos's defenses of denial and frame-up, being inherently weak defenses against the positive testimonies of the prosecution witnesses.[13]

Aggrieved, Ramos appealed[14] to the CA.

The CA Ruling

In a Decision[15] dated March 21, 2017, the CA affirmed *in toto* the RTC ruling, holding that the prosecution had shown the presence of all the elements of the crime charged.[16] It further refused to give credence to Ramos's insistence that the arresting officers failed to observe the chain of custody rule regarding the disposition of the seized items, *i.e.,* failure to make an inventory at the place of his arrest in the presence of a media

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[13] See *id*. at 44-50.

[14] See Brief for the Plaintiff-Appellee dated September 14, 2016; *id*. at 65-79.

[15] *Rollo*, pp. 2-21.

[16] See *id*. at 20 and 10-13.

man or a government official, as the PDEA operatives offered a justifiable explanation for the same. In view thereof, as well as the fact that the arresting officers sufficiently complied with the proper procedure in the handling of the seized items, the CA concluded that the integrity and evidentiary value of the seized items have been preserved.[17]

Hence, this appeal.[18]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Ramos's conviction for the crime 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.[19] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[20]

Ramos was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In every prosecution of unauthorized sale of dangerous drugs, it is essential that the following elements 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.[21]

Moreover, the prosecution must prove with moral certainty the identity of the prohibited drug, as the dangerous drug itself

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[17] See *id*. at 14-18.

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

[19] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

[21] *People v. Sumili*, 753 Phil. 342, 348 (2015).

forms an integral part of the *corpus delicti* of the crime. It 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 the drugs are seized up to their presentation in court as evidence of the crime.[22]

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.[23] Under the said section, prior to its amendment by RA 10640,[24] 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.[25] In the case of *People v. Mendoza*,[26] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure**

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[22] 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).

[23] See *People v. Sumili*, *supra* note 21, at 349-350.

[24] 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. The crime subject of this case was allegedly committed before the enactment of RA 10640, or on November 12, 2010.

[25] See Section 21 (1) and (2), Article II of RA 9165.

[26] 736 Phil. 749 (2014).

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 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 [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."[27]

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.[28] 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**.[29] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[30] In *People v. Almorfe*,[31]

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[27] *Id.* at 764; emphases and underscoring supplied.

[28] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[29] See Section 21 (a), Article II of the IRR of RA 9165.

[30] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

[31] 631 Phil. 51 (2010).

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.[32] Also, in *People v. De Guzman*,[33] 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.**[34]

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 Ramos.

First, although it is true that the seized plastic sachets were marked in the presence of Ramos himself and an elected public official, *i.e.*, Kgd. Ruiz, the same was not done in the presence of any representative from the DOJ and the media. IO1 Dealagdon admitted this when he testified on direct and cross-examinations, thus:

> DIRECT EXAMINATION:
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> [ACP Bartolome]: Mr. witness, who were present during the inventory?
>
> [IO1 Dealagdon]: The accused alias Wilson, Barangay elected official, Kagawad Ruiz, me, Agent Oliver dela Rosa, and other members of team, sir.
>
> Q: How about DOJ representative?
>
> A: None, sir.[35]
>
> CROSS-EXAMINATION:
>
> [Atty. Manzano]: After the arrest of alias Wilson, you immediately proceeded to Barangay Pinyahan, correct?

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[32] *Id.* at 60; citation omitted.

[33] 630 Phil. 637 (2010).

[34] *Id.* at 649.

[35] TSN, December 6, 2013, pp. 2-3.

[IO1 Dealagdon]: Yes, ma'am.

Q: And according to you, you conducted the marking, inventory and photograph?

A: Yes, ma'am.

Q: The marking and inventory was not done in the presence of representative from the Media and DOJ, correct?

A: Yes, ma'am.[36]

When asked to explain the absence of any representatives from the DOJ and the media during the conduct of inventory and photography, Intelligence Officer 1 Oliver Dela Rosa (IO1 Dela Rosa), another member of the buy-bust team, testified:

[ACP Bartolome]: Who were present during the preparation of this Inventory?

[IO1 Dela Rosa]: Kagawad Ruiz, sir.

Q: Of what barangay?

A: Brgy. Pinyahan, sir.

Q: Why is it that there [is] no signatures in this space provided for the representative of the DOJ and media?

A: There was no media available, sir.

Q: Why?

A: It was past office hours and we cannot find a media, sir.[37]

The Court finds the aforesaid explanation inadequate for the saving clause to apply. As may be gleaned from the records, as early as 2:30 in the afternoon of November 12, 2010, the PDEA operatives already conducted a briefing where they organized the buy-bust operation against Ramos; and such operation was implemented at 8 o'clock in the evening of even date.[38] Verily, the PDEA operatives had hours to spare before the buy-bust

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[36] TSN, December 6, 2013, p. 16.

[37] TSN, April 21, 2015, p. 5.

[38] See *rollo*, pp. 3-4. See also records, p. 6.

team was deployed in Pingkian, Pasong Tamo, Quezon City to implement the entrapment operation against Ramos. They could have used that time to secure the presence of representatives from the DOJ and the media who would have accompanied them in the conduct of the inventory and photography of the items to be seized from Ramos on account of the buy-bust; but unfortunately, they did not.

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible.[39] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced.[40] In *People v. Umipang*,[41] the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse."[42] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.[43] These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in

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[39] *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

[40] See *id*. at 1052-1053.

[41] *Id*.

[42] *Id*. at 1053.

[43] See *id*.

fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[44]

Second, the combined weight of the seized specimens, which initially weighed **0.2934** gram during the first qualitative examination,[45] decreased to **0.2406** during the re-examination[46] by the second forensic chemist. These were the same items that IO1 Dealagdon identified in court as those that he had previously marked. Although the discrepancy of 0.0528 in the amounts may be considered negligible, the prosecution, nonetheless, did not even venture to explain how the discrepancy came about. As already adverted to, the saving clause "applies only (*1*) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (*2*) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest."[47]

Verily, the procedural lapses committed by the PDEA operatives, which were unfortunately left unjustified by the State, militate against a finding of guilt beyond reasonable doubt against Ramos, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[48] It is well-settled that the procedure in Section 21 of RA 9165, as amended by RA 10640, is a matter of substantive law, and cannot be brushed

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[44] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

[45] See Chemistry Report No. PDEA-DD010-443 dated November 12, 2010 signed by Chemist Jappeth M. Santiago; records, p. 12.

[46] See Chemistry Report No. PDEA-DD010-443B dated September 7, 2011 signed by Chemist V Severino P. Uy; *id*. at 54.

[47] See *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, G.R. No. 206888, July 4, 2016, 795 SCRA 459, 469.

[48] See *People v. Sumili*, *supra* note 21, at 352.

aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[49] As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Ramos'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.[50]

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21, Article II 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,

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[49] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 39 at 1038.

[50] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

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 March 21, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07864 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Wilson Ramos *y* Cabanatan 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.

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Requisites — Art. 457 of the Civil Code of the Philippines, cited; accretion is the process whereby the soil is deposited along the banks of rivers; the deposit of soil, to be considered accretion, must be: (a) gradual and imperceptible; (b) made through the effects of the current of the water; and (c) taking place on land adjacent to the banks of rivers. (Delos Reyes *vs*. Municipality of Kalibo, Aklan, G.R. No. 214587, Feb. 26, 2018) p. 617

ACTIONS

Action in personam — An action *in personam* is an proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court; purpose; examples of actions *in personam,* enumerated. (Frias *vs*. Alcayde, G.R. No. 194262, Feb. 28, 2018) p. 713

Action in rem — Actions *in rem* are actions against the thing itself; they are binding upon the whole world; the phrase, "against the thing," to describe *in rem* actions is a metaphor; only legal or natural persons may be parties even *in rem* actions; examples of actions *in rem:* petitions directed against the "thing" itself or the *res* which concerns the status of a person, like a petition for adoption, correction of entries in the birth certificate; or annulment of marriage; nullity of marriage; petition to establish illegitimate filiation; registration of land under the Torrens system; and forfeiture proceeding. (Frias *vs*. Alcayde, G.R. No. 194262, Feb. 28, 2018) p. 713

Action quasi in rem — A proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed; in an action *quasi in rem,* an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property; unlike suits *in rem*, a *quasi in rem* judgment is conclusive only between the parties; examples of actions

— The Court sees no cogent reason to disturb the uniform findings of the RTC and the CA that appellant was guilty of simple rape and in imposing upon him the penalty of *reclusion perpetua;* there was no showing that the trial court, in assessing the credibility of the witnesses in relation to their testimonies, had overlooked, misapprehended or misconstrued any relevant fact that would affect the outcome of the case; awards for civil indemnity, as well as moral and exemplary damages, modified. (People *vs.* Gomez *y* Ragundiaz, G.R. No. 220892, Feb. 21, 2018) p. 561

— Under Sec. 2(c), Rule 41 of the Rules, it is provided that in all cases where only questions of law are raised, the appeal from a decision or order of the RTC shall be to the Supreme Court by petition for review on *certiorari* in accordance with Sec. 1 of Rule 45; here, the error relates to a mistake in the application of law and jurisprudence regarding Sec. 6 of Rule 39, and not to an error of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction; this, obviously, is a question of law; consequently, direct resort to the Court is proper. (Villareal, Jr. *vs.* Metropolitan Waterworks and Sewerage System, G.R. No. 232202, Feb. 28, 2018) p. 967

Questions of fact — Generally, the Court cannot delve into questions of fact on appeal because it is not a trier of facts; instances wherein the Court has opted to settle factual disputes duly raised by the parties: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly

Code of Professional Responsibility — Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes; to the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto; a lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public. (Espanto *vs*. Atty. Belleza, A.C. No. 10756 [Formerly CBD Case No. 11-3218], Feb. 21, 2018) p. 412

— Canon 19 of the Code of Professional Responsibility mandates lawyers to represent their clients with zeal but within the bounds of the law; they should not, therefore, misuse the rules of procedure to defeat the ends of justice or unduly delay a case, impede the execution of a judgment or misuse court processes. (*Id*.)

Disbarment or suspension — Under Sec. 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority; a lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court. (Espanto *vs*. Atty. Belleza, A.C. No. 10756 [Formerly CBD Case No. 11-3218], Feb. 21, 2018) p. 412

Gross negligence for infractions — Several cases show that lawyers who have been held liable for gross negligence for infractions similar to those of respondent lawyer's were suspended for a period of six (6) months; *Spouses Aranda v. Atty. Elayda*, *The Heirs of Tiburcio F. Ballesteros, Sr. v. Atty. Apiag* and *Abiero v. Atty. Juanino*, cited. (De Leon *vs.* Atty. Geronimo, A.C. No. 10441, Feb. 14, 2018) p. 1

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Just compensation — In *Alfonso v. LBP,* the Court, sitting En Banc, reaffirmed an established jurisprudential rule, *viz,* that until and unless declared invalid in a proper case, the basic formulas contained in DAR administrative orders partake of the nature of statutes; hence, courts have the positive legal duty to consider, and not disregard, their use and application in the determination of just compensation for agricultural lands covered by R.A. No. 6657. (Landbank of the Phils. *vs*. Alcantara, G.R. No. 187423, Feb. 28, 2018) p. 687

— In coming up with its valuation, LBP followed the formula in DAR A.O. No. 6, Series of 1992, as amended; *Heirs of Lorenzo and Carmen Vidad v. LBP,* cited; the valuation of the property should be pegged at the time of its taking, not of the filing of the complaint, pendency of the proceedings, or rendition of judgment; in this case, the court is unable to confirm from the available records that the data LBP had used for its valuation are timely data, i.e., data reasonably obtaining at the time of the taking of the property. (*Id*.)

— In its determination of just compensation in this case, the SAC made no use of any calculation or formula; the SAC failed to present a well-reasoned justification, as supported by the evidence on record, for why it deviated from the DAR formula; it ruled in blatant disregard of the factors spelled out in Sec. 17 of R.A. No. 6657; the SAC's valuation in this case must be struck down as illegal and set aside. (*Id*.)

— Interest may be awarded as warranted by the circumstances of the case and based on prevailing jurisprudence; the Court allowed the grant of legal interest in expropriation cases where there was 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; in this case, there was no delay in the payment; the order

Art. II of R.A. No. 9165 may not always be possible; the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21, Art. II of R.A. No. 9165 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; *People v. Almorfe* and *People v. De Guzman*, cited. (*Id*.)

(People *vs*. Magsano *y* Sagauinit, G.R. No. 231050, Feb. 28, 2018) p. 947

— The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Sec. 21 of R.A. No. 9165; the procedure in Sec. 21 of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. (People *vs*. Manansala *y* Maninang, G.R. No. 229092, Feb. 21, 2018) p. 578

— The procedure in Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640, 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; as such, since the prosecution failed to provide justifiable grounds for non-compliance with Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640, as well as its IRR, the accused's acquittal is perforce in order. (People *vs*. Ramos *y* Cabanatan, G.R. No. 233744, Feb. 28, 2018) p. 981

— The prosecution failed to provide justifiable grounds for the police officers' non-compliance with Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. No. 10640, as well as its IRR; as the integrity and evidentiary value of the *corpus delicti* had been compromised, the accused's acquittal is in order. (People *vs*. Magsano *y* Sagauinit, G.R. No. 231050, Feb. 28, 2018) p. 947

arrest." (People *vs*. Ramos *y* Cabanatan, G.R. No. 233744, Feb. 28, 2018) p. 981

— Under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible; the Implementing Rules and Regulations of R.A. No. 9165 – which is now crystallized into statutory law with the passage of R.A. No. 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 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 v. Almorfe* and *People v. De Guzman*, cited. (People *vs*. Manansala *y* Maninang, G.R. No. 229092, Feb. 21, 2018) p. 578

Illegal possession of dangerous drugs — For illegal possession of dangerous drugs under Sec. 11, the following elements must be established: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs; the *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself. (People *vs*. Alboka *y* Naning, G.R. No. 212195, Feb. 21, 2018) p. 487

— Given the substantive flaws and procedural lapses, serious uncertainty hangs over the identity of the seized marijuana the prosecution presented as evidence before the Court; in effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of petitioner. (Ramos *y* Lodronio *vs*. People, G.R. No. 227336, Feb. 26, 2018) p. 663

— 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

part of the *corpus delicti* of the crime; the prosecution must be able to account for each link of the chain of custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime. (People *vs*. Magsano *y* Sagauinit, G.R. No. 231050, Feb. 28, 2018) p. 947

— 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 instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug; in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. (People *vs*. Manansala *y* Maninang, G.R. No. 229092, Feb. 21, 2018) p. 578

Illegal sale of dangerous drugs — For a charge of illegal sale of dangerous drugs to prosper, the prosecution must prove: (1) the identity of the buyer, and seller, of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the sold item, and its payment; it is crucial that the integrity of the seized drug be preserved. (People *vs*. Ramos *y* Cabanatan, G.R. No. 233744, Feb. 28, 2018) p. 981

(People *vs*. Magsano *y* Sagauinit, G.R. No. 231050, Feb. 28, 2018) p. 947

(People *vs*. Bugtong *y* Amoroso, G.R. No. 220451, Feb. 26, 2018) p. 628

— The elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal

COMPROMISES

Code of Professional Responsibility — When respondent lawyer ignored the provisions of the compromise agreement and proceeded with the sale of the property even without the relocation survey, there is no question that he wantonly violated Canon 1 of the CPR. (Espanto *vs*. Atty. Belleza, A.C. No. 10756 [Formerly CBD Case No. 11-3218], Feb. 21, 2018) p. 412

Compromise agreement — A compromise agreement once approved by final order of the court has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery; when a decision on a compromise agreement is final and executory, it has the force of law and is conclusive between the parties; expounded. (Espanto *vs*. Atty. Belleza, A.C. No. 10756 [Formerly CBD Case No. 11-3218], Feb. 21, 2018) p. 412

CONSPIRACY

Existence of — The Court finds no basis in petitioner's argument that the case against him should have been dismissed considering that his alleged co-conspirator is at large; *People v. Dumlao, et al.*, cited; it is not necessary to join all the alleged co-conspirators in an indictment for a crime committed through conspiracy. (Venezuela *vs*. People, G.R. No. 205693, Feb. 14, 2018) p. 11

— Under Art. 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it; it may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. (People *vs*. Sisracon *y* Rupisan, G.R. No. 226494, Feb. 14, 2018) p. 204

rehabilitation filed by corporations, partnerships and associations pursuant to P.D. 902-A, and which is applicable in this case. (*Id*.)

CORRECTION OF CLERICAL OR TYPOGRAPHICAL ERROR IN THE CIVIL REGISTER WITHOUT NEED OF JUDICIAL ORDER (*R.A. NO. 9048)*

Clerical or typographical errors — Clerical or typographical error, defined; in 2011, R.A. No. 10172 was passed to expand the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person when it is patently clear that there was a typographical error or mistake in the entry; when respondent filed the petition for correction with the RTC in 2009, R.A. No. 10172 was not yet in effect; the proper remedy was to commence the appropriate adversarial proceedings with the RTC, pursuant to Rule 108 of the Rules of Court. (Rep. of the Phils. *vs.* Tipay, G.R. No. 209527, Feb. 14, 2018) p. 88

— With the enactment of R.A. No. 9048 in 2001, the local civil registrars, or the Consul General as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order; this law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving the substantial corrections in the civil registry to Rule 108 of the Rules of Court. (*Id*.)

COURT OF TAX APPEALS

Jurisdiction — Banco De Oro v. Republic of the Philippines, cited; Sec. 7 of R.A. No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought

DEPARTMENT OF AGRARIAN REFORM (DAR)

Jurisdiction — Proof must be adduced by the person making the allegation as to his or her status as a farmer, farmworker, or tenant; the pertinent portion of Sec. 19 of R.A. No. 9700 reads: If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR. (Chailese Dev't. Co., Inc. *vs.* Dizon, G.R. No. 206788, Feb. 14, 2018) p. 51

— The judge or prosecutor is obligated to automatically refer the cases pending before it to the DAR when the following requisites are present: a. There is an allegation from any one or both of the parties that the case is agrarian in nature; and b. One of the parties is a farmer, farmworker, or tenant. (*Id*.)

— The jurisdiction of the DAR is laid down in Sec. 50 of R.A. No. 6657, otherwise known as the CARL; by virtue of E.O. No. 129-A, the DAR Adjudication Board was designated to assume the powers and functions of the DAR with respect to the adjudication of agrarian reform cases, and matters relating to the implementation of the CARP and other agrarian laws; the exclusive jurisdiction of the DAR over agrarian cases was further amplified by the amendment introduced by Sec. 19 of R.A. 9700 to Sec. 50. (*Id*.)

— There was no evidence adduced of the existence of any tenancy agreement between respondents and the petitioner's predecessor-in-interest; this precludes the application of Sec. 50-A of R.A. No. 6657, as amended by R.A. No. 9700, for failure to satisfy the second requisite. (*Id*.)

ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (R.A. NO. 9136)

Separation benefits of contractual employees — National Transmission Corporation v. Commission on Audit, cited; under the EPIRA Law contractual employees are entitled

— The credit checking requirement imposed by respondent under the questioned Plan which effectively and undoubtedly modified the CBA provisions on salary loans was a unilateral imposition violative of its duty to bargain collectively and, therefore, invalid; petitioner sufficiently proved that respondent violated its duty to bargain collectively under Art. 253 of the Labor Code when it unilaterally restricted the availment of salary loans under Art. XI of the CA on the excuse of enforcing the Plan approved by the BSP; *Philippine Airlines, Inc. v. NLRC,* cited. (*Id.*)

— *United Kimberly-Clark Employees Union Philippine Transport General Workers Organization (UKCEU-PTGWO) v. Kimberly-Clark Philippines, Inc.,* cited; as a general proposition, an arbitrator is confined to the interpretation and application of the collective bargaining agreement; it is said that an arbitral award does not draw its essence from the CBA; hence, there is an unauthorized amendment or alteration thereof, if: 1. It is so unfounded in reason and fact; 2. It is so unconnected with the working and purpose of the agreement; 3. It is without factual support in view of its language, its context, and any other indicia of the parties' intention; 4. It ignores or abandons the plain language of the contract; 5. It is mistakenly based on a crucial assumption which concededly is a nonfact; 6. It is unlawful, arbitrary or capricious; and 7. It is contrary to public policy; If the terms of a CBA are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail; discussed. (*Id.*)

Management prerogative — Although jurisprudence recognizes the validity of the exercise by an employer of its management prerogative and will ordinarily not interfere with such, this prerogative is not absolute and is subject to limitations imposed by law, collective bargaining agreement, and general principles of fair play and justice. (Hongkong Bank Independent Labor Union (HBILU) *vs.* Hongkong and Shanghai Banking Corp. Ltd., G.R. No. 218390, Feb. 28, 2018) p. 816

so would be to render inutile legitimate measures to address employee iniquity. (*Id*.)

— There is constructive dismissal when an employer's act of clear discrimination, insensibility or disdain becomes so unbearable on the part of the employee so as to foreclose any choice on his part except to resign from such employment; it exists where there is involuntary resignation because of the harsh, hostile and unfavorable conditions set by the employer; the standard for constructive dismissal. (*Id*.)

Contingency measures — When employee wrongdoing has been uncovered, employers are equally free to adopt contingency measures; these measures may be enforced as soon as an employee's wrongdoing is uncovered, may extend until such time that disciplinary proceedings are commenced and terminated, and in certain instances, even made permanent; employers can rework processes, reshuffle assignments, enforce stopgap measures, and put in place safety checks like additional approvals from superiors; *Mandapat v. Add Force Personnel Services, Inc*., cited. (Phil. Span Asia Carriers Corp. [Formerly Sulpicio Lines, Inc.] *vs.* Pelayo, G.R. No. 212003, Feb. 28, 2018) p. 776

Illegal dismissal — Under Art. 294 of the *Labor Code,* an illegally terminated employee is entitled to reinstatement to her former position without loss of seniority rights; and to the payment of backwages covering the period from the time of her illegal dismissal until her actual reinstatement. (Casco *vs.* NLRC, G.R. No. 200571, Feb. 19, 2018) p. 284

Loss of trust and confidence — In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required, but the mere existence of a basis for believing that such employee has breached the trust of his employer suffices; application. (Casco *vs.* NLRC, G.R. No. 200571, Feb. 19, 2018) p. 284

determination of its compliance with and responsiveness to the terms and conditions in the Bidding Documents; Sec. 38, Art. XI of R.A. No. 9184 provides a time-limit within which to award a contract as a consequence of the bidding process, which is set at three (3) months from the opening of the bids; it likewise provides that the contract shall be deemed approved should there be inaction from the concerned entities. (Bureau of Customs *vs.* Hon. Gallegos, G.R. No. 220832, Feb. 28, 2018) p. 867

— The right to reject any bid contemplated by Sec. 41(c), Art. XI of R.A. No. 9184, which was invoked by Commissioner, must be read in conjunction with the ''justifiable ground" defined in Sec. 41.1 of R.A. No. 9184's IRR; the Commissioner based his discretion to abandon the procurement of the PNSW 2 project simply because he intends "to conduct a thorough review of its details" such as its terms of reference, and specifications, among others; this is hardly a justifiable ground in abandoning the bidding for the said project. (*Id*.)

— *Urbanes, Jr. v. Local Water Utilities Administration*, cited; where the Government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice, unless an unfairness or injustice is shown; as a general rule, courts cannot direct government agencies entrusted with the function to accept or reject bid and awards contract, to do a particular act or to enjoin such act within its prerogative; the bidder has no cause to complain; jurisprudence has carved out an exception; this case falls under the exception. (*Id*.)

HABEAS CORPUS

Writ of — A writ of habeas corpus may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court; if an accused is confined under a lawful process or order of the court, the proper remedy is to pursue the orderly course of trial and exhaust the usual remedies; this ordinary remedy is to file a motion to quash the information or the warrant

JURISDICTION

Jurisdiction over the parties — Concept of voluntary or conditional appearance, elucidated in *Prudential Bank v. Magdamit, Jr.;* when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, *i.e.*, to defy the RTC's lack of jurisdiction over her person; if the appearance of a party in a suit is precisely to question the jurisdiction of the said tribunal over the person of the defendant, then this appearance is not equivalent to service of summons, nor does it constitute an acquiescence to the court's jurisdiction. (Frias *vs.* Alcayde, G.R. No. 194262, Feb. 28, 2018) p. 713

— Jurisdiction over the parties is required in actions *in personam* because they seek to impose personal responsibility or liability upon a person; in a proceeding *in rem* or quasi *in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the *res*; jurisdiction over the *res* is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective. (*Id*.)

JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. NO. 9344)

Automatic suspension of sentence — Sec. 38 of R.A. No. 9344 provides that when the child below 18 years of age who committed a crime and was found guilty, the court shall place the child in conflict with the law under suspended sentence even if such child has reached 18 years or more at the time of judgment; herein minor appellants shall be entitled to appropriate disposition under Sec. 51, R.A. No. 9344, which extends even to one who has exceeded the age limit of twenty-one (21) years, so long as he committed the crime when he was

LOCAL GOVERNMENTS

Ordinances — An ordinance is presumed constitutional and valid; this presumption may only be overcome by a showing of the ordinance's clear and unequivocal breach of the Constitution. (Evasco, Jr. *vs.* Montañez, G.R. No. 199172, Feb. 21, 2018) p. 449

— An ordinance's validity shall be upheld if the following requisites are present: *first*, the local government unit must possess the power to enact an ordinance covering a particular subject matter and according to the procedure prescribed by law; *second*, the ordinance must not contravene the fundamental law of the land, or an act of the legislature, or must not be against public policy or must not be unreasonable, oppressive, partial, discriminating or in derogation of a common right. (*Id.*)

— Ordinance No. 092-2000, which regulates the construction and installation of building and other structures such as billboards within Davao City, is an exercise of police power; *Metropolitan Manila Development Authority v. Bel-Air Village Association,* cited; R.A. No. 4354 otherwise known as the Revised Charter of the City of Davao (Davao City Charter), enacted on June 19, 1965, vested the local Sangguniang Panlungsod with the legislative power to regulate, prohibit, and fix license fees for the display, construction, and maintenance of billboards and similar structures. (*Id.*)

— The power to regulate billboards within its territorial jurisdiction has been delegated by Congress to the city government *via* the Davao City Charter; this direct and specific grant takes precedence over requirements set forth in another law of general application, in this case the National Building Code; the consistency between Ordinance No. 092-2000 with the National Building Code is irrelevant to the validity of the former. (*Id.*)

MALVERSATION OF PUBLIC FUNDS

Commission of — Malversation is committed from the very moment the accountable officer misappropriates public

who may openly welcome the intrusion. (People *vs*. Agalot *y* Rubio, G.R. No. 220884, Feb. 21, 2018) p. 541

— It must be stressed that proof of hymenal laceration is not even an element of rape and healed lacerations do not negate rape; the mere penetration of the penis from entry through the labia, even without rupture or laceration of the hymen, is enough to justify conviction for rape. (People *vs*. Ragasa *y* Sta. Ana, G.R. No. 202863, Feb. 21, 2018) p. 468

— Pursuant to Art. 266-B of R.A. No. 8353, the penalty that should be imposed upon the accused-appellant is *reclusion perpetua* to death since the rape was committed with the use of a deadly weapon. Art. 63(2) of the Revised Penal Code states that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied; the penalty of *reclusion perpetua* was properly imposed, and such penalty pursuant to R.A. No. 9346 does not qualify him for parole under the Indeterminate Sentence Law; *People v. Jugueta,* cited. (*Id.*)

— Rape may be committed even in places where people congregate; thus, it is not impossible or unlikely that rape is perpetrated inside a room adjacent to a room occupied by other persons, as in this case. (People *vs*. Bauit *y* Delos Santos, G.R. No. 223102, Feb. 14, 2018) p. 166

— The absence of semen in the victim's vaginal area does not rule out a finding of rape; the presence or absence of spermatozoa is immaterial because the presence of spermatozoa is not an element of rape; it is the credible disclosure of the victim that the accused-appellant raped her that is the most important proof of the commission of the crime. (People *vs*. Agalot *y* Rubio, G.R. No. 220884, Feb. 21, 2018) p. 541

Elements — Failure of a victim to shout for help does not negate rape; physical resistance is not the sole test to determine whether a woman involuntarily succumbed to

process as it is of jurisdiction. (Frias *vs.* Alcayde, G.R. No. 194262, Feb. 28, 2018) p. 713

Substituted service — Substituted service is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute; the Sheriff fell short of these standards; as such, the presumption of regularity in the performance of official functions, which is generally accorded to a sheriff's return, does not obtain in this case. (Frias *vs.* Alcayde, G.R. No. 194262, Feb. 28, 2018) p. 713

SUPREME COURT

Jurisdiction — The direct filing of this petition in this Court is in disregard of the doctrine of hierarchy of courts; the concurrence of jurisdiction among the Supreme Court, CA and the RTC to issue the writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction did not give petitioners the unrestricted freedom of choice of court forum; although the Court has concurrent jurisdiction with the CA and the RTC in issuing the writ of *certiorari*, direct resort is allowed only when there are special, extraordinary or compelling reasons that justify the same; rationale. (Bureau of Customs *vs.* Hon. Gallegos, G.R. No. 220832, Feb. 28, 2018) p. 867

TAXATION

Tax refund or credit — Actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven; burden on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. (Coca-Cola Bottlers Phils., Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 222428, Feb. 19, 2018) p. 329

does not automatically render his statements as to the specifics on the commission of the offense inadmissible; one of the requirements under Sec. 17, Rule 119 is to establish that the erstwhile respondent does not appear to be the most guilty among him and his cohorts. (*Id*.)

WITNESSES

Credibility of — Discrepancies on minor matters that do not constitute material facts do not affect the credibility of witnesses; the trial court and the CA both held that the victim's testimony passed the test of credibility; appellant may even be convicted based solely on the testimony of the victim. (People *vs*. Antonio, G.R. No. 223113, Feb. 19, 2018) p. 349

— Factual findings of the trial courts, including their assessment of the witnesses' credibility, especially when the CA affirmed such findings, are entitled to great weight and respect by this Court; in the absence of any evidence that the prosecution witnesses were motivated by improper motives, the trial court's assessment with respect to their credibility shall not be interfered with by this Court. (People *vs*. Estrada, G.R. No. 225730, Feb. 28, 2018) p. 894

— Failure to file a complaint to the proper authorities would not impair the credibility of the complainant if such delay was satisfactorily explained; the victim's initial reluctance to file the complaint is not uncommon, considering "the natural reticence of most people to get involved in a criminal case"; fear of reprisal, too, is deemed as a valid excuse for the temporary silence of a prosecution witness (or in this case, the victim) and has been judicially declared to not have any effect on his credibility. (Etino *vs*. People, G.R. No. 206632, Feb. 14, 2018) p. 32

— In rape cases, the credibility of the complainant's testimony is almost always the single most important issue; When the complainant's testimony is credible, it may be the sole basis for the accused's conviction; The

says that she has been raped, she says in effect all that is necessary to show that rape was committed; youth and immaturity are generally badges of truth and sincerity. (*Id*.)

— Testimonies of minor victims are generally given full weight and credence as the court considers their youth and immaturity as badges of truth and sincerity; in this case, the testimony of the minor victim was "straightforward, detailed, consistent, and without any artificiality or pretension that would tarnish its credence"; moreover, it was corroborated by the medical findings. (People *vs.* Garin *y* Osorio, G.R. No. 222654, Feb. 21, 2018) p. 569

— The alleged inconsistencies and improbabilities in the testimony of the victim refer to trivial and collateral matters which, not being elements of the crime, do not diminish the credibility of the victim's declarations as long as these are coherent and intrinsically believable on the whole; there is even more reason to uphold the finding that the victim's testimony was credible since jurisprudence teaches that testimonies of child victims are normally given full weight and credit. (People *vs.* Ragasa *y* Sta. Ana, G.R. No. 202863, Feb. 21, 2018) p. 468

— The basic rule is that when a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape. (People *vs.* Agalot *y* Rubio, G.R. No. 220884, Feb. 21, 2018) p. 541

— The Court adheres to the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination"; explained in *Reyes, Jr. v. Court of Appeals.* (People *vs.* Condino, G.R. No. 219591, Feb. 19, 2018) p. 319

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